



City of Pensacola

Agenda Conference

Agenda

Monday, May 8, 2023, 3:30 PM

Council Chambers, 1st Floor

The meeting can be watched via live stream at cityofpensacola.com/video.

ROLL CALL

PRESENTATION ITEMS

REVIEW OF CONSENT AGENDA ITEMS

1. [23-00362](#) PLANTING OF A PUMPKIN ASH TREE TO BE LOCATED IN LIONS PARK IN HONOR OF MORGAN V. RILEY
Recommendation: That City Council approve the planting of a Pumpkin Ash tree to be located in Lions Park in honor of Morgan V. Riley.
Sponsors: D.C. Reeves
Attachments: [Park Amenity Dedication Proposal Form - Pumpkin Ash Tree](#)
[May 19, 2022, Parks and Recreation Board Meeting Minutes - Appro](#)
2. [23-00363](#) PLACING AN ADDITIONAL PLAQUE ON AN EXISTING BENCH LOCATED IN BARTRAM PARK IN HONOR OF JAMES WINSTEAD
Recommendation: That City approve the placement of an additional plaque on an existing bench in Bartram Park in honor of James Winstead.
Sponsors: D.C. Reeves
Attachments: [Park Amenity Dedication Proposal Form - James Thomas Winstead](#)
[March 16, 2023, Parks and Recreation Board Meeting Minutes - App](#)
3. [23-00366](#) DISCRETIONARY FUNDING ALLOCATION - CITY COUNCIL MEMBER JARED MOORE - DISTRICT 4
Recommendation: That City Council approve funding of \$1,000 to Independence for the Blind of West Florida from the City Council Discretionary Funds for District 4.
Sponsors: Jared Moore

REVIEW OF REGULAR AGENDA ITEMS (Sponsor)

4. [23-00365](#) DECLARATION OF SURPLUS AND DISPOSITION (SALE) OF REAL PROPERTY - PORTION OF 900 EAST JACKSON STREET
- Recommendation:** That City Council declare as surplus a small portion of the real property located at 900 East Jackson Street (Parcel Ref. No. 182S305001000000) adjacent to the Unity of Pensacola church and authorize the Mayor to dispose of this portion of the parcel via direct negotiation with Sanctuary Event Center Pensacola LLC. Also, that City Council waive a portion of the Disposition of City-Owned Real Property policy regarding pre-disposition mailout notices to radial property owners. Finally, that City Council authorize the Mayor to take all action necessary to execute and administer the sale consistent with the Mayor's Executive Powers as granted by the City Charter.
- Sponsors:** D.C. Reeves
- Attachments:** [Maps of Subject Parcels and Portion for Sale](#)
5. [23-00384](#) PENSACOLA AND PERDIDO BAYS ESTUARY PROGRAM (PPBEP) FIRST AMENDED AND RESTATED INTERLOCAL AGREEMENT
- Recommendation:** That City Council approve the PPBEP First Amended and Restated Interlocal Agreement.
- Sponsors:** Jared Moore
- Attachments:** [PPBEP First Amended and Restated Interlocal Agreement](#)
6. [23-00236](#) MEMORANDUM OF AGREEMENT WITH THE CHAPPIE JAMES MUSEUM OF PENSACOLA INC. FOR ADMINISTRATION OF AFRICAN AMERICAN HISTORICAL AND CULTURAL GRANT #23.S.AA.900.120 - GENERAL CHAPPIE JAMES MUSEUM AND FLIGHT ACADEMY EXPANSION
- Recommendation:** That City Council approve a Memorandum of Understanding with the Chappie James Museum of Pensacola, Inc. for administration of African American Historical and Cultural Grant #23.S.AA.900.120 to support the General Chappie James Museum and Flight Academy Expansion project. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer this grant, consistent with the terms of the grant and the Mayor's Executive Powers as granted in the City Charter. Also, that City Council accept the grant and adopt a supplemental budget resolution appropriating the funds.
- Sponsors:** D.C. Reeves
- Attachments:** [Memorandum of Agreement](#)
[AAHC Grant Agreement](#)
[Supplemental Budget Resolution No. 2023-022](#)
[Supplemental Budget Explanation No. 2023-022](#)

7. [2023-022](#) SUPPLEMENTAL BUDGET RESOLUTION NO. 2023-022 - AFRICAN AMERICAN HISTORICAL AND CULTURAL GRANT #23.S.AA.900.120 - GENERAL CHAPPIE JAMES MUSEUM AND FLIGHT ACADEMY EXPANSION
- Recommendation:* That City Council adopt Supplemental Budget Resolution No. 2023-022.
- A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN EFFECTIVE DATE.
- Sponsors:* D.C. Reeves
- Attachments:* [Supplemental Budget Resolution No. 2023-022](#)
[Supplemental Budget Explanation No. 2023-022.pdf](#)
[AAHC Grant Agreement](#)
[Memorandum of Agreement](#)
8. [23-00237](#) FIRST AMENDED AND RESTATED LEASE AGREEMENT WITH THE CHAPPIE JAMES MUSEUM OF PENSACOLA INC.
- Recommendation:* That City Council approve the First Amended and Restated Lease Agreement with the Chappie James Museum of Pensacola, Inc. for operation of the commemorative Chappie James Museum located at 1606 Dr. Martin Luther King, Jr. Drive.
- Sponsors:* D.C. Reeves
- Attachments:* [First Amended and Restated Lease Agreement](#)
[Exhibit B - Leased Premises](#)
[Exhibit C - Leased Premises - Post Expansion](#)
9. [23-00238](#) SECOND AMENDED AND RESTATED LEASE AGREEMENT WITH THE DANIEL CHAPPIE JAMES FLIGHT ACADEMY, INC.
- Recommendation:* That City Council approve the Second Amended and Restated Lease Agreement with the Daniel Chappie Flight Academy, Inc. for operation of a youth flight academy located at 1608 Dr. Martin Luther King, Jr. Drive.
- Sponsors:* D.C. Reeves
- Attachments:* [Second Amended and Restated Lease Agreement](#)
[Exhibit B - Leased Premises](#)
[Exhibit C - Leased Premises - Post Expansion](#)

10. [23-00381](#) INTERLOCAL AGREEMENT WITH THE COMMUNITY REDEVELOPMENT AGENCY FOR FUNDING OF STREETSCAPE IMPROVEMENTS TO SPRING STREET PURSUANT TO A MASTER REDEVELOPMENT AGREEMENT

Recommendation: That the City Council approve an interlocal agreement between the City of Pensacola (City) and the Community Redevelopment Agency (CRA), to permit the City to issue to the CRA a loan of up to \$1,482,278 plus \$139,329.48 in capitalized interest for a total value of \$1,621,597.48 to fund streetscape improvements along Spring Street from Garden to Romana Streets pursuant to the Master Redevelopment Agreement between the CRA, the City and 200 West Garden LLC and 27 Spring Condos, LLC. Provided, however, that the CRA may pre-pay the balance of the loan in whole or in part at any time, without penalty. Finally, that the City Council authorize the Mayor to execute the agreement, consistent with the terms of the agreement and the Mayor’s Executive Powers as granted in the City Charter.

Sponsors: Teniade Broughton

Attachments: [Interlocal Agreement -- City-CRA- Spring St. Streetscape](#)

11. [2023-040](#) RESOLUTION NO. 2023-040 - APPROVING MASTER REDEVELOPMENT AGREEMENT FOR SPRING STREETSCAPE IMPROVEMENTS FROM GARDEN TO ROMANA

Recommendation: That City Council adopt Resolution No. 2023-040:

A RESOLUTION OF THE CITY OF PENSACOLA, FLORIDA RELATING TO COMMUNITY REDEVELOPMENT WITHIN THE URBAN CORE COMMUNITY REDEVELOPMENT AREA; PROVIDING FINDINGS; APPROVING AND AUTHORIZING EXECUTION OF A MASTER REDEVELOPMENT AGREEMENT BETWEEN THE AGENCY, THE CITY OF PENSACOLA, FLORIDA, 200 WEST GARDEN LLC AND 97 SPRING CONDOS LLC PROVIDING FOR THE REDEVELOPMENT OF CERTAIN PROPERTY LOCATED IN THE REDEVELOPMENT AREA CONSISTING OF RIGHT OF WAY, STREETSCAPE IMPROVEMENTS; AND PROVIDING AN EFFECTIVE DATE.

Sponsors: Teniade Broughton

Attachments: [Resolution No. 2023-040](#)
[Master Redevelopment Agreement - Spring St. Streetscape](#)

12. [23-00293](#) FY23 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM: STATE

Recommendation: That City Council accept the Edward Byrne Memorial Justice Assistance Grant (JAG), Grant# 15PBJA-21-GG-00241-MUMU for C-8081:IN-CAR RADIOS FOR PPD OFFICERS in the amount of \$50,322.00. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer this grant, consistent with the terms of the grant and the Mayor’s Executive Powers as granted in the City Charter. Also, that City Council adopt a supplemental budget resolution appropriating the grant funds.

Sponsors: D.C. Reeves

Attachments: [Application and Summary of Grant Award C-8C081 IN-CAR RADIOS Award Grant No. 15PBJA-21-GG-00241-MUMU](#)
[Supplemental Budget Resolution No. 2023-031](#)
[Supplemental Budget Explanation No. 2023-031](#)

13. [2023-031](#) SUPPLEMENTAL BUDGET RESOLUTION NO. 2023-031 - FY23 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM: STATE

Recommendation: That City Council adopt Supplemental Budget Resolution No. 2023-031.

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN EFFECTIVE DATE

Sponsors: D.C. Reeves

Attachments: [Supplemental Budget Resolution No. 2023-031](#)
[Supplemental Budget Explanation No. 2023-031](#)

- 14. [11-23](#) PROPOSED ORDINANCE NO. 11-23 - AMENDING SECTION 9-10-1 OF THE CITY CODE - FIREFIGHTER SUPPLEMENTAL BENEFITS
Recommendation: That City Council approve Proposed Ordinance No. 11-23 on first reading.

AN ORDINANCE AMENDING SECTION 9-10-1 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; PROVIDING FIREFIGHTER PENSION BENEFITS SUPPLEMENTAL TO BENEFITS PROVIDED BY STATE STATUTE; TO COMPLY WITH CHAPTER 2019-21, LAWS OF FLORIDA, AS AMENDED; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

Sponsors: D.C. Reeves

Attachments: [Letter - DMS re Page 5 Cancer Presumption.pdf](#)
[Proposed Ordinance No. 11-23](#)

- 15. [09-23](#) AN ORDINANCE AMENDING SECTIONS 7-4-1, 7-4-2, 7-4-3, 7-4-4, 7-4-6, AND 7-4-11 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; REMOVING AUTHORITY TO OPERATE BOTTLE CLUBS; ADDING DEFINITION OF RESTAURANT; LIMITING RESTRICTION ON NUMBER AND LOCATION OF ESTABLISHMENTS WHERE ALCOHOLIC BEVERAGES CAN BE SOLD; EXPANDING THE EXEMPTION FOR RESTAURANT TO SELL ALCOHOLIC BEVERAGES..
Recommendation: That City Council adopt Proposed Ordinance No. 09-23 on second reading.

AN ORDINANCE AMENDING SECTIONS 7-4-1, 7-4-2, 7-4-3, 7-4-4, 7-4-6, AND 7-4-11 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; REMOVING AUTHORITY TO OPERATE BOTTLE CLUBS; ADDING DEFINITION OF RESTAURANT; LIMITING RESTRICTION ON NUMBER AND LOCATION OF ESTABLISHMENTS WHERE ALCOHOLIC BEVERAGES CAN BE SOLD; EXPANDING THE EXEMPTION FOR RESTAURANT TO SELL ALCOHOLIC BEVERAGES; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Sponsors: D.C. Reeves

Attachments: [Proposed Ordinance No. 09-23](#)
[FAILED - PROPOSED AMENDMENT BY COUNCIL MEMBER PAT](#)

CONSIDERATION OF ANY ADD-ON ITEMS

FOR DISCUSSION

READING OF ITEMS FOR COUNCIL AGENDA

COMMUNICATIONS

CITY ADMINISTRATOR'S COMMUNICATION

CITY ATTORNEY'S COMMUNICATION

CITY COUNCIL COMMUNICATION

ADJOURNMENT

If any person decides to appeal any decision made with respect to any matter considered at such meeting, he will need a record of the proceedings, and that for such purpose he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The City of Pensacola adheres to the Americans with Disabilities Act and will make reasonable accommodations for access to City services, programs and activities. Please call 435-1606 (or TDD 435-1666) for further information. Request must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services.



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 23-00362

City Council

5/11/2023

LEGISLATIVE ACTION ITEM

SPONSOR: D.C. Reeves, Mayor

SUBJECT:

PLANTING OF A PUMPKIN ASH TREE TO BE LOCATED IN LIONS PARK IN HONOR OF MORGAN V. RILEY

RECOMMENDATION:

That City Council approve the planting of a Pumpkin Ash tree to be located in Lions Park in honor of Morgan V. Riley.

HEARING REQUIRED: No Hearing Required

SUMMARY:

Mr. Morgan V. Riley passed away on March 18, 2022. Losing his battle with depression, he took his own life leaving behind his wife, 5-year-old daughter, and parents. The request for planting a Pumpkin Ash Tree stems from its Irish symbolism as the tree of life and immortality.

PRIOR ACTION:

May 19, 2022 - Parks and Recreation Board approved this request.

FUNDING:

N/A

FINANCIAL IMPACT:

Any cost not borne by the requestor, or the requestor's organization will be assumed by the Parks and Recreation Department.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

5/1/2023

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Miller, Deputy City Administrator
Adrian Stills, Director of Parks and Recreation
Tonya Byrd, Assistant Director of Parks and Recreation

ATTACHMENTS:

- 1) Park Amenity Dedication Proposal Form - Pumpkin Ash Tree
- 2) May 19, 2022, Parks and Recreation Board Meeting Minutes - Approved

PRESENTATION: No

Park Amenity Dedication PROPOSAL FORM

Please fill out the form below.

Amenity: Pumpkin Ash Tree
(List amenity you would like to dedicate)

Nominating Party

NAME: EPHA - Carmen Jones
(INDIVIDUAL OR REPRESENTATIVE OF GROUP)

ADDRESS: 2804 E. Strong St 32503

DAY PHONE: 850-982-6405 EVENING PHONE: _____

E-MAIL: Carmen.jones.photography@gmail.com

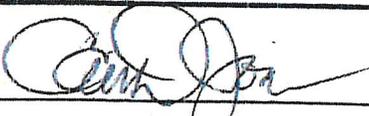
PERSON/ORGANIZATION/EVENT BEING HONORED

NAME: In Memory of Morgan V. Riley

PARK DEDICATION WOULD BE LOCATED: Lions Park
Bayou Blvd.

DESCRIBE THE SIGNIFICANT CONTRIBUTIONS MADE BY THE HONOREE:

Morgan took his own life on March 18, 2022 losing his battle to
Depression. He left behind his wife, parents and a 5yr old
daughter. The significance of the Ash Tree

SIGNATURE  DATE 4/15/2022

PLEASE FORWARD TO THE PARKS AND RECREATION DEPARTMENT:

222 West Main Street
Pensacola, FL 32502
Phone: 850.436.5670
Fax: 850.436.5199



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Meeting Minutes 3 - Final

Parks and Recreation Board

Thursday, May 19, 2022

8:00 AM

Hagler-Mason Conference Room

Members of the public may attend the meeting in person. City Council encourages those not fully vaccinated to wear face coverings that cover their nose and mouth.

CALL TO ORDER

The meeting was called to order by Chairperson Hicks

Chairperson Hicks read a statement to the public about the time delay and how they can participate in the board meeting.

ROLL CALL

Present 6 - Chairperson Rand Hicks, Antonio Bruni, David Del Gallo, Alejandra Escobar-Ryan, Michael Wolf, and Renee Borden
Absent 1 - Leah Harrison

1. SWEARING IN OF NEW AND/OR RETURNING BOARD MEMBERS

Assistant City Clerk Tice asked Vice Chair Maranda Sword to stand and raise her right hand. She was re-appointed by Council to serve an additional three-year term. Assistant City Clerk Tice administered the oath. She agreed to serve.

APPROVAL OF MINUTES

2. MINUTES OF APRIL 21, 2022 PARKS AND RECREATION BOARD MEETING

Attachments: [22-4-21 Minutes Uapproved](#)

A motion was made by Sword, seconded by Del Gallo, that this Minutes be Approved. The motion carried by the following vote:

Yes: 7 - Chairperson Hicks, Sword, Bruni, Del Gallo, Escobar-Ryan, Wolf, and Borden

Absent: 2 - O'Donovan, and Harrison

DIRECTOR'S REPORT

3. DIRECTOR'S REPORT

Attachments: [22-5-19 Director's Report Parks and Recreation Board](#)
[Tech Park Land to Soccer Fields](#)

Chairperson Hicks asked the board members if they had any questions concerning the Director's Report.

*Member Borden inquired about the soccer participation numbers. She asked if these numbers only encompass the city's recreation programs. Athletics Superintendent Fox explained the numbers only include the Pensacola Youth Soccer League. The travel teams are outside of these numbers.

*Member Bruni inquired about the youth programs. He asked if scholarships offset the revenue collected. Athletics Superintendent Fox stated yes it does. Member Bruni asked about the accounting of programs and requested documentation of payment. Discussion continued in regards to registration and the collection of revenue received.

*Member Del Gallo asked for an update on the Roger Scott Tennis Courts Project. Interim Director Stills reported the project will go back out to bid the end of May.

*Member Escobar-Ryan inquired about the status of trees being planted. Interim Director reported the City arborist will advise on the care for the trees during this dry season.

*Chairperson Hicks asked board members to reach out to the neighborhood associations and to ask for community involvement. Discussion continued.

*Member Borden inquired about the trees to be planted in Technology Park. Interim Director Stills explained the specs received from Geosyntec did include Technology Park to have trees planted but that has not taken place.

*Member Borden inquired about the exhibit presented to board for the possibility of turning the technology park into practice fields. Interim Director Stills reported he is working on the possibility to have access to part of the park as practice soccer fields.

STAFF REPORTS

4.

Attachments: [Board PR All Funds Financial Summary](#)

Budget and Planning Specialist Kendra Weekley brought before the board a report that reflects the financials for the second quarter ending in March with a three years comparison. Kendra asked the board if they had any questions in reference to the report that was included in the agenda packet.

*Member Borden asked where would revenue received from resource centers show in the report. Budget and Planning Specialist Weekley stated those numbers will show in line item titled Recreation/Athletic Fund. She added the funds are low at this time because the busiest season does not

start until April the next quarterly report will show those revenues.

*Member Borden asked the tennis fund revenue received is the same as the expenditures is this correct. Budget and Planning Specialist Weekley stated yes that is correct the revenue that exceeds the budget will go to other programs. The expenditures from the tennis fund only encompasses the minor repairs. Major repairs are handled through Parks and Recreation LOST fund.

*Member Borden asked if revenue is collected for the concessions at the tennis center. Budget and Planning Specialist Weekley stated revenue is collected from Pro Shop and would have to look into concession sales.

5. TONYA BYRD - SUMMER PROGRAMS

Recreation Superintendent Tonya Byrd brought before board Summer Camp Programs. The registration for Summer Camps started April 4th and within a half hour most outdoor camps were full. As far as the other camps, they were reaching full level which we had to limit the number of registration at a couple of centers because of the issue with being under staffed. The ratio is 1/25 and we do separate the kids into age groups as well. Having enough staff to cover 7:00 to 6:00 with breaks has been a struggle. We do need one more bus driver with a CDL license if anyone knows of a driver please contact her. Training starts this Saturday at Fricker Center from 9:00 to 12:00 for new and returning staff. They will come in for a refresher and receive shirts to be ready May 31st. Two new camps this year. We were able to work with Breathe Yoga to bring two yoga camps at Gull Point.

*Member Del Gallo suggested reaching out to the Escambia County School Board for drivers. Recreation Superintendent Byrd confirmed she has contacted them and is working on the possibility of sharing a driver.

* Member Del Gallo suggested recruiting juniors and seniors from the high schools to help staff at the summer camps. Recreation Superintendent Byrd confirmed she has contacted the school board and also Kelsey Powell who runs the Summer Youth Employment Program with the City of Pensacola has the job descriptions and has received three applications through the program.

*Member Bruni inquired as to the reason the registrations fills up so quickly is it related to a staffing issue. Recreation Superintendent Byrd reported a greater demand is there vs staffing, resources and budget.

*Member Bruni inquired if the summer camps are revenue neutral. Recreation Superintendent Byrd responded that the outdoor camps are revenue positive. Discussion followed.

*Member Bruni inquired as to the break down of city residents vs county residents that who register for the summer camps. Recreation Superintendent Byrd responded that she does not have that information she would need to look at the registrations.

*Member Bruni suggested city residents should have priority to register first for summer camps.

NEW BUSINESS

6. PARK AMENITY DEDICATION REQUEST - PUMPKIN ASH TREE - LIONS PARK

Attachments: [Pumpkin Ash Tree - Lions Park](#)

Dawn Cagle brought before the board a presentation to request a park amenity dedication of a Pumpkin Ash Tree at Lions Park for the memory of Morgan V. Riley. Ms. Cagle told the board that Carmen Jones is a dear friend who unbeknown to her submitted the dedicated request for the Pumpkin Ash Tree. Ms. Cagle informed the board she is the mother of Morgan V. Riley. Ms. Cagle enlightened the board that Morgan V. Riley was a beautiful beautiful man who had committed suicide on March 18, 2022 losing his battle to depression. Ms. Cagle continued to say that Morgan, her granddaughter, and I would go to Lions Park a lot as it is close to where I live. One of the symbolic meanings of the Pumpkin Ash Tree in Ireland is that it is the tree of life and of immortality.

A motion was made by Bruni, seconded by Escobar-Ryan, that this Park Amenity be Approved. The motion carried by the following vote:

Yes: 7 - Chairperson Hicks, Sword, Bruni, Del Gallo, Escobar-Ryan, Wolf, and Borden

Absent: 2 - O'Donovan, and Harrison

7. PARK AMENITY DEDICATION REQUEST - THE GARDEN OF PEACE AND HOPE - A MEMORIAL FOR HOMICIDE VICTIMS

Attachments: [The Garden of Peace and Hope - Corrine Jones Park](#)

Alyson Yarbough Clay, Angela Mixon, and Lavon Brown brought before the board a presentation to request a park amenity dedication for a garden of peace and hope - a memorial for homicide victims.

Alyson Yarbough Clay, began the presentation to the board.

Ms. Yarbough Clay is a board member for (PAIN) Parents Against Injustice and Negligence which is a non-profits 501c3 organization that advocates and assist families of homicide victims in the local area. One way to do so is to create a park The Garden of Peace and Hope that would honor those who have lost their lives to homicide. The homicide victims to be honored are those that have fallen to the violence that has plagued our community. These honorees had lives that were cut short by the hands of others leaving families and friends to mourn the unexpected loss. This location will be an opportunity to honor the memory of those who have fallen. This location promotes healing, hope and peace in the lives of those impacted by a homicide in our community and the community at large.

Ms. Mixon, began the presentation by telling the board her 22 year old daughter was murdered on February 17, 2011 and placed in a shallow grave by the Navy Base. The park is a place that is close by to where I live

and I can stand on my front porch and look at the park. The park is where I go to reflect on the memories of her and it offers me a place of peace and tranquility instead of going to the site and remembering what happened there that day. The park is a place that I can take her two sons to remember her and this is the area where she grew up we had been living in this area since 1994. Ms. Mixon thanked the board for taking the time to listen today. Ms. Brown, President of Parents Against Injustice and Negligence. I am a mother of has been affected by a homicide. I am a survivor. On October 22, 2012, I received a call saying my son had been shot. Upon the arrival at the location which I was directed by the caller, I encountered my son who was covered by a white sheet immediately I knew a mothers worse fear had found me, my son was dead. The crime scene tape was placed and I could not appear any further. Every emotion you could image grabbed me and I began to run and holler until suddenly a peace fell upon me. With this peace, I was able to start comforting others at the scene. A nugget of my ability to comfort others in distress was increased at the most worse tragedy that I could ever think of. This is why I support the development of The Garden of Peace and Hope that our area is lacking in support for survivors families of homicide victims. This is very important we began working on this since 2014 and we are looking forward to come fruition this year. The name is very important for this spot. Currently we have meetings now in the Corrine Jones Park in the area where we have been allotted this area to have the Garden of Peace and Hope this area that is very peaceful. This is for anyone who is suffering a tragedy this is a place for healing a place for peace and a place to reflect on good memories and good time. Many people go to the cemetery or the crime scene where is not a good place where you can think on good memories. We want this place to be a reflection of good memories and we can smile, talk and laugh and we can have peace. I know what peace is. Ms. Brown thanked the board for everything that is being done.

Chairperson Hicks asked Ms. Brown for a clearer idea of what it is she wants to specifically do at the site. Ms. Brown stated she wants to set up a place where there is a concrete slab, benches, flowers, a wall, and some pavers with names and dates as a memorial. Each family would be responsible for purchasing the pavers. Ms. Brown showed a rendering of the idea.

Member Del Gallo offered his services for the concrete work.

A motion was made by Borden, seconded by Sword, that this Park Amentiy be Approved. The motion carried by the following vote:

Yes: 7 - Chairperson Hicks, Sword, Bruni, Del Gallo, Escobar-Ryan, Wolf, and Borden

Absent: 2 - O'Donovan, and Harrison

OLD BUSINESS

8. DISCUSSION - PARKS AND RECREATION REQUEST FOR MASTER PLAN

Attachments: [Link to City of Gainesville Master Plan](#)
[Orange County Florida - Table of Contents](#)
[Master Plan Ideas - Contents for Discussion](#)
[Template for Creating Your Own Master Planning Request for Proposal](#)
[UWF - COP Parks Needs Assessment 12-1-2016](#)

Chairperson Hicks reported to the board that he has reached out to Dr. Song who is an Associate Professor and Program Coordinator, Sports Management at the University of West Florida. He had spoken to him about the needs assessment completed by the university in 2016 and asked him if he would like to repeat that performance. Dr. Song said absolutely. They would like to come and provide for us a needs assessment regarded as a step towards or equivalent to a master plan. They would like to do this for the good of the community for the good of Pensacola and as a gift to our city. Dr. Song wants to suggest is that this be a permanent/semi-permanent relationship that this would be something that University of West Florida can continue to do as needed years coming forward.

*Member Wolf asked if a fee was involved. Chairperson Hicks responded no fee.

*Member Del Gallo asked if they would be able to and willing to meet with board members to talk about processes. Chairperson Hicks responded that Dr. Song is interested in coming to and participating at the board meetings and also at public engagement meetings and all of us will be invited to attend.

Discussion continued.

*Chairperson Hicks asked for comments from the Interim Director and the Deputy City Administrator. Interim Director Stills commented that this is very exciting news. Soccer fields for games and practices are at great demand right now and if the needs assessment can help that would be a great benefit to expanding the program.

*Member Wolf asked the Deputy City Administrator Forte if city council would need to approve the involvement with University of West Florida and them producing a needs assessment. Deputy City Administrator Forte responded that a interlocal agreement would to be entered into with University of West Florida drafted by legal outlining the perimeters and responsibilities.

Discussion continued.

9. MEMBERSHIP - NATIONAL RECREATION AND PARK ASSOCIATION

Attachments: [Links - National Recreation and Park Association Publications - April & May](#)

Chairperson Hicks announced that all board members have been added to the National Recreation and Park Association membership and will start receiving monthly publications.

OPEN FORUM

Chairperson Hicks announced that Michael O'Donovan has resigned from the Parks and Recreation Board.

Member Bruni made a motion to encourage the Council to give extra consideration to appoint a nominee to the Parks and Recreation board from District 7 in order to encourage the diversity of the group.

A motion was made by Bruni, seconded by Del Gallo, that this be Approved. The motion carried by the following vote:

Yes: 5 - Chairperson Hicks, Bruni, Del Gallo, Wolf, and Borden

Absent: 4 - O'Donovan, Sword, Escobar-Ryan, and Harrison

ADJOURNMENT

The City of Pensacola adheres to the Americans with Disabilities Act and will make reasonable accommodations for access to City services, programs and activities. Please call 435-1606 (or TDD 435-1666) for further information. Request must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services.



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 23-00363

City Council

5/11/2023

LEGISLATIVE ACTION ITEM

SPONSOR: D.C. Reeves, Mayor

SUBJECT:

PLACING AN ADDITIONAL PLAQUE ON AN EXISTING BENCH LOCATED IN BARTRAM PARK IN HONOR OF JAMES WINSTEAD

RECOMMENDATION:

That City approve the placement of an additional plaque on an existing bench in Bartram Park in honor of James Winstead.

HEARING REQUIRED: No Hearing Required

SUMMARY:

James Thomas Winstead was a marine research biologist at the United States Environmental Protection Agency Lab on Pensacola Beach and resided in this area for over 40 years. The placing of this additional plaque, on one of the two existing benches designated for the family, will allow his family to go to the park to honor him.

PRIOR ACTION:

March 16, 2023 - Parks and Recreation Board recommended that City Council approve.

FUNDING:

N/A

FINANCIAL IMPACT:

Any cost not borne by the requestor, or the requestor's organization will be assumed by the Parks and Recreation Department.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

5/1/2023

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Miller, Deputy City Administrator
Adrian Stills, Director of Parks and Recreation
Tonya Byrd, Assistant Director of Parks and Recreation

ATTACHMENTS:

- 1) Park Amenity Dedication Proposal Form - James Thomas Winstead
- 2) March 16, 2023, Parks and Recreation Board Meeting Minutes - Approved

PRESENTATION: No

Park Amenity Dedication PROPOSAL FORM

The installation of any plaque as a dedication to an individual or group at a City facility must be approved. Please fill out the form below. You will be notified of the decision.

Nominating Party

NAME: Courtney R. Winstead (spouse)
(INDIVIDUAL OR REPRESENTATIVE OF GROUP)

ADDRESS: 3052 Rosa Del Villa Dr. Gulf Breeze, FL 32563

DAY PHONE: 850-380-2635 EVENING PHONE: 850-932-5787

E-MAIL: crwinstead47@gmail.com

PERSON/ORGANIZATION/EVENT BEING HONORED

NAME: James Thomas Winstead

PARK DEDICATION WOULD BE LOCATED: Placing a plaque with his name next to the existing family plaque on the bench located in Bartram Park.

DESCRIBE THE SIGNIFICANT CONTRIBUTIONS MADE BY THE HONOREE:

James T. Winstead has resided in this area for over 40 years. He worked at the USEPA lab on Pensacola Beach until his retirement. He also taught as an adjunct professor at UWF. He was a veteran, serving in the U.S. Air Force.

SIGNATURE Courtney R. Winstead DATE 1/13/2023

PLEASE FORWARD TO THE PARKS AND RECREATION DEPARTMENT:

222 West Main Street
Pensacola, FL 32502
Phone: 850.436.5670
Fax: 850.436.5199



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Meeting Minutes 3 - Final

Parks and Recreation Board

Thursday, March 16, 2023

8:00 AM

Hagler Mason Conference Room, 2nd Floor

CALL TO ORDER

ROLL CALL

Present 7 - Chairperson Rand Hicks, Vice Chair Renee Borden, Antonio Bruni, David Del Gallo, Leah Harrison, John Jerrals, and Michael Wolf
Absent 1 - Alejandra Escobar-Ryan

APPROVAL OF MINUTES

MINUTES OF FEBRUARY 16, 2023 PARKS AND RECREATION BOARD

Attachments: [23-2-16 Minutes - Unapproved](#)

A motion was made by Vice Chair Borden, seconded by Bruni, that this Minutes be Approved. The motion carried by the following vote:

Yes: 7 - Chairperson Hicks, Bruni, Del Gallo, Harrison, Wolf, Vice Chair Borden, and Jerrals

Absent: 1 - Escobar-Ryan

DIRECTOR'S REPORT

DIRECTOR'S REPORT

Attachments: [23-3-16 Director's Report Parks and Recreation Board](#)

Member Borden asked regarding the renovations at Malcolm Yonge Gymnasium what is our position now. Director Stills responded at this point in time we are in the process of assessing damage to that facility. We had a contractor go out and do an assessment for us and we haven't gotten all the information back. As of yesterday, they were coming over and dismantling the sides of the building to see how much damage there is. Once we get that assessment back, we will determine the best course of action to take concerning the facility we will take that back to the board.

Member Borden asked if the city is having a contractor go out to do assessment or is that back on the Lighthouse. Director Stills responded that at this point in time it is in-house. Our Public Works department has been tasked with coming out and conducting an assessment and based on

their recommendations we will outsource a final assessment.

Member Borden asked if the Lighthouse would do the repairs. Director Stills responded that the agreement that we had in the past is that they would do repairs up to \$25,000 a year. We definitely need to do repairs from a safety standpoint since we are leasing the facility, we need to do our due diligence first.

Member Borden asked if an assessment was done prior to leasing the facility and entering into the agreement. Director Stills responded that he would get back to the board with the last time an assessment was done on the building.

Member Bruni asked regarding the Scenic Heights Community sign that in the Director's Report it shows an anticipated completion date as the end of March can you give us an update on this. Director Stills responded that we are in the process of getting the sign we are in the stage of coming up with a couple of options that we want the neighborhood association to sign off on and the placement of the sign.

Member Bruni asked regarding the grandfathering in the kids for the summer camps are we reserving spots for them how are we managing to get the kids in when it is filling up so quickly. Assistant Director Byrd explained those kids will be invited to the early registration period, but it is still up to them to get registered.

Member Harrison asked regarding the Childrens Chorus that they have kicked off the programs and the Children's Chorus is going to do an outreach to promote programs is the city doing anything and is this on the city's website. Assistant Director Byrd responded that it is on the website along with on-line registration and have been pushing through social media.

STAFF REPORTS

CULTURAL AFFAIRS PRESENTATION - SYDNEY ROBINSON

Attachments: [23-3-16 PensaCulture Robinson Sydney Presentation](#)

Cultural Affairs Coordinator Robinson came before the board to give a presentation on the key focus areas of the culture affairs programs. When starting the program, the main objective was to define what cultural affairs at the City of Pensacola is going to be. So right now, my key focus areas are to increase access to public art, create pathways for more collaboration between the city and the cultural and artistic communities, and promote and help support cultural events throughout the city.

Member Wolf asked if the plan is to use local artist. Cultural Affairs Coordinator Robinson responded we are not committing to only local artists if an opportunity to bring in something fantastic from somewhere else and we decide that's a benefit then we would do that but right now it is local artists.

Cultural Affairs Coordinator Robinson continued with presentation displaying slides of completed projects and upcoming projects.

Completed Projects

*Cubed - This project increased public art, funded local artists, and showed city-level support of existing art organizations.

*Bloomberg Grant - Applied for a million-dollar grant which would create an art park in Hollice T Williams Park.

Upcoming Projects

*Art Boxes - Cover 8 city-owned traffic signal boxes located in rights-of-way in prime downtown area with murals from local artist.

*Journey to Juneteenth - Coordinate with new and existing Juneteenth-themed events in honor of federal holiday.

*Hollice T. Art Courts - Resurface existing basketball courts (3) located at Hollice T. Williams Park.

*The Mariner - Donated sculpture from local sculptor to be placed near Marina located in Maritime Park.

*PensaCULTURE Art Walls - Complete grant application to create 10+large scale murals.

*Indigenous Heritage Trail - Partner with Santa Rosa Band of the lower Muscogee to create educational and artist trail through city parks.

*Pensacola Arts Alliance - Host quarterly networking and coordinating meetings with Pensacola-area arts and cultural organizations.

Member Wolf asked if the TBD for the completion dates on the presentation slides represents not having funding or have not determined how to do the project or is it both. Cultural Affairs Coordinator Robinson responded it is a little bit of both depending on which event. Haven't quit set deadlines for everything. Member Wolf asked if the program is in the need of funding. Cultural Affairs Coordinator Robinson responded that the cultural affairs program is funded through ARPA that council had set aside. Member Wolf asked if she was the only one or is there someone else. Cultural Affairs Coordinator Robinson responded that she is the only one but works with the staff in Parks and Recreation.

Member Harrison asked if the program would have access to bring in kids. Cultural Affairs Coordinator Robinson responded that she had thought about that and would like to have a well-rounded approach available. Member Harrison stated please let us know how we can support you.

NEW BUSINESS

PARK AMENITY REQUEST - ADDITIONAL PLAQUE ON EXISTING BENCH AT BARTRAM PARK - JAMES WINSTEAD

Attachments: [Park Amenity Dedication Proposal Form](#)

Chairperson Hicks asked Ms. Courtney Winstead to come forward with her request to have an additional plaque added to an existing bench. Ms. Winstead came before board and gave a brief history of previously purchasing two family benches designated for her family. Her mother loved to spend her time sitting and looking out over the water so when she had passed away the family purchased a bench and a plaque to be placed by the water in Wayside Park as a way for the family to remember her. When the construction of the three-mile bridge began, the bench was removed. The bench was placed in the city warehouse and had deteriorated, and it could no longer be used. The city informed Ms. Winstead of the condition of the bench and offered to place the bench in another park by the water and suggested Bartram Park. Ms. Winstead then asked to have two benches placed in Bartram Park one to replace the bench for her mother and one for her sister who has now had passed away. Ms. Courtney Winstead is requesting to have an additional family plaque placed on one of the existing benches for her husband James Thomas Winstead. James Thomas Winstead was a marine research biologist at the Environmental Protection Agency out at Sabine Island on Pensacola Beach who has fallen terminally ill. He has requested to be cremated and his ashes spread into the gulf. This additional plaque on the bench will be a way for his family to go honor him.

Chairperson Hicks asked board for any questions, no response. Chairperson Hicks shared with board that he fully endorses the ideal. A gentleman who worked at Sabine or many years to improve the health of the gulf and improve the quality of the ocean will be interred there in a sense.

A motion was made by Harrison, seconded by Del Gallo, that this Park Amenity be Approved. The motion carried by the following vote:

Yes: 7 - Chairperson Hicks, Bruni, Del Gallo, Harrison, Wolf, Vice Chair Borden, and Jerrals

Absent: 1 - Escobar-Ryan

OLD BUSINESS

Member Bruni asked if staff could give updates when available regarding the Miraflores Park. Chairperson Hicks stated that Adrienne Walker is offering that information to the public. Chairperson Hicks stated that he is on the advisory board and will share whatever information he has.

Member Borden added that Ms. Oliver had given a presentation to the parks and recreation board and suggested that be forwarded to the advisory board.

Member Bruni stated that he may have come across as being contrarian in specific to the youth sports, however with the presentation given by Travis Peterson he agrees 100% with everything that was said all that he is asking for is the youth sports providers to have transparency and have accountability.

Director Stills gave an update on the use agreement to the board. The sports providers and the mayor had a meeting, so everyone had an opportunity to understand what the city was asking regarding the participates, scholarships, and the in-kind contributions. So next year in 2024, we will inject more in-kind contributions into the agreement.

Member Wolf asked for news on the master plan. Chairperson Hicks stated the master plan will not come from UWF they were to be involved in the needs assessment. The concept of a master plan will eventually have to be approved by council and endorsed by administration. We get request every day to improve the parks and until we have a master plan we don't know where we are as a whole.

Member Wolf asked if the city needs to send out an RFI to planning firms to get bids to show to council. Chairperson Hicks asked Deputy City Administrator Miller how we should proceed with the quest for a master plan. Deputy City Administrator Miller stated that at the first meeting with Director Stills she asked if there was a parks master plan. She is aware of the need and would like to collaborate with staff and brainstorm a bit on how to accomplish that task. In addition to opportunities available to us through UWF, there may be other free or nearly free resources available to us at the state level. She will work with staff to put together a draft timeline and steps in the process to bring back to the board to review and to provide input and feedback and then take to council to get funding appropriated and/or approval to move forward. Will come back to board meeting in June with a draft.

OPEN FORUM

Member Borden asked regarding the presentation to council from the Veterans Memorial Council if they had requested to do a presentation to Parks and Recreation Board. Director Stills responded no one had been in contact with him. Member Borden asked if Veterans Memorial Park is under Parks and Recreation such as maintenance and repairs or does their board oversee all the maintenance required. Director Stills responded that the Veterans Memorial Council does all the maintenance for the park

up to Admiral Mason at this time and they do a great job.

Member Borden asked regarding the council item for Alabama Square Park was that something that should have come before the board for recommendation to council. Director Stills responded that the council item was to reallocate funding for repairs.

Member Borden asked if the new playground equipment being purchased is ADA compliant. Director Stills responded that yes, the vendors that we use you cannot purchase playground equipment that is not ADA compliant.

Member Borden asked if the new playground equipment will be available to review and to get public input before installing. Director Stills responded that Parks will try to address that to the board. Superintendent of Administration and Special Projects Carmody knows the footprint of the parks and what playground equipment fits and the timing of working with the grants and logistics of getting the playground equipment varies we will try to get some options.

Member Bruni would like it to be noted for record that the Parks and Recreation Board members were emailed and did receive on February 27, 2023, the letter from Christopher J Lewis.

Chairperson Hicks asked regarding Dunmire Woods what precisely is being done there with the wood chips. Director Stills responded he will research if the wood chips make the playground ADA compliant instead of having sand.

Chairperson Hicks shared with board members that City of Pensacola Parks and Recreation have supported Pensacola Ciclovía since its conception in 2017 we have made a gender generational and diverse transfer and Brittney Ellers is now our president of Ciclovía. When you see her congratulate her she will do a great job and if you can support her please do, I will.

ADJOURNMENT

The City of Pensacola adheres to the Americans with Disabilities Act and will make reasonable accommodations for access to City services, programs and activities. Please call 435-1606 (or TDD 435-1666) for further information. Request must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services.



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 23-00366

City Council

5/11/2023

LEGISLATIVE ACTION ITEM

SPONSOR: City Council Member Jared Moore

SUBJECT:

DISCRETIONARY FUNDING ALLOCATION - CITY COUNCIL MEMBER JARED MOORE - DISTRICT 4

RECOMMENDATION:

That City Council approve funding of \$1,000 to Independence for the Blind of West Florida from the City Council Discretionary Funds for District 4.

HEARING REQUIRED: No Hearing Required

SUMMARY:

In accordance with Sections 3.28-3.33 of the Policies of the City Council, prior to any distribution of grant or sponsorship funds from the City Council Discretionary Funds, approval by City council is required.

Independence for the Blind of West Florida serves the ten counties from Pensacola to the Apalachicola River and is funded in part by the Florida Department of Education, Division of Blind Services and the United Way of West Florida. Their mission is to empower people who are blind or visually impaired in Northwest Florida to achieve maximum independence. Their programs are designed to meet the emotional and practical needs of the blind and visually impaired community by providing client-centered individualized instruction to the blind, incorporating the most up-to-date techniques and equipment. Funding will be used towards the furtherance of their mission.

PRIOR ACTION:

July 21, 2022 - City Council adopted Resolution No. 2022-065 establishing the City Council Discretionary Fund Policy.

FUNDING:

Budget:	\$30,054	District 4 Discretionary funds
Actual:	\$ 1,000	Independence for the Blind of West Florida

FINANCIAL IMPACT:

A balance of \$30,054 is currently within the District 4 Discretionary Fund Account. Upon approval by City Council, a balance of \$29,054 will remain in the District 4 Discretionary Fund Account.

STAFF CONTACT:

Don Kraher, Council Executive
Yvette McLellan, Special Assistant to the Council Executive

ATTACHMENTS:

None

PRESENTATION: No



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 23-00365

City Council

5/11/2023

LEGISLATIVE ACTION ITEM

SPONSOR: D.C. Reeves, Mayor

SUBJECT:

DECLARATION OF SURPLUS AND DISPOSITION (SALE) OF REAL PROPERTY - PORTION OF 900 EAST JACKSON STREET

RECOMMENDATION:

That City Council declare as surplus a small portion of the real property located at 900 East Jackson Street (Parcel Ref. No. 182S305001000000) adjacent to the Unity of Pensacola church and authorize the Mayor to dispose of this portion of the parcel via direct negotiation with Sanctuary Event Center Pensacola LLC. Also, that City Council waive a portion of the Disposition of City-Owned Real Property policy regarding pre-disposition mailout notices to radial property owners. Finally, that City Council authorize the Mayor to take all action necessary to execute and administer the sale consistent with the Mayor's Executive Powers as granted by the City Charter.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The real property located at 900 East Jackson Street. This improved parcel currently totals approximately 1.37 acres and is zoned R-1AA.

The subject portion of this parcel is approximately 0.17 acres and is located between the gym and the Unity church. The portion has been used as a parking lot for the church next door for at least the last 50 years due to an overlap issue in deed descriptions.

A representative for the new owners of the church property contacted the City in late 2022 to permanently resolve the issue of use and ownership with an offer to acquire. After some negotiation, the potential buyer has offered \$78,912. Staff has determined the offer for the acquisition of the 0.17 acres to be sufficient based on valuation obtained in previous appraisal.

Per Council policy regarding disposition, no historical findings requiring the retention of the parcel were identified, nor is the property waterfront or with a water view. The request for waiver of the pre-disposition mailout to property owners within the 300-ft radius of the subject property is due to the current use of the property remains unchanged.

PRIOR ACTION:

N/A

FUNDING:

N/A

FINANCIAL IMPACT:

Per Council policy, the net proceeds from the sale will be placed in the Housing Initiatives Fund, unless otherwise determined by Council. A supplemental budget amendment recognizing the funds will be brought to Council at a later meeting.

LEGAL REVIEW ONLY BY CITY ATTORNEY: No

4/27/2023

STAFF CONTACT:

Kerrith Fiddler, City Administrator
David Forte, Deputy City Administrator
Amy Lovoy, Finance Director

ATTACHMENTS:

- 1) Maps of Subject Parcels and Portion for Sale

PRESENTATION: No

JACKSON STREET

9th AVENUE

10th AVENUE

LA RUA STREET

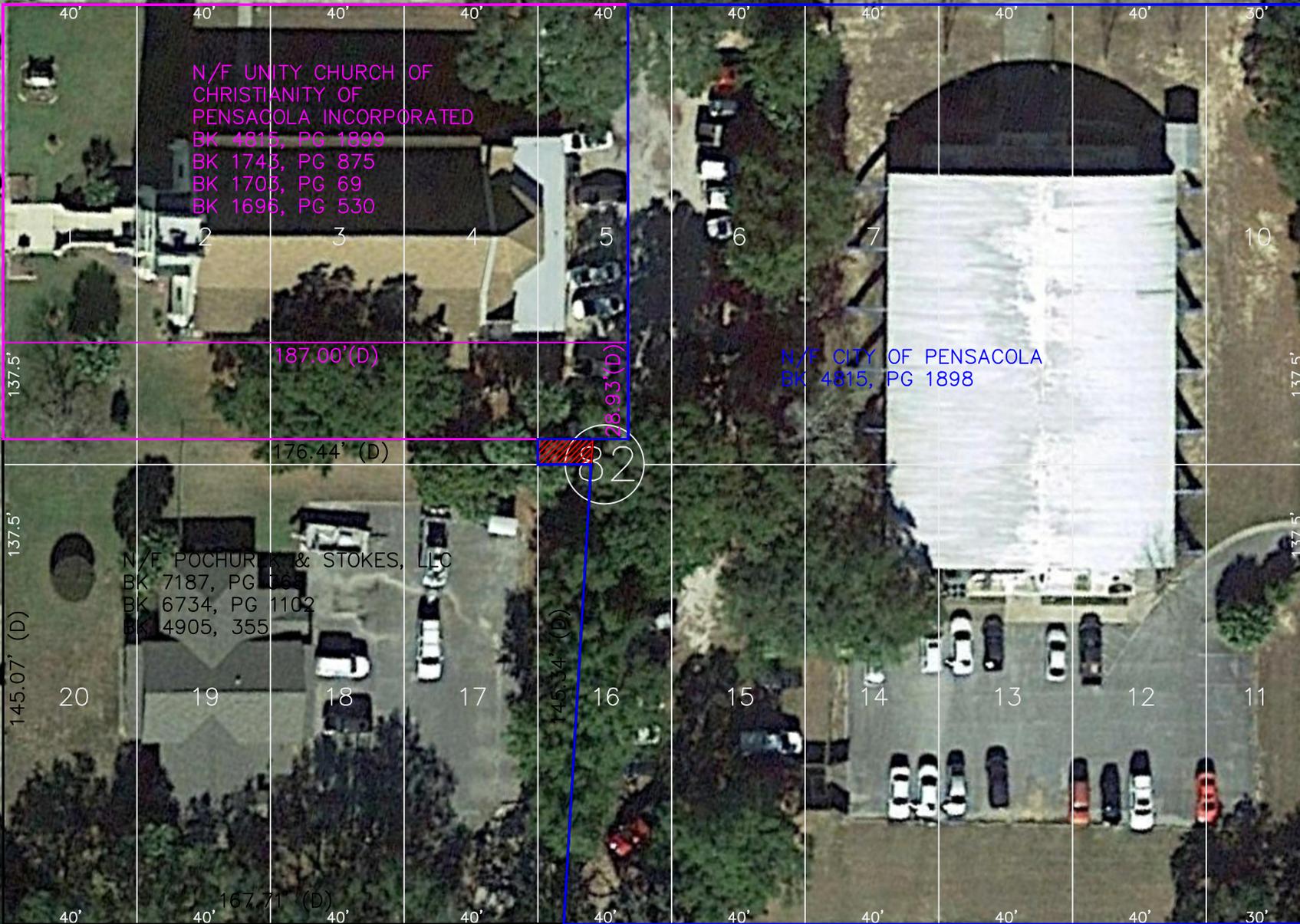
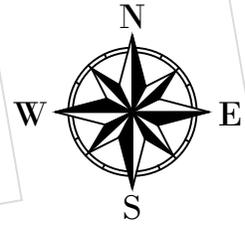
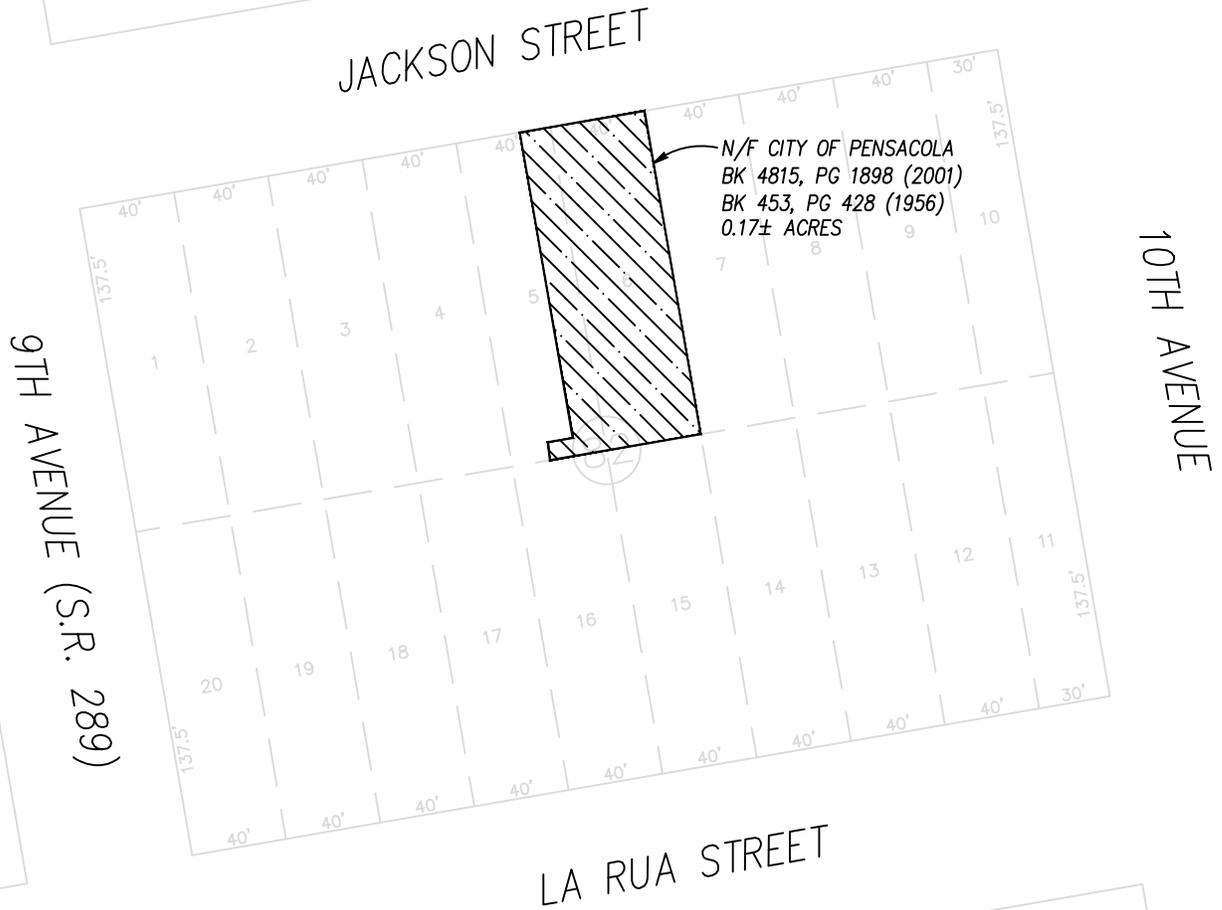


EXHIBIT A-1



SCALE 1" = 80'



Description

LOT 6 AND THE EAST 13 FEET OF LOT 5 AND THE SOUTH 7.57 FEET OF THE WEST 27 FEET OF LOT 5, BLOCK 82, NEW CITY TRACT, ACCORDING TO THE MAP OF THE CITY OF PENSACOLA, COPYRIGHTED BY THOMAS C. WATSON IN 1906, LESS AND EXCEPT THE PARCEL OF LAND DESCRIBED IN OFFICIAL RECORD BOOK 7187 AT PAGE 368, CLERK OF THE COURT, ESCAMBIA COUNTY, FLORIDA.

CITY OF PENSACOLA
222 WEST MAIN STREET
PENSACOLA, FLORIDA

A PORTION OF
LOTS 5 & 6, BLOCK 82, NEW CITY TRACT
THIS SKETCH IS NOT A SURVEY



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 23-00384

City Council

5/11/2023

LEGISLATIVE ACTION ITEM

SPONSOR: City Council Member Jared Moore
D.C. Reeves, Mayor

SUBJECT:

PENSACOLA AND PERDIDO BAYS ESTUARY PROGRAM (PPBEP) FIRST AMENDED AND RESTATED INTERLOCAL AGREEMENT

RECOMMENDATION:

That City Council approve the PPBEP First Amended and Restated Interlocal Agreement.

HEARING REQUIRED: No Hearing Required

SUMMARY:

In 2018, the City entered into an Interlocal Agreement, under Chapter 163, Florida Statutes, with Escambia County, FL; Santa Rosa County, Florida; Okaloosa County, Florida; the City of Gulf Breeze, Florida; the City of Milton, Florida; the Town of Century, Florida; Baldwin County, Alabama; and the City of Orange Beach, Alabama. The purpose of the Agreement was to establish the management structure for the Estuary Program, which replaced the former Bay Area Resource Council (BARC) partnership established in 1987. The Estuary Program established in 2018 is governed by a Policy Board made up of representatives from each of the participating local government entities. Councilman Moore currently serves as the City's representative.

Through the Estuary Program, the participating local governments have been able to work together cooperatively for the protection and management of their shared estuaries to an extent that the entities could not achieve if acting alone. The Program has successfully functioned to implement a Comprehensive Conservation and Management Plan (CCMP) to restore and protect the Pensacola Bay and Perdido Bay systems and is prepared to continue this mission going forward.

The Estuary Program is currently hosted by Escambia County, with the County providing accounting and administrative services. The Estuary Program Policy Board has determined that it would be advantageous to establish a separate, independent legal entity to carry out the purpose of the Program. Thus, at its meeting on April 5, 2023, the Policy Board approved the attached First Amended and Restated Pensacola and Perdido Bay Estuary Program Interlocal Agreement to provide for the creation of a Florida not-for-profit corporation to administer and carry out the purpose of the Estuary Program. The Board also authorized the transmittal of the Amended Interlocal Agreement to all the local government participants, along with a proposed resolution for adoption and appointment of a representative to the new corporation's board. Following adoption of the First

Amended and Restated Interlocal Agreement, the Estuary Program organizational structure will transition into a not-for-profit corporation as an “instrumentality of government”.

PRIOR ACTION:

November 8, 2018 - City Council approved entering into an Interlocal Agreement with PPBEP

May 18, 1987 - City Council entered into the BARC Interlocal Agreement

July 22, 1997 - City Council revised the BARC Interlocal Agreement

August 9, 2005 - City Council revised the BARC Interlocal Agreement

FUNDING:

N/A

FINANCIAL IMPACT:

There is no financial impact to approving the Amended and Restated Interlocal Agreement.

STAFF CONTACT:

Don Kraher, Council Executive

ATTACHMENTS:

- 1) PPBEP First Amended and Restated Interlocal Agreement

PRESENTATION: No

**FIRST AMENDED AND RESTATED
PENSACOLA AND PERDIDO BAYS ESTUARY PROGRAM
INTERLOCAL AGREEMENT**

This Interlocal Agreement (hereinafter referred to as the “Agreement”) is executed and made effective by and among: Escambia County, Santa Rosa County, and Okaloosa County, political subdivisions of the State of Florida; Baldwin County, a political subdivision of the State of Alabama (hereinafter referred to as the “Counties”); City of Gulf Breeze, City of Milton, City of Pensacola, and Town of Century, municipal corporations of the State of Florida; and City of Orange Beach, a municipal corporation of the State of Alabama (hereinafter referred to as the “Cities”) (each being at times referred to as “Party” or “Parties”).

WITNESSETH:

WHEREAS, the Florida Parties are authorized by Section 163.01, Florida Statutes, et seq., to enter into interlocal agreements and thereby cooperatively utilize their powers and resources in the most efficient and economical manner possible; and

WHEREAS, the City of Orange Beach is an Alabama Class 8 municipality vested with a portion of the state’s sovereign power to protect the public health, safety, and welfare pursuant to *Alabama Code* §11-45-1 et seq. (1975), and has specific authority to enter into contracts with counties and municipal corporations for the joint exercise of their powers and resources pursuant to *Alabama Code* §11-102-1 et seq. (1975); and

WHEREAS, Baldwin County is a political subdivision of the State of Alabama which is vested with certain authority as provided by state law, which includes the authority to provide for and protect the public health, safety, and welfare in the exercise of enumerated powers, and pursuant to *Alabama Code* § 11-102-1, et seq., (1975), Baldwin County has the authority to enter into contracts with counties and municipal corporations for the joint exercise of any power or service that state or local law authorizes each contracting entity to execute individually, subject to the limitations set forth in applicable laws, rules and regulations, including, but not limited to, *Alabama Code* § 11-102-5 (1975); and

WHEREAS, the Florida political subdivisions of Escambia and Santa Rosa Counties and the Florida municipal corporations of the Cities of Gulf Breeze, Milton, and Pensacola entered into an interlocal agreement, *Restated Interlocal Agreement Establishing Local Funding Requirements for the Bay Area Resource Council*, on May 18, 1987, revised on July 22, 1997, and last revised on August 9, 2005, establishing the Bay Area Resource Council (hereinafter the “BARC”) to ensure effective water resource planning, preservation, and coordination; and

WHEREAS, on August 31, 2017, the Parties were notified of intent to award funds to establish the Pensacola and Perdido Bays Estuary Program (hereinafter referred to as the “Estuary Program” or “Program”) through a Cooperative Agreement between the Gulf Coast Ecosystem Restoration Council (hereinafter referred to as the “RESTORE Council”) and the US Environmental Protection Agency’s (USEPA) Gulf of Mexico Program (GMP); and

WHEREAS, the Estuary Program succeeds and absorbs the BARC's mission; and

WHEREAS, the Estuary Program is established to develop and implement a Comprehensive Conservation & Management Plan (CCMP) to restore and protect the Pensacola Bay System and Perdido Bay System, and their associated watersheds as defined in Article I; and

WHEREAS, this Agreement establishes the Estuary Program to develop and implement the CCMP through close cooperation with the Parties, local, state, and federal agencies, and the public for effective planning, restoration, and protection of the Pensacola Bay System and Perdido Bay System.

NOW, THEREFORE, in consideration of the mutual terms and conditions contained in this Agreement, the receipt and adequacy acknowledged by them, the Parties agree as follows:

ARTICLE 1 – PURPOSE OF AGREEMENT

- 1.1 **Recitals**: The recitals contained in the preamble of this Agreement are declared to be true and correct and are hereby incorporated into this Agreement.
- 1.2 **Geographic Territory**: The geographic territory of the Estuary Program shall include the Pensacola Bay System (Figure 1) and the Perdido Bay System (Figure 2) and their associated watersheds, including all bayous, bays, creeks, rivers, and streams contained within. The Pensacola Bay System includes: Blackwater Bay, East Bay, Escambia Bay, Pensacola Bay, and Santa Rosa Sound, as well as the Blackwater River, East River, Escambia River, and Yellow River. The Perdido Bay System includes: Bay La Launch, Big Lagoon, Perdido Bay, and Wolf Bay, as well as the Blackwater River, Perdido River, and Styx River. Collectively, the waterbodies in the geographic territory shall be referred to as the "Bay Systems".

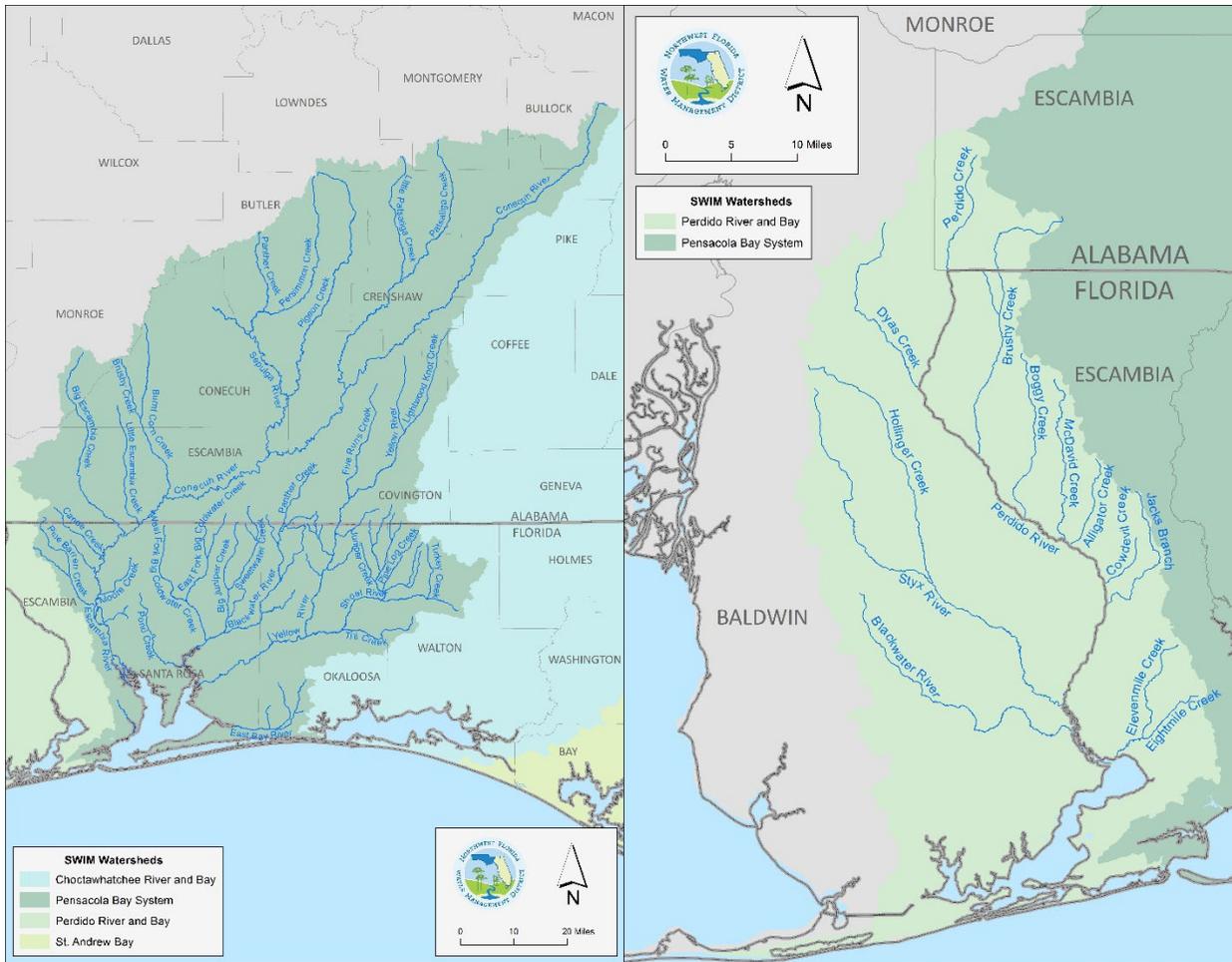


Figure 1: Pensacola Bay System

Figure 2: Perdido Bay System

1.3 **Purpose:** The Estuary Program will guide the development and implementation of a Comprehensive Conservation and Management Plan (CCMP) to improve water quality and living resources for the Bay Systems, as defined in section 1.2, through publicly identified outcomes and goals developed by the Parties, local, state, and federal agencies, and the public.

The Parties agree to work collaboratively and effectively on the development and implementation of the CCMP to meet the following outcomes:

- a) Water quality improvement;
- b) Restoration and conservation of habitat;
- c) Healthy ecosystems that support wildlife and fisheries;
- d) Improve surface and ground water quality and quantity, and flood control;
- e) Enhance community resilience; and
- f) Revitalize the coastal economy and quality of life.

ARTICLE 2 – AUTHORITY, COMPOSITION, AND POWERS

2.1 **Authority:** This Agreement is an interlocal agreement, as authorized by Section 163.01, Florida Statutes, et seq., (hereinafter referred to as the Act) and pursuant to the authority of subsection (4) of the Act, all Florida Parties qualify to be a part of this Agreement under such Act. The Alabama Parties have authority to enter into this agreement pursuant to applicable state law, including, but not limited to, *Alabama Code* § 11-102-1, et seq., (1975), subject to the limitations set forth in applicable law, rules and regulations, including, but not limited to, *Alabama Code* § 11-102-5 (1975). Collectively, such laws are hereinafter referred to as the “Enabling Acts.”

2.2 **Immunity:** Pursuant to the Enabling Acts, and other laws, all privileges and immunities from liability, exemptions from laws, ordinances, and rules; and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of any public agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extraterritorially under the provisions of this Agreement.

2.3 **Composition:**

2.3.1 **Creation of a Florida Not-for-Profit Corporation:** Pursuant to the Act, an independent public body corporate and politic, to be known as the Pensacola and Perdido Bays Estuary Program, Inc., a Florida not-for-profit corporation (the “Corporation”), shall be created for the purpose of administering and carrying out the purpose of the Estuary Program.

2.3.2 **Corporation Board:** The Board of the Corporation shall serve as the Top Level Organizational Unit (TLOU) and be comprised of the Parties. Escambia County and Santa Rosa County will each appoint and be represented by two voting directors, all other Parties will each appoint and be represented by one voting director. Each Party will also appoint an alternate director for the Corporation Board from time to time to serve when their primary director is not available. Each Party may change their director or alternate director from time to time with prior written notice by a duly authorized representative of any change to the Corporation Board before any meeting. The Corporation Board shall have policy-making powers for the Estuary Program in addition to those powers explicitly set forth in this Agreement.

a) Meetings. The Corporation Board should convene not less than quarterly. Meetings should be convened as needed as described in the bylaws;

b) Quorum. Except as otherwise specifically set forth herein or in the bylaws, a quorum for Corporation Board meetings shall be a majority of the Corporation Board directors;

c) Officers. The Corporation Board shall elect (i) a chair and vice chair of the Corporation Board; and (ii) other Corporation Board officers as deemed necessary by the Corporation Board. Election processes and term limits shall be described in the bylaws;

d) Voting. Each director shall have one vote. Voting will be conducted in person to the maximum extent possible, and other voting processes and criteria shall be described in the bylaws;

e) No compensation. All directors of the Corporation Board shall serve without compensation; and

f) Additional Board Members. The Corporation Board may allow other governmental entities, regulatory agencies, or other entities, to the extent allowed by law, to participate as members of the Corporation Board, provided they are approved by a supermajority vote of the Corporation Board. Upon approval, such Party must execute a Joinder Agreement by which it agrees to comply with all the provisions of this Agreement.

2.3.3 Committees: At the direction of the Corporation Board, the Corporation Board or Estuary Program staff may establish or terminate committees as it deems necessary including, without limitation, the Technical Committee, the Community Committee, the Education Committee, the Business Partnership Committee, and the Environmental Justice Committee. Procedures for establishing the nature (fact-finding or advisory) of a committee and its membership shall be described in the bylaws. All committee members shall serve without compensation.

2.4 Powers, Functions, and Responsibilities:

2.4.1 Powers: Pursuant to the Enabling Acts, the Estuary Program has the power to engage in agreements or contracts with other public or private entities for provisions of assistance in planning, financing, and coordinating the physical, chemical, biological, economic, and aesthetic aspects of the Bay Systems. The Estuary Program may establish rules, regulations, bylaws, and organization necessary to perform the Estuary Program's intended functions; provided, however, no such rules or regulations will operate in a manner that obligates a Party to act without the approval of the Party's governing body.

2.4.2 Exercise of Powers: All powers, privileges, and duties vested in or imposed upon the Estuary Program shall be exercised and performed upon a majority vote of a quorum of members; provided, however, subject to Corporation Board oversight, the exercise of such executive, administrative, and ministerial powers may be delegated by the Corporation Board to any of its officers, staff, or agents, to the extent provided under Florida Law. Any such delegation of powers may be withdrawn at any time for any reason.

2.4.3 Limitations of Powers: The Estuary Program shall have no power of taxation, regulation, eminent domain, law enforcement, nor obligate or bind a Party to act without approval by the Party's governing body.

2.5 Responsibilities:

2.5.1 Personnel: The Corporation Board shall be responsible for hiring, supervising, evaluating, and/or terminating the Executive Director. The Executive Director shall be responsible for hiring, supervising, evaluating, and/or terminating subordinate staff. The Executive Director must receive approval from the Corporation Board prior to the establishment of any new positions.

2.5.2 Budget: The Corporation Board shall approve an annual budget. Processes for establishing the budget shall be described in the bylaws.

2.5.3 Adoption of the CCMP Goals and Priorities: The Parties hereby agree that once approved by the Corporation Board, the Goals for the geographic territory of the Pensacola and Perdido Bays Estuary Program as described in the CCMP will be submitted for approval and

adoption by each of the Parties. The Parties shall endeavor to undertake reasonable efforts to achieve the Goals within the time periods described and shall work cooperatively to achieve all of the Goals applicable to them in a cost-effective manner. Additionally, the Parties agree to work together in good faith and undertake reasonable effort to address other actions and recommendations in the CCMP.

2.5.4 Bylaws: The Corporation Board by super-majority vote shall create, adopt, amend and update Bylaws or appropriate rules of procedure for the Pensacola and Perdido Bays Estuary Program for its governance and which shall remain in effect until modified by the Corporation Board.

2.5.5 Modification: The CCMP and its incorporated Goals shall not be amended, changed, extended, modified, or supplemented without unanimous consent of all the Parties. The process for modification shall be defined in the Corporation Board bylaws.

ARTICLE 3 – FUNDING

3.1 Funding: Recurring funding contributions will be necessary to fund Estuary Program operations and implementation of the CCMP. Program operations will be financed by local, state, and federal government contributions, donations, grants, assistance funds and bequests. Contributions recommended for each Party shall be determined by a super-majority vote of the Corporation Board; however, nothing contained herein shall obligate any Party to appropriate or expend any monies for the Estuary Program or make any contributions thereto without the prior approval of the Party's governing body.

ARTICLE 4 – TERM

4.1 Term: The term of this Agreement shall commence upon its execution by all Parties and shall continue indefinitely unless terminated as provided for herein.

4.2 Termination: Estuary Program membership may be terminated by any Party for convenience, upon sixty (60) days written notice by the terminating Party to the other Parties of such termination. This Agreement may be terminated by the then Parties upon sixty (60) days written notice to one other.

4.3 Sunset Review: This Agreement shall be subject to a review by the Corporation Board five (5) years from the Effective Date of this Agreement and on the same day of each five (5) year period thereafter at which time the Corporation Board shall evaluate the appropriateness and effectiveness of this Agreement and the Estuary Program. The Corporation Board shall vote by majority vote on whether to recommend terminating this Agreement, amending this Agreement or to let the status quo prevail.

ARTICLE 5 – GENERAL PROVISIONS

5.1 **Fiscal Year**: The Estuary Program shall observe a fiscal year beginning on October 1 and ending September 30 of each year.

5.2 **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 Florida and/or Alabama open records laws. In the event a Party fails to abide by the provisions of such laws, the other Parties 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.

5.3 **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.

5.4 **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 a subject of this Agreement, shall be in Escambia County, Florida.

5.5 **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.

5.6 **Modification**: This Agreement may be modified, altered or amended only by a written instrument recommended by the Corporation Board and subsequently approved and executed by the Parties hereto.

5.7 **Execution**: This Agreement shall not be effective, nor shall it have any force and effect whatsoever, until all the Parties have duly executed this Agreement and filed the Agreement pursuant to section 5.8.

5.8 **Filing**: The Estuary Program shall, pursuant to Section 163.01(11), Florida Statutes, file a copy of this Agreement and any other amendments thereto with the Clerk of the Circuit Court of each County where the Parties are located.

5.9 **Debt**: Neither the Estuary Program nor any Party shall have the power to incur any debt or obligation which shall become the responsibility of any other Party.

5.10 **Benefit**: This Agreement is for the benefit of the Parties only and is not intended to confer any rights or benefits, either direct, indirect, intended or implied, to any third party.

5.11 **Liability**: Each Party to this Agreement, its officers, employees and agents do not assume and specifically disclaim any liability for the acts, omissions, or negligence of the other Parties, their officers, employees and agents, arising from or related to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates under each signature: the Counties, through their respective Boards of County Commissioners, signing by and through their Chairmen, and the Cities through their respective City Managers and/or Mayors.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGES ATTACHED

ESCAMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida acting by and through its duly authorized Board of County Commissioners.

By: _____
Lumon J. May, Chairman

ATTEST:

Date: _____

By: _____
Pam Childers
Clerk of the Circuit Court

(SEAL)

SANTA ROSA COUNTY, FLORIDA, a political subdivision of the State of Florida acting by and through its duly authorized Board of County Commissioners.

By: _____
Colten Wright, Chairman

ATTEST:

Date: _____

By: _____
Donald C. Spencer
Clerk of the Circuit Court

(SEAL)

OKALOOSA COUNTY, FLORIDA, a political subdivision of the State of Florida acting by and through its duly authorized Board of County Commissioners.

By: _____
Robert A. "Trey" Goodwin, Chairman

ATTEST:

Date: _____

By: _____
J.D. Peacock, II
Clerk of the Circuit Court

(SEAL)

BALDWIN COUNTY, ALABAMA, a political subdivision of the State of Alabama acting by and through its duly authorized Board of County Commissioners.

By: _____
Charles F. Gruber, Chairman

ATTEST:

Date: _____

By: _____
Ronald J. Cink
Interim County Administrator

(SEAL)

CITY OF GULF BREEZE, a Florida
Municipal Corporation acting by and through
its duly authorized City Council.

By: _____
Cherry Fitch, Mayor

Date: _____

ATTEST:

By: _____
Leslie H. Guyer, CMC, City Clerk

(SEAL)

CITY OF MILTON, a Florida Municipal Corporation acting by and through its duly authorized City Council.

By: _____
Heather Lindsey, Mayor

ATTEST:

Date: _____

By: _____
Dawn Molinero
City Clerk

(SEAL)

CITY OF PENSACOLA, a Florida Municipal Corporation acting by and through its duly authorized City Council.

By: _____
D.C. Reeves, Mayor

ATTEST:

Date: _____

By: _____
Ericka Burnett
City Clerk

(SEAL)

TOWN OF CENTURY, a Florida Municipal Corporation acting by and through its duly authorized Town Council.

By: _____
Benjamin Boutwell, Mayor

ATTEST:

Date: _____

By: _____
Leslie Howington
Town Clerk

(SEAL)

CITY OF ORANGE BEACH, a Alabama
Municipal Corporation acting by and through
its duly authorized City Council.

By: _____
Tony Kennon, Mayor

ATTEST:

Date: _____

By: _____
Renee Eberly
City Clerk

(SEAL)



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 23-00236

City Council

5/11/2023

LEGISLATIVE ACTION ITEM

SPONSOR: D.C. Reeves, Mayor

SUBJECT:

MEMORANDUM OF AGREEMENT WITH THE CHAPPIE JAMES MUSEUM OF PENSACOLA INC. FOR ADMINISTRATION OF AFRICAN AMERICAN HISTORICAL AND CULTURAL GRANT #23.S.AA.900.120 - GENERAL CHAPPIE JAMES MUSEUM AND FLIGHT ACADEMY EXPANSION

RECOMMENDATION:

That City Council approve a Memorandum of Understanding with the Chappie James Museum of Pensacola, Inc. for administration of African American Historical and Cultural Grant #23.S.AA.900.120 to support the General Chappie James Museum and Flight Academy Expansion project. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer this grant, consistent with the terms of the grant and the Mayor's Executive Powers as granted in the City Charter. Also, that City Council accept the grant and adopt a supplemental budget resolution appropriating the funds.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The Chappie James Museum of Pensacola, Inc. was awarded the subject grant as part of the State of Florida African American Historical and Cultural Grant Program to support expansion of the General Chappie James Museum and Flight Academy campus. The City of Pensacola Community Redevelopment Agency (CRA) completed design of the project and authorized the project to go to bid on May 9, 2022.

A Memorandum of Understanding (MOU) between the City and the Museum is required to permit the City to manage the grant and the project. The CRA will issue an Invitation to Bid (ITB) following appropriation of the grant funds and execution of the MOU.

PRIOR ACTION:

May 9, 2022 - The CRA approved final design plans for the General Daniel "Chappie" James, Jr. Museum and Flight Academy Phase II Project and authorized staff to proceed with bid solicitation.

FUNDING:

Budget: \$ 470,000 AAHC Grant
\$ 375,666 Eastside Bonds, Series 2017
\$ 845,666

Actual: \$ 845,666

FINANCIAL IMPACT:

AAHC grant funds in the amount of \$470,000 will provide partial funding for this project. The remaining funding will be provided by the Eastside Bonds, Series 2017. Approval of the supplemental budget resolution will appropriate the grant funds for this project.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

4/26/2023

STAFF CONTACT:

Kerrith Fiddler, City Administrator
David Forte, Deputy City Administrator
Sherry Morris, Development Services Director
Victoria D'Angelo, CRA Division Manager
Kevin Boyer, Grants and Special Project Coordinator

ATTACHMENTS:

- 1) Memorandum of Agreement
- 2) AAHC Grant Agreement
- 3) Supplemental Budget Resolution No. 2023-022
- 4) Supplemental Budget Explanation No. 2023-022

PRESENTATION: No

**MEMORANDUM OF AGREEMENT
BETWEEN THE CHAPPIE JAMES MUSEUM OF PENSACOLA, INC
AND THE CITY OF PENSACOLA RELATING TO GENERAL CHAPPIE
JAMES MUSEUM AND FLIGHT ACADEMY BUILDING EXPANSION**

This Memorandum of Agreement (“Agreement”) is made and entered into by and between the Chappie James Museum of Pensacola, Inc. (the “Museum”), a registered not-for-profit and the City of Pensacola, a municipal corporation created and existing under the laws of the State of Florida, (hereinafter referred to as “City”).”

WITNESSETH

WHEREAS, the City has prepared design plans and allocated partial funding for expansion of the General Chappie James Museum and Flight Academy Building, addressed at 1606 and 1608 Dr. MLK Jr. Drive, Pensacola, Florida (the “Project”); and

WHEREAS, the Museum has applied for and has been awarded an African American Cultural and Historical Grant in the amount of \$470,000 from the State of Florida to support the Project (the “Grant”); and

WHEREAS, to facilitate effective and efficient construction of the Project, the City intends to manage and serve as fiduciary of the grant funds, on behalf of the Museum;

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

Section 1. Purpose of the Agreement

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

1.2 Purpose. The purpose of this Agreement is to establish the conditions and mechanisms whereby the City and Museum will work in good faith and cooperatively to complete the Project in compliance with the grant requirements.

Section 2. Scope of Project

2.1. The Project will include expansion of the General Chappie James Museum and Flight Academy Building, addressed at 1606 and 1608 Dr. MLK Jr. Drive, Pensacola, Florida.

2.2 Responsibilities of the Parties

- a) The City shall be responsible for procuring, overseeing and managing the Project, including compliance, reporting, invoicing, and close out.

- b) The Museum shall fully cooperate with the City and the Grantor to facilitate full construction of the Project and receipt of the Grant funds.
- c) The Museum, upon receipt of Grant funds, shall remit an amount equal to the amount of Grant funds received, to the City within ten (10) calendar days of receipt.
- d) The Museum shall not violate the Restrictive Covenant the parties must execute as a condition of receipt of the Grant funds.

2.3 Term and Termination. This Agreement shall commence upon the date last executed and run concurrent with the completion of the Project and close out of the Grant, including the City's receipt of an amount equal to the amount of the Grant funds.

Section 3. Miscellaneous Provisions.

3.1 Liability. The Museum agrees to fully indemnify, defend and save harmless, the City of Pensacola, its officers, agents, elected officials, and employees from and against all actions, damages, costs, liabilities, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable incurred by the City of Pensacola's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing any terms of this Agreement (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of the Museum arising from the matters covered by this Agreement. This shall be a continuing indemnity and shall remain in effect until revoked in writing. Nothing herein is intended to serve as a waiver of sovereign immunity by the City or any of the City's defenses against being sued by third parties in any matter arising out of this Agreement. This Agreement is not intended to create third-party beneficiaries. The City does not by this Agreement consent to be sued. The Museum shall cooperate with all reasonable requests of the City to ensure compliance with all federal, state, and local laws, ordinances, rules, and regulations relating to the matters within the scope of this Agreement.

3.2 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, which consent shall not be unreasonably withheld.

3.3 All Prior Agreements Superseded:

- (a) 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 up any prior representations or Agreements whether oral or written.

- (b) 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.

3.4 Headings: Headings and subtitled 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.

3.5 Survival: All provisions, which by their inherent character, sense and context are intended to survive termination of this Agreement, shall survive the termination of this Agreement.

3.6 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 referenced herein. 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.

- a) If either party discovered any material discrepancy, deficiency, ambiguity, error or omission in this Agreement or is otherwise in doubt as to the meaning of any provisions of the Agreement, it shall immediately notify the other party and request clarification of its interpretation of this Agreement.
- b) 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 of the terms or provisions hereto.

3.7 Severability: The invalidity or non-enforceability of any portion or provisions 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 of provision.

3.8 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.

3.9 Governing Law.

This Agreement is governed and construed in accordance with the laws of the State of Florida. The law of the State of Florida shall be the law applied in the resolution of any claim, actions, or proceedings arising out of this Agreement. Venue for any and all proceedings shall be Escambia County, Florida.

3.10 Venue.

Venue for any claim, actions, or proceedings arising out of this Agreement shall be Escambia County, Florida.

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

MUSEUM

Chappie James
Museum of Pensacola
Attn: President
1606 Dr. MLK Jr. Dr.
Pensacola, FL 32503

CITY

City of Pensacola

Attn: Chief Finance Officer
222 W. Main Street
Post Office Box 12910
Pensacola, FL 32521

3.12 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

3.13 Public Records Act.

The parties acknowledge and agree to fulfill all obligations respecting required contract provisions in any contract entered into or amended after July 1, 2016, in full compliance pursuant to Section 119.0701, *Florida Statutes*, and obligations respecting termination of a contract for failure to provide public access to public records. The parties expressly agree specifically that the contracting parties hereto shall comply with the requirements within Attachment "A" attached hereto and incorporated by reference.

3.14 Mandatory Use of E-Verify System.

In compliance with the provisions of F.S. 448.095, the parties to this contract and any subcontractors engaged in the performance of this contract hereby certify that they have registered with and shall use the E-Verify system of the United States Department of Homeland Security to verify the work authorization status of all newly hired employees, within the meaning of the statute.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed and sealed the day and year first above written.

**CHAPPIE JAMES MUSEUM
OF PENSACOLA, INC.**

**THE CITY
OF PENSACOLA, FLORIDA**

President

Mayor, D.C. Reeves

Marion Williams, PhD

Attest: _____
City Clerk, Ericka L. Burnett

Attest: _____
Corporate Secretary

Approved as to Substance:

CRA Manager

Legal in form and execution:

City Attorney

Attachment "A"

PUBLIC RECORDS: Consultant shall comply with Chapter 119, Florida Statutes. Specifically, Consultant shall:

- A. Keep and maintain public records required by the city to perform the service.
- B. Upon request from the City's custodian of public records, provide the City 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 Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. 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 Contract term and following the completion of the Contract if Consultant does not transfer the records to the City.
- D. Upon completion of the Contract, transfer, at no cost, to the City, all public records in possession of consultant or keep and maintain public records required by the City to perform the service. If Consultant transfers all public records to the City upon completion of the Contract, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of the Contract, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request of the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure by Consultant to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Contract by the City.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE PUBLIC RECORDS COORDINATOR AT:

THE OFFICE OF THE CITY CLERK, (850) 435-1715

PUBLICRECORDS@CITYOFPENSACOLA.COM

222 WEST MAIN STREET, PENSACOLA, FL 32502

**GRANT AWARD AGREEMENT BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF STATE
AND
Chappie James Museum of Pensacola, Inc.
WPZ5ZJLN33A9
23.s.aa.900.120**

This Agreement is by and between the State of Florida, Department of State, hereinafter referred to as the “Department,” and the Chappie James Museum of Pensacola, Inc. hereinafter referred to as the "Grantee."

The Grantee has been awarded an African-American Historical and Cultural Grant by the Department, grant number 23.s.aa.900.120 for the Project “General Chappie James Museum Expansion” in the amount of \$470,000 (“Grant Award Amount”). The Department enters into this Agreement and has the authority to administer this grant in accordance with Section 152 of the 2021-2022 General Appropriations Act and Section 197 of the 2022-23 General Appropriations Act.

Funding for this grant is provided by the federal Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program established by the American Rescue Plan, Pub. L. No. 117-2 (ARPA), as authorized by the Department of the Treasury. Federal funds disbursed under this program may only be used in compliance with ARPA, Treasury’s regulations implementing the Act, applicable provisions of 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and all other applicable federal statutes, regulations, and executive orders. For additional information about the SLFRF program, see the Assistance Listing in SAM.gov under assistance listing number (formerly known as CFDA number) 21.027.

In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. **Grant Purpose.** This grant shall be used exclusively for the “General Chappie James Museum Expansion,” the public purpose for which these funds were appropriated.
 - a. The Grantee shall perform the following **Scope of Work**:

Funds are to be used for construction of the expansion project of The Chappie James Museum of Pensacola and Flight Academy Facility.

All tasks associated with the Project shall meet the requirements set forth in this agreement.

- b. The Grantee agrees to provide the following **Deliverables** and **Performance Measures** related to the Scope of Work for payments to be awarded.

#	Payment Type	Deliverable Description	Documentation	Payment Amount

1	Fixed Price	Provide one (1) copy of the draft contract with a professional architectural/engineering consultant; one (1) copy of the project timeline to the Department for review and approval; one (1) copy of the Certificate of Completion for participation in the Grants Management Webinar demonstrating a 100/100 score on the AACH Grants Management Quiz; one (1) copy of the SAM.gov entity information form.	One (1) copy of the draft contract with a professional architectural/engineering consultant; one (1) copy of the project timeline to the Department for review and approval; one (1) Certificate of Completion demonstrating a 100/100 score on the AACH Grants Management Quiz; one (1) copy of the SAM.gov entity information form.	\$117,500
2	Fixed Price	Complete and submit a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least thirty percent (30%) of the project completed for review and approval; Photographic documentation of installed project identification sign with Grant Funding Acknowledgement; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks.	One (1) copy of a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least thirty percent (30%) of the project completed; Photographic documentation of installed project identification sign with Grant Funding Acknowledgement; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks.	\$117,500
3	Fixed Price	Complete and Submit one (1) copy of a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least sixty percent (60%) of the project completed; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks	One (1) copy of a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least sixty percent (60%) of the project completed; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks.	\$117,500

4	Fixed Price	Complete and submit an Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least one hundred percent (100%) of the project completed, including all retainage amounts paid, for review and approval. In addition, a new/updated FMSF form (for previously extant structures over 50 years old); for the property and executed Restrictive Covenant filed with the County Clerk shall be submitted prior to final payment; a Single Audit Form shall be completed by the Grantee and submitted along with the Final Progress Report prior to final payment; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks.	One (1) copy of the completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least one hundred percent (100%) of the project completed, including all retainage amounts paid; One (1) copy of the new/updated FMSF form (for previously extant structures over 50 years old); One (1) copy of the executed Restrictive Covenant filed with the County Clerk; One (1) Single Audit Form; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks.	\$117,500
Totals				\$470,000

- c. The Grantee has provided an Estimated Project Budget based upon reasonable expenditures projected to accomplish the Grantee's Scope of Work and Deliverables outlined in the Agreement. The Budget provides details of how grant and match funds will be spent. All expenditures shall be in accordance with this budget (which is incorporated as part of this Agreement and entitled Attachment A) and must be incurred during the term of this Agreement, as stated in Section 2 of this Agreement.
 - d. Should grant expenditures vary from the budgeted grant amount for any line item in Attachment A (Estimated Project Budget) by more than 20%, the Grantee shall be required to submit a proposal for revision of the Estimated Project Budget with a written explanation for the reason(s) for deviation(s) from the original Estimated Project Budget to the Division for review and written approval.
- 2. Length of Agreement.** This Agreement shall begin on July 1, 2021, and shall end June 30, 2023, unless terminated in accordance with the provisions of Section 33 of this Agreement. Contract extensions will not be granted unless Grantee is able to provide substantial written justification and the Department approves such extension. The Grantee's written request for such extension must be submitted to the Department no later than thirty (30) days prior to the termination date of this Agreement and no amendment will be valid until a written amendment is signed by both parties as required in Section 7 and Section 15 of this Agreement.
- 3. Contract Administration.** The parties are legally bound by the requirements of this Agreement. Each party's contract manager, named below, will be responsible for monitoring its performance under this Agreement, and will be the official contact for each party. Any notice(s) or other communications in regard to this agreement shall be directed to or delivered to the other party's contract manager by utilizing the information below. Any change in the contact information below shall be submitted in writing to the contract manager within 10 days of the change.

For the Department :
Teri Abstein
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399

Phone: 850.245.6299
Email: teri.abstein@dos.myflorida.com

For the Grantee:

Contact: Ross Pristera
Address: 1606 Dr. Martin Luther King Jr. Drive Pensacola Florida 32503
Phone: 850.595.5985
Email: RPristera@uwf.edu

4. **Grant Payments.** All grant payments are requested online via <https://dosgrants.com/> by submitting a payment request with documentation that the deliverable has been completed. The total grant award shall not exceed the Grant Award Amount, which shall be paid by the Department in consideration for the Grantee's minimum performance as set forth by the terms and conditions of this Agreement. Grant payment requests are not considered complete for purposes of payment until review of the deliverables for compliance with the terms and conditions of this Agreement by the appropriate Department staff is complete and approval of the deliverable given. The grant payment schedule is outlined below:
 - a. All payments will be made in the amounts identified with the Deliverables in Section 1 of this agreement.
 - b. All payments will be made in accordance with the completion of those Deliverables.

5. **Electronic Payments.** The Grantee can choose to use electronic funds transfer (EFT) to receive grant payments. All grantees wishing to receive their award through electronic funds transfer must submit a Direct Deposit Authorization form to the Florida Department of Financial Services (DFS). If EFT has already been set up for the organization, the Grantee does not need to submit another authorization form unless the organization has changed bank accounts. The authorization form is accessible at https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/vendors/vendor-relations/dfs-a1-26e-direct-deposit-vendors.pdf?sfvrsn=eff728cf_16 where information pertaining to payment status is also available.

6. **Florida Substitute Form W-9.** A completed Substitute Form W-9 issued by DFS is required from any entity that receives a payment from the State of Florida that may be subject to 1099 reporting. DFS must have the correct Taxpayer Identification Number (TIN) and other related information in order to report accurate tax information to the Internal Revenue Service (IRS). To register or access a Florida Substitute Form W-9 visit <http://www.flvendor.myfloridacfo.com/>. **A copy of the Grantee's Florida Substitute Form W-9 must be submitted to the Department, as required, in advance of or with the executed Agreement.**

7. **Amendment to Agreement.** Either party may request modification of the provisions of this Agreement by contacting the Department to request an Amendment to the Contract. **Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.** If changes are implemented without the Department's written approval, the organization is subject to noncompliance, and the grant award is subject to reduction, partial, or complete refund to the State of Florida and termination of this agreement.

8. **Financial Consequences.** The Department shall apply the following financial consequences for failure to perform the minimum level of services required by this Agreement in accordance with Sections 215.971 and 287.058, *Florida Statutes*.
 - a. Payments will be withheld for failure to complete services as identified in the Scope of Work and Deliverables, provide documentation that the deliverable has been completed, or demonstrate the appropriate use of state or federal funds.
 - b. If the Grantee has spent less than the Grant Award Amount in state or federal funds to complete the Scope of Work, the final payment will be reduced by an amount equal to the difference between spent state or federal dollars and the Grant Award Amount.
 - c. The Division may reduce individual payments by 10% if the completed deliverable is not consistent with any applicable historic preservation standards as outlined in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation available online at <https://www.nps.gov/subjects/historicpreservation/standards.htm> or applicable industry standards.

The Department shall reduce total grant funding for the Project in direct proportion to any required match contributions not met by the end of the grant period. This reduction shall be calculated by dividing the actual match amount by the required match amount indicated in the Agreement and multiplying the product by the Grant Award Amount indicated in the Agreement. Pursuant to Section 17, Grantee shall refund to the Department any excess funds paid out prior to a reduction of total grant funding.

9. Additional Special Conditions.

a) For all projects involving **development activities**, the following special conditions apply:

- i. All project work shall be completed under the supervision of a licensed architect or licensed contractor.
- ii. All project work affecting a Historic Property must be in compliance with the **Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation** available online at: <https://www.nps.gov/subjects/historicpreservation/standards.htm>
- iii. The Grantee shall provide photographic documentation of the Project activity. Guidelines regarding the photographic documentation are available online at <https://dos.myflorida.com/historical/grants/special-category-grants/>

iv. Architectural Services

- A. All projects shall require contracting for architectural/engineering services.
- B. The Grantee may request a waiver of this requirement from the Department if they believe that the architectural/engineering services are not needed for the Project. The Department shall make a recommendation to the Grantee after review of the proposed work.

v. Architectural Documents and Construction Contracts

The Grantee shall submit the architectural services contract to the Department for review and approval prior to final execution. In addition, pursuant to *Section 267.031(5)(i), Florida Statutes*, the Grantee shall submit architectural planning documents to the Department for review and approval at the following stages of development:

- A. Upon completion of **schematic design**;
- B. Upon completion of **design development and outline specifications**; and
- C. Upon completion of **100% construction documents and project manual**, prior to execution of the construction contract.

vi. For the construction phase of the Project, in addition to the review submissions indicated above, a copy of the construction contract must be submitted to the Department for review and approval prior to final execution. Department review and approval of said contracts shall not be construed as acceptance by or imposition upon the Department of any financial liability in connection with said contracts.

vii. For projects involving ground disturbance (examples include: historic building or structure relocation, grading and site work, installation of sewer and water lines, subgrade foundation repairs or damp proofing, construction of new foundations and installation of landscape materials), the Grantee shall ensure that the following requirements are included in all contracts for architectural and engineering services:

- A. Ground disturbance around historic buildings or elsewhere on the site shall be minimized, thus reducing the possibility of damage to or destruction of significant archaeological resources.
- B. If an archaeological investigation of the Project site has not been completed, the architect or engineer shall contact the Department for assistance in determining the actions necessary to evaluate the potential for adverse effects of the ground disturbing activities on significant archaeological resources.
- C. Significant archaeological resources shall be protected and preserved in place whenever possible. Heavy machinery shall not be allowed in areas where significant archaeological resources may be disturbed or damaged.
- D. When preservation of significant archaeological resources in place is not feasible, a mitigation plan shall be developed in consultation with and approved by the Division of Historical Resources, Bureau of Historic Preservation's Compliance Review Section (contact information available online at www.flheritage.com). The mitigation plan shall be implemented under the

direction of an archaeologist meeting the *Secretary of the Interiors' Professional Qualification Standards for Archaeology*.

- E. Documentation of archaeological investigation and required mitigation actions shall be submitted to the Compliance Review Section for review and approval. This documentation shall conform to the *Secretary of the Interior's Standards for Archaeological Documentation*, and the reporting standards of the Compliance Review Section set forth in *Chapter 1A-46, Florida Administrative Code*.

b) For all projects involving **survey activities**, the following special conditions apply:

- i. The Grantee shall submit survey contracts to the Department for review and approval prior to execution.
- ii. A 1A-32 permit must be obtained from the Division of Historical Resources, Bureau of Archaeological Research prior to the beginning of fieldwork conducted in state lands and a copy submitted to the Department, if applicable.
- iii. For historical structure and archaeological surveys, the Grantee shall follow the historic structure and archaeological survey guidelines as outlined in the documents found online at <https://dos.myflorida.com/historical/grants/small-matching-grants/>. The survey report shall conform to *Chapter 1A-46, Florida Administrative Code*.

c) Federal Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program Grant Subrecipients must comply with the Federal Special Conditions contained in Attachment C.

10. Credit Line(s) to Acknowledge Grant Funding. Pursuant to Section 286.25, *Florida Statutes*, in publicizing, advertising, or describing the sponsorship of the program the Grantee shall include the following statement:

- a. "This project is sponsored in part by the Department of State and the State of Florida." Any variation in this language must receive prior approval in writing by the Department.
- b. All site-specific projects must include a Project identification sign, with the aforementioned language, that must be placed on site. The cost of preparation and erection of the Project identification sign are allowable project costs. Routine maintenance costs of Project signs are not allowable project costs. A photograph of the aforementioned sign must be submitted to the Department as soon as it is erected.

11. Encumbrance of Funds. The Grantee shall execute a binding contract for at least a part of the Scope of Work within six (6) months from the date of execution of this Agreement, except as allowed below.

- a. Extension of Encumbrance Deadline: The encumbrance deadline indicated above may be extended by written approval of the Department. To be eligible for this extension, the Grantee must demonstrate to the Department that encumbrance of grant funding and the required match by binding contract(s) is achievable by the end of the requested extended encumbrance period. The Grantee's written request for extension of the encumbrance deadline must be submitted to the Department no later than fifteen (15) days prior to the encumbrance deadline indicated above.
- b. Encumbrance Deadline Exception: For projects not involving contract services the Grantee and the Department shall consult on a case-by-case basis to develop an acceptable encumbrance schedule.

12. Grant Reporting Requirements. The Grantee must submit the following reports to the Department. All reports shall document the completion of any deliverables/tasks, expenses and activities that occurred during that reporting period. All reports on grant progress will be submitted online via <https://dosgrants.com/>. If the Grant Period end date set forth in Section 2 is extended in accordance with the requirements of Section 7 and Section 15 of this Agreement, additional quarterly progress reports shall be submitted until the expiration of the Grant Period.

- a. **First Project Progress Report** is due by July 15, 2022, for the period April 1 - June 30, 2022.
- b. **Second Project Progress Report** is due by October 15, 2022, for the period July 1 - September 30, 2022.
- c. **Third Project Progress Report** is due by January 15, 2023, for the period October 1 - December 31, 2022.

- d. **Fourth Project Progress Report** is due by April 15, 2023 for the period ending January 1 - March 31, 2023.
 - e. **Fifth Project Progress Report** is due by July 15, 2023, for the period ending April 1 - June 30, 2023.
 - f. **Final Report.** The Grantee must submit a Final Report to the Division within one month of the Grant Period End Date set forth in Section 2 above. All final reports must document the completion of all deliverables/tasks, expenses and activities that occurred by the Grant Period End Date. The Grantee may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period. Expenditures of state or federal financial assistance must be in compliance with the laws, rules, and regulations applicable to expenditures of state and federal funds, including, but not limited to, this Agreement, the *Reference Guide for State Expenditures*, and 2 CFR Part 200.
- 13. Matching Funds.** Grantee is not required to provide matching funds if the Grant Award Amount is equal to or less than \$500,000. *However*, if the Grant Award Amount is greater than \$500,000, Grantee is required to provide a 50% match of the amount above \$500,000. The Grantee is responsible for any matching funds included in the budget in Attachment A, whether required or voluntary. The Grantee must submit documentation that the match requirements of this Agreement have been met and provide to the Department documentation evidencing expenses incurred to comply with this requirement.
- 14. Grant Completion Deadline.** The grant completion deadline is the end date of this Agreement set forth in Section 2 above. The Grant Completion Deadline is the date when all grant and any required matching funds have been paid out or incurred in accordance with the work described in the Scope of Work, detailed in the Estimated Project Budget. If the Grantee finds it necessary to request an extension of the Grant Completion Deadline, an Amendment to the Agreement must be executed as per Section 7, and the stipulations in Section 15 must be met.
- 15. Extension of the Grant Completion Deadline.** An extension of the completion date must be requested at least thirty (30) days prior to the end of the Grant Period and may not exceed six (6) months, unless the Grantee can clearly demonstrate extenuating circumstances: *provided, however*; that under no circumstances may this Agreement be extended beyond the period of performance for use of SLFRF funds, as set forth by the Department of the Treasury. An extenuating circumstance is one that is beyond the control of the Grantee, and one that prevents timely completion of the Project such as a natural disaster, death or serious illness of the individual responsible for the completion of the Project, litigation related to the Project, or failure of the contractor or architect to provide the services for which they were contracted to provide. An extenuating circumstance does not include failure to read or understand the administrative requirements of a grant or failure to raise sufficient matching funds. Changes to the original completion deadline shall be valid only when requested in writing, approved by the Department, and an Amendment to the Agreement has been executed by both parties and attached to the original of this Agreement. The Grantee must provide documentation that a portion of the grant funds and match contributions are encumbered and demonstrate to the satisfaction of the Department that project work is progressing at a rate such that completion is achievable within the extended Grant Period.
- 16. Non-allowable Grant Expenditures.** The Grantee agrees to expend all grant funds received under this agreement solely for the purposes for which they were authorized and appropriated. Expenditures (grant and match) shall be in compliance with applicable federal and state statutes, regulations, the program guidelines, and this agreement. The following categories of expenditures are non-allowable for expenditure of grant funds and as contributions to required match:
- a) Expenditures for work not included in the Scope of Work of the executed Grant Award Agreement;
 - b) Costs of goods and services not procured in accordance with procurement procedures set forth in the Grant Award Agreement and 2 CFR Part 200;
 - c) Expenses incurred or obligated prior to or after the Grant Period, as indicated in the Grant Award Agreement;
 - d) Expenditures of state or federal financial assistance not in compliance with the laws, rules, and regulations applicable to expenditures of state and federal funds as outlined in the Department of Financial Services' Reference Guide for State Expenditures (revised 11/1/2019) and 2 CFR Part 200.
 - e) Expenses associated with lobbying or attempting to influence Federal, State or local legislation, the judicial branch or any state agency;
 - f) For project activities directed at a Historic Property, expenditures for work not consistent with the applicable historic Preservation Standards as outlined in the Secretary of the Interior's Guidelines available at www.nps.gov/tps/standards/treatment-guidelines-2017.pdf, standards available at <http://www.nps.gov/tps/standards.htm> and www.nps.gov/history/local-law/arch_stnds_0.htm or applicable industry standards;

- g) Costs for projects having as their primary purpose the fulfillment of Federal or State regulatory requirements, including costs of consultation and mitigation measures required under Section 106 of the National Historic Preservation Act of 1966, as amended, or under Section 267.031, F.S.;
- h) Projects directed at activities or Real Properties that are restricted to private or exclusive participation or access, which shall include restricting access on the basis of sex, race, color, religion, national origin, disability, age, pregnancy, handicap or marital status;
- i) Entertainment, food, beverages, plaques, awards or gifts;
- j) Costs not documented in accordance with the provisions of the Grant Award Agreement;
- k) Indirect costs including Grantee overhead, management expenses, general operating costs and other costs that are not readily identifiable as expenditures for the materials and services required to complete the work identified in the Scope of Work in the Grant Award Agreement. Examples of indirect costs include: rent/mortgage, utilities, janitorial services, insurance, accounting, internet service, monthly expenses associated to security systems, non-grant related administrative and clerical staffing, marketing and fundraising activities;
- l) Administrative and project management expenditures such as expenditures that are directly attributable to management of the grant-assisted Project and meeting the reporting and associated requirements of the Grant Award Agreement;
- m) Grantee operational support (i.e., organization salaries not directly related to grant activities; travel expenditures; per diem; or supplies);
- n) Insurance costs (Exception: costs for builder's risk, workers' compensation and contractor's liability insurance);
- o) Capital improvements to the interior of Religious Properties (Exception: repairs to elements of the structural system. Examples include: foundation repairs, repairs to columns, load bearing wall framing, roof framing, masonry repairs, window and exterior door repairs and restoration practices associated with the building envelope);
- p) Accessibility improvements for Religious Properties;
- q) Parking facilities, sidewalks, walkways, and trails that are the entire scope of work; landscaping; fabrication or design of exhibits; or commercial projects (coffee shops, cafés, and gifts shops as part of the facility are allowable);
- r) Furniture and equipment unnecessary to furnish and operate a new or improved facility as part of a Fixed Capital Outlay project. Specific prior approval must be granted by the Department for all expenditures for furniture and equipment;
- s) Costs associated with attending or hosting conferences, summits, workshops or presentations (Exception: municipal or county required public meetings necessary for completion of the grant assisted project);
- t) Travel expenditures, including those of personnel responsible for items of work approved by the Department, administrative personnel, contracted or subcontracted employees, either for purposes of work on-site or research off-site; and
- u) Tuition waivers, fees, and other non-grant related costs associated with employing students for grant projects.

17. Unobligated and Unearned Funds and Allowable Costs. In accordance with Section 215.971, *Florida Statutes*, the Grantee shall refund to the State of Florida any balance of unobligated funds which has been advanced or paid to the Grantee. In addition, funds paid in excess of the amount to which the recipient is entitled under the terms and conditions of the agreement must be refunded to the state agency. Further, the recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period. Expenditures of state or federal financial assistance must be in compliance with the laws, rules, and regulations applicable to expenditures of state and federal funds, including, but not limited to, the *Reference Guide for State Expenditures* and 2 CFR Part 200.

18. Repayment. All refunds or repayments to be made to the Department under this Agreement are to be made payable to the order of the "Department of State" and mailed directly to the following address: Florida Department of State, Attention: African-American Cultural and Historical Grant Program, Department of State, 500 South Bronough Street Tallahassee, FL 32399. In accordance with Section 215.34(2), *Florida Statutes*, if a check or other draft is returned to the Department for collection, Grantee shall pay to the Department a service fee of \$15.00 or five percent (5%) of the face amount of the returned check or draft, whichever is greater.

19. Single Audit Act. The Grantee is required to complete a Single Audit Act certification form through the Department of State grants management system at <https://dosgrants.com/>. Each grantee, other than a grantee that is a State agency, shall submit to an audit pursuant to 2 CFR 200, Subpart F - Audit Requirements, and Section 215.97, *Florida Statutes*. See Attachment B for additional information regarding this requirement.

20. Retention of Accounting Records. Financial records, supporting documents, statistical records, and all other records including electronic storage media pertinent to the Project shall be retained for a period of five (5) years after the close out of the grant. If any litigation or audit is initiated, or claim made, before the expiration of the five-year period, the records shall be retained until the litigation, audit, or claim has been resolved.

- 21. Obligation to Provide State Access to Grant Records.** The Grantee must make all grant records of expenditures, copies of reports, books, and related documentation available to the Department or a duly authorized representative of the State of Florida for inspection at reasonable times for the purpose of making audits, examinations, excerpts, and transcripts.
- 22. Obligation to Provide Public Access to Grant Records.** The Department reserves the right to unilaterally cancel this Agreement in the event that the Grantee refuses public access to all documents or other materials made or received by the Grantee that are subject to the provisions of Chapter 119, *Florida Statutes*, known as the *Florida Public Records Act*. The Grantee must immediately contact the Department's Contract Manager for assistance if it receives a public records request related to this Agreement.
- 23. Restrictive Covenants.** The Grantee and the Property Owner(s), if different, shall execute and file Restrictive Covenants with the Clerk of the Circuit Court in the county where the property is located, prior to initial release of final payment. The Restrictive Covenants shall include at a minimum the following provisions:
- a. The Restrictive Covenants shall run with the title of the property, shall encumber the property and shall be binding upon the Grantee and the Property Owner(s), if different, and their successors in interest for ten (10) years from the date of the recordation of the Restrictive Covenants for projects involving improvements to Real Property.
 - b. The Grantee and Property Owner(s) shall permit the Department to inspect the property at all reasonable times to determine whether the Grantee and Property Owner(s) are in compliance with the terms of the Restrictive Covenants.
 - c. In the case of Historic Properties, the Grantee and Property Owner(s) shall maintain the property in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties.
 - d. In the case of Cultural Facilities, the Grantee and Property Owner(s) shall maintain the property as a building which is be used primarily for the programming, production, presentation, exhibition or any combination of the above functions of any of the cultural disciplines defined in Section 265.283(7), Florida Statute. These disciplines include, but are not limited to music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.
 - e. The Grantee and Property Owner(s) agree that no modifications will be made to the property, other than routine repairs and maintenance, without advance review and approval of the plans and specifications by the Department.
 - f. The Restrictive Covenants shall contain the following amortization schedule of the repayment of grant funds, should the Grantee or Property Owner(s) or their successors in interest violate the Restrictive Covenants.
 - i. Amortization Schedule for projects involving improvements to Real Property:
If the violation occurs within the first five (5) years of the effective date of these covenants, the Department shall be entitled to return of the entire grant amount. If the violation occurs after the first five (5) years, the Department shall be entitled to return of the entire grant amount, less 10% for each year past the first five (5).
 - g. Other provisions as agreed upon by the Department and the Grantee.
- 24. Noncompliance with Grant Requirements.** Any Grantee that has not submitted required reports or satisfied other administrative requirements for this grant or other grants from any other Florida Department of State (DOS) Division will be in noncompliance status and subject to the DOS Grants Compliance Procedure. Grant compliance issues must be resolved before a grant award agreement may be executed, and before grant payments for any DOS grant may be released.
- 25. Accounting Requirements.** The Grantee must maintain an accounting system that provides a complete record of the use of all grant funds as follows:
- a. The accounting system must be able to specifically identify and provide audit trails that trace the receipt, maintenance, and expenditure of state funds;

- b. Accounting records must adequately identify the sources and application of funds for all grant activities and must classify and identify grant funds by using the same budget categories that were approved in the grant application. If Grantee's accounting system accumulates data in a different format than the one in the grant application, subsidiary records must document and reconcile the amounts shown in the Grantee's accounting records to those amounts reported to the Department.
 - c. An interest-bearing checking account or accounts in a state or federally chartered institution may be used for revenues and expenses described in the Scope of Work and detailed in the Estimated Project Budget.
 - d. The name of the account(s) must include the grant award number;
 - e. The Grantee's accounting records must have effective control over and accountability for all funds, property, and other assets; and
 - f. Accounting records must be supported by source documentation and be in sufficient detail to allow for a proper pre-audit and post-audit (such as invoices, bills, and canceled checks).
- 26. Availability of Funds.** The State of Florida's performance and obligation to pay under this Agreement are contingent upon an annual appropriation by the Florida Legislature, or the United States Congress in the case of a federally funded grant. In the event that the state or federal funds upon which this Agreement is dependent are withdrawn, this Agreement will be automatically terminated and the Department shall have no further liability to the Grantee, beyond those amounts already released prior to the termination date. Such termination will not affect the responsibility of the Grantee under this Agreement as to those funds previously distributed. In the event of a state revenue shortfall, the total grant may be reduced accordingly.
- 27. Independent Contractor Status of Grantee.** The Grantee, if not a state agency, agrees that its officers, agents and employees, in performance of this Agreement, shall act in the capacity of independent contractors and not as officers, agents, or employees of the state. The Grantee is not entitled to accrue any benefits of state employment, including retirement benefits and any other rights or privileges connected with employment by the State of Florida.
- 28. Grantee's Subcontractors.** The Grantee shall be responsible for all work performed and all expenses incurred in connection with this Agreement. The Grantee may subcontract, as necessary, to perform the services and to provide commodities required by this Agreement. The Department shall not be liable to any subcontractor(s) for any expenses or liabilities incurred under the Grantee's subcontract(s), and the Grantee shall be solely liable to its subcontractor(s) for all expenses and liabilities incurred under its subcontract(s). The Grantee must take the necessary steps to ensure that each of its subcontractors will be deemed to be "independent contractors" and will not be considered or permitted to be agents, servants, joint ventures, or partners of the Department.
- 29. Liability.** The Department will not assume any liability for the acts, omissions to act, or negligence of, the Grantee, its agents, servants, or employees; nor may the Grantee exclude liability for its own acts, omissions to act, or negligence, to the Department.
- a. The Grantee shall be responsible for claims of any nature, including but not limited to injury, death, and property damage arising out of activities related to this Agreement by the Grantee, its agents, servants, employees, and subcontractors. The Grantee, other than a Grantee which is the State or the State's agencies or subdivisions, as defined in Section 768.28, *Florida Statutes*, shall indemnify and hold the Department harmless from any and all claims of any nature and shall investigate all such claims at its own expense. If the Grantee is governed by Section 768.28, *Florida Statutes*, it shall only be obligated in accordance with that Section.
 - b. Neither the state nor any agency or subdivision of the state waives any defense of sovereign immunity, or increases the limits of its liability, by entering into this Agreement.
 - c. The Department shall not be liable for attorney fees, interest, late charges or service fees, or cost of collection related to this Agreement.
 - d. The Grantee shall be responsible for all work performed and all expenses incurred in connection with the Project. The Grantee may subcontract as necessary to perform the services set forth in this Agreement, including entering into subcontracts with vendors for services and commodities; and provided that it is understood by the Grantee that the Department shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.
- 30. Strict Compliance with Laws.** The Grantee shall perform all acts required by this Agreement in strict conformity with all applicable laws

and regulations of the local, state and federal law.

- 31. No Discrimination.** The Grantee may not discriminate against any employee employed under this Agreement, or against any applicant for employment because of race, color, religion, gender, national origin, age, pregnancy, disability or marital status. The Grantee shall insert a similar provision in all of its subcontracts for services under this Agreement.
- 32. Breach of Agreement.** The Department will demand the return of grant funds already received, will withhold subsequent payments, and/or will terminate this agreement if the Grantee improperly expends and manages grant funds, fails to prepare, preserve or surrender records required by this Agreement, or otherwise violates this Agreement.
- 33. Termination of Agreement.**
- a. Termination by the Department. The Department will terminate or end this Agreement if the Grantee fails to fulfill its obligations herein. In such event, the Department will provide the Grantee a notice of its violation by letter, and shall give the Grantee fifteen (15) calendar days from the date of receipt to cure its violation. If the violation is not cured within the stated period, the Department will terminate this Agreement. The notice of violation letter shall be delivered to the Grantee's Contract Manager, personally, or mailed to his/her specified address by a method that provides proof of receipt. In the event that the Department terminates this Agreement, the Grantee will be compensated for any work completed in accordance with this Agreement, prior to the notification of termination, if the Department deems this reasonable under the circumstances. Grant funds previously advanced and not expended on work completed in accordance with this Agreement shall be returned to the Department, with interest, within thirty (30) days after termination of this Agreement. The Department does not waive any of its rights to additional damages, if grant funds are returned under this Section.
 - b. Termination for convenience. The Department or the Grantee may terminate the grant in whole or in part when both parties agree that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds. The two parties will agree upon the termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated.
 - c. Termination by Grantee. The Grantee may unilaterally cancel the grant at any time prior to the first payment on the grant although the Department must be notified in writing prior to cancellation. After the initial payment, the Project may be terminated, modified, or amended by the Grantee only by mutual agreement of the Grantee and the Department. Request for termination prior to completion must fully detail the reasons for the action and the proposed disposition of the uncompleted work.
- 34. Preservation of Remedies.** No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or violation by either party under this Agreement, shall impair any such right, power or remedy of either party; nor shall such delay or omission be construed as a waiver of any such breach or default, or any similar breach or default.
- 35. Non-Assignment of Agreement.** The Grantee may not assign, sublicense nor otherwise transfer its rights, duties or obligations under this Agreement without the prior written consent of the Department, which consent shall not unreasonably be withheld. The agreement transferee must demonstrate compliance with the requirements of the Project. If the Department approves a transfer of the Grantee's obligations, the Grantee shall remain liable for all work performed and all expenses incurred in connection with this Agreement. In the event the Legislature transfers the rights, duties, and obligations of the Department to another governmental entity pursuant to Section 20.06, *Florida Statutes*, or otherwise, the rights, duties, and obligations under this Agreement shall be transferred to the successor governmental agency as if it was the original party to this Agreement.
- 36. Required Procurement Procedures for Obtaining Goods and Services.**
- a. The Grantee shall provide maximum open competition when procuring goods and services related to the grant-assisted project. Procurement documentation supporting maximum open competition must be submitted to the Department for review and approval prior to execution of project contracts.
 - b. Grantee's procurement standards must be consistent with 2 C.F.R. §§ 200.317 – 200.327, as applicable. All procurement

transactions for goods or services must be conducted in a manner providing full and open competition, consistent with the standards outlined in 2 C.F.R. §200.320, which allows for non-competitive procurements only in circumstances where at least one of the four applicable conditions provided are met; *provided, however*, that 2 C.F.R. §200.320(c)(4) is not applicable to SLFRF program awards.

37. **Conflicts of Interest.** The Grantee hereby certifies that it is cognizant of the prohibition of conflicts of interest described in Sections 112.311 through 112.326, *Florida Statutes*, and affirms that it will not enter into or maintain a business or other relationship with any employee of the Department of State that would violate those provisions. The Grantee further agrees to seek authorization from the General Counsel for the Department of State prior to entering into any business or other relationship with a Department of State Employee to avoid a potential violation of those statutes.
38. **Binding of Successors.** This Agreement shall bind the successors, assigns and legal representatives of the Grantee and of any legal entity that succeeds to the obligations of the Department of State.
39. **No Employment of Unauthorized Aliens.** The employment of unauthorized aliens by the Grantee is considered a violation of Section 274A (a) of the Immigration and Nationality Act. If the Grantee knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.
40. **Severability.** If any term or provision of the Agreement is found to be illegal and unenforceable, the remainder will remain in full force and effect, and such term or provision shall be deemed stricken.
41. **Americans with Disabilities Act.** All programs and facilities related to this Agreement must meet the standards of Sections 553.501-553.513, *Florida Statutes*, and the Americans with Disabilities Act of 1990 as amended (42 U.S.C. 12101, *et seq.*), which is incorporated herein by reference.
42. **Governing Law.** This Agreement shall be construed, performed, and enforced in all respects in accordance with the laws and rules of Florida. Venue or location for any legal action arising under this Agreement will be in Leon County, Florida.

43. Entire Agreement. The entire Agreement of the parties consists of the following documents:

- a. This Agreement
- b. Estimated Project Budget (Attachment A)
- c. Single Audit Act Requirements and Exhibit I (Attachment B)
- d. Federal Special Conditions (Attachment C)
- e. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions (Attachment D)

In acknowledgment of this grant, provided from funds appropriated in the Florida FY2021-22 General Appropriation Act, the Florida FY2022-23 General Appropriation Act and the federal Coronavirus State Fiscal Recovery Fund (Public Law 117-2), I hereby certify that I have read this entire Agreement, and will comply with all of its requirements.

Department of State: By: _____ Division Director _____ Division of _____ _____ Date	Grantee: By: _____ Authorizing Official for the Grantee _____ Typed name and title _____ Date
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ATTACHMENT A

Estimated Project Budget

Description	Grant Funds	Cash Match	In Kind Match
Other			
Construction of the expansion project	\$470,000	\$0	\$0
<i>Subtotals</i>	<i>\$470,000</i>	<i>\$0</i>	<i>\$0</i>
Totals	\$470,000	\$0	\$0

ATTACHMENT B

FEDERAL AND STATE OF FLORIDA SINGLE AUDIT ACT REQUIREMENTS

AUDIT REQUIREMENTS

The administration of resources awarded by the Department of State to the Grantee may be subject to audits and/or monitoring by the Department of State as described in this Addendum to the Grant Award Agreement.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and section 215.97, Florida Statutes (F.S.), as revised (see AUDITS below), monitoring procedures may include, but not be limited to, on-site visits by Department of State staff, limited scope audits as defined by 2 CFR §200.425, or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures or processes deemed appropriate by the Department of State. In the event the Department of State determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by Department of State staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

Part I: Federally Funded

This part is applicable if the recipient is a state or local government or a nonprofit organization as defined in 2 CFR §200.90, §200.64, and §200.70.

1. A recipient that expends \$750,000 or more in federal awards in its fiscal year must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. EXHIBIT 1 to this agreement lists the federal resources awarded through the Department of State by this agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of State. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR §§200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR §200.514 will meet the requirements of this Part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR §§200.508-512.
3. A recipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. If the recipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than federal entities).

The Internet web addresses listed below will assist recipients in locating documents referenced in the text of this agreement and the interpretation of compliance issues.

U.S. Government Printing Office www.ecfr.gov

Part II: State Funded

This part is applicable if the recipient is a nonstate entity as defined by section 215.97(2), F.S.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a state single or project-specific audit for such fiscal year in accordance with section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement lists the state financial assistance awarded through the Department of State by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of State, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for federal program matching requirements.
2. For the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of section 215.97(8), F.S. This includes submission of a financial reporting package as defined by section 215.97(2), F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal years ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of section 215.97, F.S., is not required. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, F.S., the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than state entities).

The Internet web addresses listed below will assist recipients in locating documents referenced in the text of this agreement and the interpretation of compliance issues.

State of Florida Department of Financial Services (Chief Financial Officer)

<http://www.myfloridacfo.com/>

State of Florida Legislature (Statutes, Legislation relating to the Florida Single Audit Act) <http://www.leg.state.fl.us/>

Part III: Report Submission

1. Copies of reporting packages for audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and required by Part I of this agreement shall be submitted, when required by 2 CFR §200.512, by or on behalf of the recipient directly to each of the following:
 - A. The Department of State through the <https://dosgrants.com/> grants management system.
 - B. The Federal Audit Clearinghouse (FAC) as provided in 2 CFR §200.36 and §200.512.

The FAC's website provides a data entry system and required forms for submitting the single audit reporting package. Updates to the location of the FAC and data entry system may be found at the OMB website.
2. Copies of financial reporting packages required by Part II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:
 - A. The Department of State through the <https://dosgrants.com/> grants management system.
 - B. The Auditor General's Office at the following address:

Auditor General
 Local Government Audits/342
 Claude Pepper Building, Room 401

111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<https://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Any reports, management letters, or other information required to be submitted to the Department of State pursuant to this agreement shall be submitted timely in accordance with 2 CFR §200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
4. Recipients, when submitting financial reporting packages to the Department of State for audits done in accordance with 2 CFR 200, Subpart F - Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

Part IV: Record Retention

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award(s) and this agreement for a period of five years from the date the audit report is issued, and shall allow the Department of State, or its designee, the CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of State, or its designee, the CFO, or Auditor General upon request for a period of at least three years from the date the audit report is issued, unless extended in writing by the Department of State.

EXHIBIT 1

FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Department of the Treasury, Coronavirus State and Local Fiscal Recovery Funds, Assistance Listing number (formerly known as CFDA number) 21.027. \$470,000

COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

As contained in 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and 31 CFR Part 35, Subpart A – Coronavirus State and Local Fiscal Recovery Funds.

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Not applicable

MATCHING RESOURCES FOR FEDERAL PROGRAMS:

Not applicable.

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

Not applicable.

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

Not applicable.

ATTACHMENT C

FEDERAL SPECIAL CONDITIONS

In addition to the terms and conditions contained in this agreement and the program guidelines generally applicable to grants awarded by the Department, African-American Cultural and Historical Grants, as federal pass-through grants, are also subject to additional federal requirements for use of SLFRF funds. The SLFRF awards are generally subject to the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (the "Uniform Guidance"). In all instances, Applicant Organizations should review the Uniform Guidance requirements applicable to your organization's use of SLFRF funds, and SLFRF-funded projects.

The following sections provide a general summary of compliance responsibilities under applicable federal statutes and regulations, including the Uniform Guidance, as described in the 2020 OMB Compliance Supplement Part 3. Compliance Requirements (issued August 18, 2020). Note that the descriptions below are only general summaries and all recipients and subrecipients of SLFRF funds are advised to carefully review the Uniform Guidance requirements and any additional regulatory and statutory requirements applicable to the program.

Grantee, as a subrecipient of federal funds, should ensure they remain in compliance with all SLFRF Award Terms and Conditions.

1. **Allowable Costs/Cost Principles.** As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. As such, the Department will implement robust internal controls and effective monitoring of subrecipients to ensure compliance with the Cost Principles, which are important for building trust and accountability. SLFRF Funds may be, but are not required to be, used along with other funding sources for a given project. Note that SLFRF Funds may not be used for a non-Federal cost share or match where prohibited by other Federal programs, e.g., funds may not be used for the State share for Medicaid.
2. **Cash Management.** SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR part 205 or 2 CFR 200.305(b)(8)-(9). As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award.
3. **Equipment and Real Property Management.** Any purchase of equipment or real property with SLFRF funds (as approved by the Department) must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.
4. **Period of Performance.** All SLFRF funds remain subject to statutory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December 31, 2026. Any funds not used must be returned to Treasury.
5. **Procurement, Suspension & Debarment.** Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable. The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate. Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance requires an infrastructure for competitive

bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, State, and federal procurement laws and regulations.

6. **Program Income.** Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federal awards and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records. The Uniform Guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Treasury intends to provide additional guidance regarding program income and the application of 2 CFR 200.307(e)(1), including with respect to lending programs.
7. **Reporting.** All recipients of federal funds must complete financial, performance, and compliance reporting. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1. Your organization should appropriately maintain accounting records for compiling and reporting accurate, compliant financial data, in accordance with appropriate accounting standards and principles. In addition, where appropriate, your organization needs to establish controls to ensure completion and timely submission of all mandatory performance and/or compliance reporting to the Department, for use in its required reporting to Treasury.
8. **SAM.gov Requirements.** All eligible recipients are also required to have an active registration with the System for Award Management (SAM) (<https://www.sam.gov>). To ensure timely receipt of funding, Treasury has stated that Non-entitlement Units of Government (NEUs) who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.
9. **Recordkeeping Requirements.** Generally, your organization must maintain records and financial documents for five years after all funds have been expended or returned to Treasury. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats. Your organization must agree to provide or make available such records to Treasury upon request, and to any authorized oversight body, including but not limited to the Government Accountability Office ("GAO"), Treasury's Office of Inspector General ("OIG"), and the Pandemic Relief Accountability Committee ("PRAC").
10. **Single Audit Requirements.** Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements. Recipients and subrecipients may also refer to the Office of Management and Budget (OMB) Compliance Supplements for audits of federal funds and related guidance and the Federal Audit Clearinghouse to see examples and single audit submissions.
11. **Civil Rights Compliance.** Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23. In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status.

12. **General Federal Regulations.** Recipients shall comply with the regulations listed in 2 CFR 200, 48 CFR 31, and 40 U.S.C. 1101 *et sequence*.
13. **Rights to Patents and Inventions Made Under a Contract or Agreement.** Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 U.S.C. 200 through 212.
14. **Compliance with the Trafficking Victims Protection Act of 2000 (2 CFR Part 175).** Recipients, their employees, subrecipients under this award, and subrecipients' employees may not:
- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
15. **Whistleblower Protection.** Recipients shall comply with U.S.C. §4712, Enhancement of Recipient and Subrecipient Employee Whistleblower Protection. This requirement applies to all awards issued after July 1, 2013 and effective December 14, 2016 has been permanently extended (Public Law (P.L.) 114-261).
- i. This award, related subawards, and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards, and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).
 - ii. Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.
 - iii. The Recipient shall insert this clause, including this paragraph C, in all subawards and in contracts over the simplified acquisition threshold related to this award; best efforts should be made to include this clause, including this paragraph C in any subawards and contracts awarded prior to the effective date of this provision.
16. **Notification of Termination (2 CFR § 200.340).** In accordance with 2 CFR § 200.340, in the event that the Agreement is terminated prior to the end of the period of performance due to the Recipient's or subcontractor's material failure to comply with Federal statutes, regulations or the terms and conditions of this Agreement or the Federal award, the termination shall be reported to the Office of Management and Budget (OMB)-designated integrity and performance system, accessible through System for Award Management (SAM) currently the Federal Awardee Performance and Integrity Information System (FAPIS). The Non-Federal Entity will notify the Recipient of the termination and the Federal requirement to report the termination in FAPIS. See 2 CFR § 200.340 for the requirements of the notice and the Recipient's rights upon termination and following termination.
17. **Additional Lobbying Requirements.**
- i. The Recipient certifies that no funds provided under this Agreement have been used or will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.
 - ii. The Lobbying Disclosure Act of 1995, as amended (2 U.S.C. §1601 *et seq.*), prohibits any organization described in Section 501(c)(4) of the Internal Revenue Code, from receiving federal funds through an award, grant (and/or subgrant) or loan unless such organization warrants that it does not, and will not engage in lobbying activities prohibited by the Act as a special condition of such an award, grant (and/or subgrant), or loan. This restriction does not apply to loans made pursuant to approved revolving loan programs or to contracts awarded using proper procurement procedures.
 - iii. Pursuant to 2 CFR §200.450 and 2 CFR §200.454(e), the Recipient is hereby prohibited from using funds provided by this

Agreement for membership dues to any entity or organization engaged in lobbying activities.

18. **Compliance with Assurances.** Recipients shall comply with any and all applicable assurances made by the Department or the Recipient to the Federal Government during the Grant application process.
19. **Federal Reporting Requirements (FFATA).** Grant Recipients awarded a new Federal grant greater than or equal to \$30,000 awarded on or after October 1, 2015, are subject to the FFATA the Federal Funding Accountability and Transparency Act (“FFATA”) of 2006. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov. The Grantee agrees to provide the information necessary, within one (1) month of execution, for the Department to comply with this requirement.
20. **2 CFR Part 200 Appendix 2 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards** In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.
- i. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
 - ii. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
 - iii. Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#) all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” [60 FR 12319, 12935, 3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#) “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
 - iv. Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#) and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#) “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#) “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- The Davis-Bacon Act requirements do not apply to projects funded solely with award funds from the SLFRF. Recipients may be otherwise subject to the requirements of the Davis-Bacon Act, when SLFRF award funds are used on a construction project in conjunction with funds from another federal program that requires enforcement of the Davis-Bacon Act.**
- v. Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of

a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- vi. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- vii. Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- viii. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- ix. Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- x. Procurement of Recovered Materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- xi. Prohibition on Certain Telecommunications and video surveillance services or equipment. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - A. Procure or obtain;
 - B. Extend or renew a contract to procure or obtain; or
 - C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - 1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

2. Telecommunications or video surveillance services provided by such entities or using such equipment.
 3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- D. In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- E. See [Public Law 115-232](#), section 889 for additional information.
- F. See also 2 CFR [§ 200.471](#).
- xii. Domestic Preferences for Procurements.
- A. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
 - B. For purposes of this section:
 1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

ATTACHMENT D

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 45 CFR 1183.35, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ ATTACHED INSTRUCTIONS)

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**RESOLUTION
NO. 2023-022**

A RESOLUTION
TO BE ENTITLED:

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE
FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA

SECTION 1. The following appropriations from funds on hand in the fund accounts stated below, not heretofore appropriated, and transfer from funds on hand in the various accounts and funds stated below, heretofore appropriated, be, and the same are hereby made, directed and approved to-wit:

A. SPECIAL GRANTS FUND

As Reads	Federal Grants	7,383,160
Amended		
To Read:	Federal Grants	7,853,160
As Reads	Capital Outlay	3,916,661
Amended		
To Read:	Capital Outlay	4,386,661

SECTION 2. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

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 City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

THE CITY OF PENSACOLA

MAY 2023 - SUPPLEMENTAL BUDGET RESOLUTION - AAHC Grant - General Chappie James Museum & Flight Academy Expansion - RES NO. 2023-022

<u>FUND</u>	<u>AMOUNT</u>	<u>DESCRIPTION</u>
SPECIAL GRANTS FUND		
Estimated Revenues		
Federal Grants	470,000	Increase appropriation for Federal Grants - AAHC Grant - General Chappie James Museum & Flight Academy Expansion
Total Revenues	<u>470,000</u>	
Appropriations		
Capital Outlay	470,000	Increase appropriation for Capital Outlay
Total Appropriations	<u>470,000</u>	



Memorandum

File #: 2023-022

City Council

5/11/2023

LEGISLATIVE ACTION ITEM

SPONSOR: D.C. Reeves, Mayor

SUBJECT:

SUPPLEMENTAL BUDGET RESOLUTION NO. 2023-022 - AFRICAN AMERICAN HISTORICAL AND CULTURAL GRANT #23.S.AA.900.120 - GENERAL CHAPPIE JAMES MUSEUM AND FLIGHT ACADEMY EXPANSION

RECOMMENDATION:

That City Council adopt Supplemental Budget Resolution No. 2023-022.

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The Chappie James Museum of Pensacola, Inc. was awarded the subject grant as part of the State of Florida African American Historical and Cultural Grant Program to support expansion of the General Chappie James Museum and Flight Academy campus. The City of Pensacola Community Redevelopment Agency (CRA) completed design of the project and authorized the project to go to bid on May 9, 2022.

The City will manage the grant and the project, in accordance with a Memorandum of Understanding (MOU) between the City and the Museum. The CRA will issue an Invitation to Bid (ITB) following appropriation of the grant funds and execution of the MOU.

PRIOR ACTION:

May 9, 2022 - The CRA approved final design plans for the General Daniel “Chappie” James, Jr. Museum and Flight Academy Phase II Project and authorized staff to proceed with bid solicitation.

FUNDING:

Budget:	\$ 470,000	AAHC Grant
	<u>\$ 375,666</u>	Eastside Bonds, Series 2017
	\$ 845,666	

Actual: \$ 845,666

FINANCIAL IMPACT:

AAHC grant funds in the amount of \$470,000 will provide partial funding for this project. The remaining funding will be provided by the Eastside Bonds, Series 2017. Approval of the supplemental budget resolution will appropriate the grant funds for this project.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

4/26/2023

STAFF CONTACT:

Kerrith Fiddler, City Administrator
David Forte, Deputy City Administrator
Sherry Morris, Development Services Director
Victoria D'Angelo, CRA Division Manager
Kevin Boyer, Grants and Special Projects Coordinator

ATTACHMENTS:

- 1) Supplemental Budget Resolution No. 2023-022
- 2) Supplemental Budget Explanation No. 2023-022
- 3) AAHC Grant Agreement
- 4) Memorandum of Agreement

PRESENTATION: No

**RESOLUTION
NO. 2023-022**

A RESOLUTION
TO BE ENTITLED:

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE
FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN EFFECTIVE DATE.

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Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

THE CITY OF PENSACOLA

MAY 2023 - SUPPLEMENTAL BUDGET RESOLUTION - AAHC Grant - General Chappie James Museum & Flight Academy Expansion - RES NO. 2023-022

FUND	AMOUNT	DESCRIPTION
SPECIAL GRANTS FUND		
Estimated Revenues		
Federal Grants	470,000	Increase appropriation for Federal Grants - AAHC Grant - General Chappie James Museum & Flight Academy Expansion
Total Revenues	<u>470,000</u>	
Appropriations		
Capital Outlay	470,000	Increase appropriation for Capital Outlay
Total Appropriations	<u>470,000</u>	

**GRANT AWARD AGREEMENT BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF STATE
AND
Chappie James Museum of Pensacola, Inc.
WPZ5ZJLN33A9
23.s.aa.900.120**

This Agreement is by and between the State of Florida, Department of State, hereinafter referred to as the “Department,” and the Chappie James Museum of Pensacola, Inc. hereinafter referred to as the "Grantee."

The Grantee has been awarded an African-American Historical and Cultural Grant by the Department, grant number 23.s.aa.900.120 for the Project “General Chappie James Museum Expansion” in the amount of \$470,000 (“Grant Award Amount”). The Department enters into this Agreement and has the authority to administer this grant in accordance with Section 152 of the 2021-2022 General Appropriations Act and Section 197 of the 2022-23 General Appropriations Act.

Funding for this grant is provided by the federal Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program established by the American Rescue Plan, Pub. L. No. 117-2 (ARPA), as authorized by the Department of the Treasury. Federal funds disbursed under this program may only be used in compliance with ARPA, Treasury’s regulations implementing the Act, applicable provisions of 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and all other applicable federal statutes, regulations, and executive orders. For additional information about the SLFRF program, see the Assistance Listing in SAM.gov under assistance listing number (formerly known as CFDA number) 21.027.

In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. **Grant Purpose.** This grant shall be used exclusively for the “General Chappie James Museum Expansion,” the public purpose for which these funds were appropriated.
 - a. The Grantee shall perform the following **Scope of Work**:

Funds are to be used for construction of the expansion project of The Chappie James Museum of Pensacola and Flight Academy Facility.

All tasks associated with the Project shall meet the requirements set forth in this agreement.

- b. The Grantee agrees to provide the following **Deliverables** and **Performance Measures** related to the Scope of Work for payments to be awarded.

#	Payment Type	Deliverable Description	Documentation	Payment Amount

1	Fixed Price	Provide one (1) copy of the draft contract with a professional architectural/engineering consultant; one (1) copy of the project timeline to the Department for review and approval; one (1) copy of the Certificate of Completion for participation in the Grants Management Webinar demonstrating a 100/100 score on the AACH Grants Management Quiz; one (1) copy of the SAM.gov entity information form.	One (1) copy of the draft contract with a professional architectural/engineering consultant; one (1) copy of the project timeline to the Department for review and approval; one (1) Certificate of Completion demonstrating a 100/100 score on the AACH Grants Management Quiz; one (1) copy of the SAM.gov entity information form.	\$117,500
2	Fixed Price	Complete and submit a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least thirty percent (30%) of the project completed for review and approval; Photographic documentation of installed project identification sign with Grant Funding Acknowledgement; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks.	One (1) copy of a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least thirty percent (30%) of the project completed; Photographic documentation of installed project identification sign with Grant Funding Acknowledgement; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks.	\$117,500
3	Fixed Price	Complete and Submit one (1) copy of a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least sixty percent (60%) of the project completed; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks	One (1) copy of a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least sixty percent (60%) of the project completed; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks.	\$117,500

4	Fixed Price	Complete and submit an Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least one hundred percent (100%) of the project completed, including all retainage amounts paid, for review and approval. In addition, a new/updated FMSF form (for previously extant structures over 50 years old); for the property and executed Restrictive Covenant filed with the County Clerk shall be submitted prior to final payment; a Single Audit Form shall be completed by the Grantee and submitted along with the Final Progress Report prior to final payment; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks.	One (1) copy of the completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or their equivalents, showing at least one hundred percent (100%) of the project completed, including all retainage amounts paid; One (1) copy of the new/updated FMSF form (for previously extant structures over 50 years old); One (1) copy of the executed Restrictive Covenant filed with the County Clerk; One (1) Single Audit Form; documentation to support all paid expenditures including detailed paid invoices, bank records, and canceled checks.	\$117,500
Totals				\$470,000

- c. The Grantee has provided an Estimated Project Budget based upon reasonable expenditures projected to accomplish the Grantee's Scope of Work and Deliverables outlined in the Agreement. The Budget provides details of how grant and match funds will be spent. All expenditures shall be in accordance with this budget (which is incorporated as part of this Agreement and entitled Attachment A) and must be incurred during the term of this Agreement, as stated in Section 2 of this Agreement.
 - d. Should grant expenditures vary from the budgeted grant amount for any line item in Attachment A (Estimated Project Budget) by more than 20%, the Grantee shall be required to submit a proposal for revision of the Estimated Project Budget with a written explanation for the reason(s) for deviation(s) from the original Estimated Project Budget to the Division for review and written approval.
- 2. Length of Agreement.** This Agreement shall begin on July 1, 2021, and shall end June 30, 2023, unless terminated in accordance with the provisions of Section 33 of this Agreement. Contract extensions will not be granted unless Grantee is able to provide substantial written justification and the Department approves such extension. The Grantee's written request for such extension must be submitted to the Department no later than thirty (30) days prior to the termination date of this Agreement and no amendment will be valid until a written amendment is signed by both parties as required in Section 7 and Section 15 of this Agreement.
- 3. Contract Administration.** The parties are legally bound by the requirements of this Agreement. Each party's contract manager, named below, will be responsible for monitoring its performance under this Agreement, and will be the official contact for each party. Any notice(s) or other communications in regard to this agreement shall be directed to or delivered to the other party's contract manager by utilizing the information below. Any change in the contact information below shall be submitted in writing to the contract manager within 10 days of the change.

For the Department :
Teri Abstein
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399

Phone: 850.245.6299
Email: teri.abstein@dos.myflorida.com

For the Grantee:

Contact: Ross Pristera
Address: 1606 Dr. Martin Luther King Jr. Drive Pensacola Florida 32503
Phone: 850.595.5985
Email: RPristera@uwf.edu

4. **Grant Payments.** All grant payments are requested online via <https://dosgrants.com/> by submitting a payment request with documentation that the deliverable has been completed. The total grant award shall not exceed the Grant Award Amount, which shall be paid by the Department in consideration for the Grantee's minimum performance as set forth by the terms and conditions of this Agreement. Grant payment requests are not considered complete for purposes of payment until review of the deliverables for compliance with the terms and conditions of this Agreement by the appropriate Department staff is complete and approval of the deliverable given. The grant payment schedule is outlined below:
 - a. All payments will be made in the amounts identified with the Deliverables in Section 1 of this agreement.
 - b. All payments will be made in accordance with the completion of those Deliverables.

5. **Electronic Payments.** The Grantee can choose to use electronic funds transfer (EFT) to receive grant payments. All grantees wishing to receive their award through electronic funds transfer must submit a Direct Deposit Authorization form to the Florida Department of Financial Services (DFS). If EFT has already been set up for the organization, the Grantee does not need to submit another authorization form unless the organization has changed bank accounts. The authorization form is accessible at https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/vendors/vendor-relations/dfs-a1-26e-direct-deposit-vendors.pdf?sfvrsn=eff728cf_16 where information pertaining to payment status is also available.

6. **Florida Substitute Form W-9.** A completed Substitute Form W-9 issued by DFS is required from any entity that receives a payment from the State of Florida that may be subject to 1099 reporting. DFS must have the correct Taxpayer Identification Number (TIN) and other related information in order to report accurate tax information to the Internal Revenue Service (IRS). To register or access a Florida Substitute Form W-9 visit <http://www.flvendor.myfloridacfo.com/>. **A copy of the Grantee's Florida Substitute Form W-9 must be submitted to the Department, as required, in advance of or with the executed Agreement.**

7. **Amendment to Agreement.** Either party may request modification of the provisions of this Agreement by contacting the Department to request an Amendment to the Contract. **Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.** If changes are implemented without the Department's written approval, the organization is subject to noncompliance, and the grant award is subject to reduction, partial, or complete refund to the State of Florida and termination of this agreement.

8. **Financial Consequences.** The Department shall apply the following financial consequences for failure to perform the minimum level of services required by this Agreement in accordance with Sections 215.971 and 287.058, *Florida Statutes*.
 - a. Payments will be withheld for failure to complete services as identified in the Scope of Work and Deliverables, provide documentation that the deliverable has been completed, or demonstrate the appropriate use of state or federal funds.
 - b. If the Grantee has spent less than the Grant Award Amount in state or federal funds to complete the Scope of Work, the final payment will be reduced by an amount equal to the difference between spent state or federal dollars and the Grant Award Amount.
 - c. The Division may reduce individual payments by 10% if the completed deliverable is not consistent with any applicable historic preservation standards as outlined in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation available online at <https://www.nps.gov/subjects/historicpreservation/standards.htm> or applicable industry standards.

The Department shall reduce total grant funding for the Project in direct proportion to any required match contributions not met by the end of the grant period. This reduction shall be calculated by dividing the actual match amount by the required match amount indicated in the Agreement and multiplying the product by the Grant Award Amount indicated in the Agreement. Pursuant to Section 17, Grantee shall refund to the Department any excess funds paid out prior to a reduction of total grant funding.

9. Additional Special Conditions.

a) For all projects involving **development activities**, the following special conditions apply:

- i. All project work shall be completed under the supervision of a licensed architect or licensed contractor.
- ii. All project work affecting a Historic Property must be in compliance with the **Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation** available online at: <https://www.nps.gov/subjects/historicpreservation/standards.htm>
- iii. The Grantee shall provide photographic documentation of the Project activity. Guidelines regarding the photographic documentation are available online at <https://dos.myflorida.com/historical/grants/special-category-grants/>
- iv. Architectural Services
 - A. All projects shall require contracting for architectural/engineering services.
 - B. The Grantee may request a waiver of this requirement from the Department if they believe that the architectural/engineering services are not needed for the Project. The Department shall make a recommendation to the Grantee after review of the proposed work.
- v. Architectural Documents and Construction Contracts

The Grantee shall submit the architectural services contract to the Department for review and approval prior to final execution. In addition, pursuant to *Section 267.031(5)(i), Florida Statutes*, the Grantee shall submit architectural planning documents to the Department for review and approval at the following stages of development:

- A. Upon completion of **schematic design**;
 - B. Upon completion of **design development and outline specifications**; and
 - C. Upon completion of **100% construction documents and project manual**, prior to execution of the construction contract.
- vi. For the construction phase of the Project, in addition to the review submissions indicated above, a copy of the construction contract must be submitted to the Department for review and approval prior to final execution. Department review and approval of said contracts shall not be construed as acceptance by or imposition upon the Department of any financial liability in connection with said contracts.
 - vii. For projects involving ground disturbance (examples include: historic building or structure relocation, grading and site work, installation of sewer and water lines, subgrade foundation repairs or damp proofing, construction of new foundations and installation of landscape materials), the Grantee shall ensure that the following requirements are included in all contracts for architectural and engineering services:
 - A. Ground disturbance around historic buildings or elsewhere on the site shall be minimized, thus reducing the possibility of damage to or destruction of significant archaeological resources.
 - B. If an archaeological investigation of the Project site has not been completed, the architect or engineer shall contact the Department for assistance in determining the actions necessary to evaluate the potential for adverse effects of the ground disturbing activities on significant archaeological resources.
 - C. Significant archaeological resources shall be protected and preserved in place whenever possible. Heavy machinery shall not be allowed in areas where significant archaeological resources may be disturbed or damaged.
 - D. When preservation of significant archaeological resources in place is not feasible, a mitigation plan shall be developed in consultation with and approved by the Division of Historical Resources, Bureau of Historic Preservation's Compliance Review Section (contact information available online at www.flheritage.com). The mitigation plan shall be implemented under the

direction of an archaeologist meeting the *Secretary of the Interiors' Professional Qualification Standards for Archaeology*.

- E. Documentation of archaeological investigation and required mitigation actions shall be submitted to the Compliance Review Section for review and approval. This documentation shall conform to the *Secretary of the Interior's Standards for Archaeological Documentation*, and the reporting standards of the Compliance Review Section set forth in *Chapter 1A-46, Florida Administrative Code*.

b) For all projects involving **survey activities**, the following special conditions apply:

- i. The Grantee shall submit survey contracts to the Department for review and approval prior to execution.
- ii. A 1A-32 permit must be obtained from the Division of Historical Resources, Bureau of Archaeological Research prior to the beginning of fieldwork conducted in state lands and a copy submitted to the Department, if applicable.
- iii. For historical structure and archaeological surveys, the Grantee shall follow the historic structure and archaeological survey guidelines as outlined in the documents found online at <https://dos.myflorida.com/historical/grants/small-matching-grants/>. The survey report shall conform to *Chapter 1A-46, Florida Administrative Code*.

c) Federal Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program Grant Subrecipients must comply with the Federal Special Conditions contained in Attachment C.

10. Credit Line(s) to Acknowledge Grant Funding. Pursuant to Section 286.25, *Florida Statutes*, in publicizing, advertising, or describing the sponsorship of the program the Grantee shall include the following statement:

- a. "This project is sponsored in part by the Department of State and the State of Florida." Any variation in this language must receive prior approval in writing by the Department.
- b. All site-specific projects must include a Project identification sign, with the aforementioned language, that must be placed on site. The cost of preparation and erection of the Project identification sign are allowable project costs. Routine maintenance costs of Project signs are not allowable project costs. A photograph of the aforementioned sign must be submitted to the Department as soon as it is erected.

11. Encumbrance of Funds. The Grantee shall execute a binding contract for at least a part of the Scope of Work within six (6) months from the date of execution of this Agreement, except as allowed below.

- a. Extension of Encumbrance Deadline: The encumbrance deadline indicated above may be extended by written approval of the Department. To be eligible for this extension, the Grantee must demonstrate to the Department that encumbrance of grant funding and the required match by binding contract(s) is achievable by the end of the requested extended encumbrance period. The Grantee's written request for extension of the encumbrance deadline must be submitted to the Department no later than fifteen (15) days prior to the encumbrance deadline indicated above.
- b. Encumbrance Deadline Exception: For projects not involving contract services the Grantee and the Department shall consult on a case-by-case basis to develop an acceptable encumbrance schedule.

12. Grant Reporting Requirements. The Grantee must submit the following reports to the Department. All reports shall document the completion of any deliverables/tasks, expenses and activities that occurred during that reporting period. All reports on grant progress will be submitted online via <https://dosgrants.com/>. If the Grant Period end date set forth in Section 2 is extended in accordance with the requirements of Section 7 and Section 15 of this Agreement, additional quarterly progress reports shall be submitted until the expiration of the Grant Period.

- a. **First Project Progress Report** is due by July 15, 2022, for the period April 1 - June 30, 2022.
- b. **Second Project Progress Report** is due by October 15, 2022, for the period July 1 - September 30, 2022.
- c. **Third Project Progress Report** is due by January 15, 2023, for the period October 1 - December 31, 2022.

- d. **Fourth Project Progress Report** is due by April 15, 2023 for the period ending January 1 - March 31, 2023.
 - e. **Fifth Project Progress Report** is due by July 15, 2023, for the period ending April 1 - June 30, 2023.
 - f. **Final Report.** The Grantee must submit a Final Report to the Division within one month of the Grant Period End Date set forth in Section 2 above. All final reports must document the completion of all deliverables/tasks, expenses and activities that occurred by the Grant Period End Date. The Grantee may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period. Expenditures of state or federal financial assistance must be in compliance with the laws, rules, and regulations applicable to expenditures of state and federal funds, including, but not limited to, this Agreement, the *Reference Guide for State Expenditures*, and 2 CFR Part 200.
- 13. Matching Funds.** Grantee is not required to provide matching funds if the Grant Award Amount is equal to or less than \$500,000. *However*, if the Grant Award Amount is greater than \$500,000, Grantee is required to provide a 50% match of the amount above \$500,000. The Grantee is responsible for any matching funds included in the budget in Attachment A, whether required or voluntary. The Grantee must submit documentation that the match requirements of this Agreement have been met and provide to the Department documentation evidencing expenses incurred to comply with this requirement.
- 14. Grant Completion Deadline.** The grant completion deadline is the end date of this Agreement set forth in Section 2 above. The Grant Completion Deadline is the date when all grant and any required matching funds have been paid out or incurred in accordance with the work described in the Scope of Work, detailed in the Estimated Project Budget. If the Grantee finds it necessary to request an extension of the Grant Completion Deadline, an Amendment to the Agreement must be executed as per Section 7, and the stipulations in Section 15 must be met.
- 15. Extension of the Grant Completion Deadline.** An extension of the completion date must be requested at least thirty (30) days prior to the end of the Grant Period and may not exceed six (6) months, unless the Grantee can clearly demonstrate extenuating circumstances: *provided, however*; that under no circumstances may this Agreement be extended beyond the period of performance for use of SLFRF funds, as set forth by the Department of the Treasury. An extenuating circumstance is one that is beyond the control of the Grantee, and one that prevents timely completion of the Project such as a natural disaster, death or serious illness of the individual responsible for the completion of the Project, litigation related to the Project, or failure of the contractor or architect to provide the services for which they were contracted to provide. An extenuating circumstance does not include failure to read or understand the administrative requirements of a grant or failure to raise sufficient matching funds. Changes to the original completion deadline shall be valid only when requested in writing, approved by the Department, and an Amendment to the Agreement has been executed by both parties and attached to the original of this Agreement. The Grantee must provide documentation that a portion of the grant funds and match contributions are encumbered and demonstrate to the satisfaction of the Department that project work is progressing at a rate such that completion is achievable within the extended Grant Period.
- 16. Non-allowable Grant Expenditures.** The Grantee agrees to expend all grant funds received under this agreement solely for the purposes for which they were authorized and appropriated. Expenditures (grant and match) shall be in compliance with applicable federal and state statutes, regulations, the program guidelines, and this agreement. The following categories of expenditures are non-allowable for expenditure of grant funds and as contributions to required match:
- a) Expenditures for work not included in the Scope of Work of the executed Grant Award Agreement;
 - b) Costs of goods and services not procured in accordance with procurement procedures set forth in the Grant Award Agreement and 2 CFR Part 200;
 - c) Expenses incurred or obligated prior to or after the Grant Period, as indicated in the Grant Award Agreement;
 - d) Expenditures of state or federal financial assistance not in compliance with the laws, rules, and regulations applicable to expenditures of state and federal funds as outlined in the Department of Financial Services' Reference Guide for State Expenditures (revised 11/1/2019) and 2 CFR Part 200.
 - e) Expenses associated with lobbying or attempting to influence Federal, State or local legislation, the judicial branch or any state agency;
 - f) For project activities directed at a Historic Property, expenditures for work not consistent with the applicable historic Preservation Standards as outlined in the Secretary of the Interior's Guidelines available at www.nps.gov/tps/standards/treatment-guidelines-2017.pdf, standards available at <http://www.nps.gov/tps/standards.htm> and [nps.gov/history/local-law/arch_stnds_0.htm](http://www.nps.gov/history/local-law/arch_stnds_0.htm) or applicable industry standards;

- g) Costs for projects having as their primary purpose the fulfillment of Federal or State regulatory requirements, including costs of consultation and mitigation measures required under Section 106 of the National Historic Preservation Act of 1966, as amended, or under Section 267.031, F.S.;
- h) Projects directed at activities or Real Properties that are restricted to private or exclusive participation or access, which shall include restricting access on the basis of sex, race, color, religion, national origin, disability, age, pregnancy, handicap or marital status;
- i) Entertainment, food, beverages, plaques, awards or gifts;
- j) Costs not documented in accordance with the provisions of the Grant Award Agreement;
- k) Indirect costs including Grantee overhead, management expenses, general operating costs and other costs that are not readily identifiable as expenditures for the materials and services required to complete the work identified in the Scope of Work in the Grant Award Agreement. Examples of indirect costs include: rent/mortgage, utilities, janitorial services, insurance, accounting, internet service, monthly expenses associated to security systems, non-grant related administrative and clerical staffing, marketing and fundraising activities;
- l) Administrative and project management expenditures such as expenditures that are directly attributable to management of the grant-assisted Project and meeting the reporting and associated requirements of the Grant Award Agreement;
- m) Grantee operational support (i.e., organization salaries not directly related to grant activities; travel expenditures; per diem; or supplies);
- n) Insurance costs (Exception: costs for builder's risk, workers' compensation and contractor's liability insurance);
- o) Capital improvements to the interior of Religious Properties (Exception: repairs to elements of the structural system. Examples include: foundation repairs, repairs to columns, load bearing wall framing, roof framing, masonry repairs, window and exterior door repairs and restoration practices associated with the building envelope);
- p) Accessibility improvements for Religious Properties;
- q) Parking facilities, sidewalks, walkways, and trails that are the entire scope of work; landscaping; fabrication or design of exhibits; or commercial projects (coffee shops, cafés, and gifts shops as part of the facility are allowable);
- r) Furniture and equipment unnecessary to furnish and operate a new or improved facility as part of a Fixed Capital Outlay project. Specific prior approval must be granted by the Department for all expenditures for furniture and equipment;
- s) Costs associated with attending or hosting conferences, summits, workshops or presentations (Exception: municipal or county required public meetings necessary for completion of the grant assisted project);
- t) Travel expenditures, including those of personnel responsible for items of work approved by the Department, administrative personnel, contracted or subcontracted employees, either for purposes of work on-site or research off-site; and
- u) Tuition waivers, fees, and other non-grant related costs associated with employing students for grant projects.

17. Unobligated and Unearned Funds and Allowable Costs. In accordance with Section 215.971, *Florida Statutes*, the Grantee shall refund to the State of Florida any balance of unobligated funds which has been advanced or paid to the Grantee. In addition, funds paid in excess of the amount to which the recipient is entitled under the terms and conditions of the agreement must be refunded to the state agency. Further, the recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period. Expenditures of state or federal financial assistance must be in compliance with the laws, rules, and regulations applicable to expenditures of state and federal funds, including, but not limited to, the *Reference Guide for State Expenditures* and 2 CFR Part 200.

18. Repayment. All refunds or repayments to be made to the Department under this Agreement are to be made payable to the order of the "Department of State" and mailed directly to the following address: Florida Department of State, Attention: African-American Cultural and Historical Grant Program, Department of State, 500 South Bronough Street Tallahassee, FL 32399. In accordance with Section 215.34(2), *Florida Statutes*, if a check or other draft is returned to the Department for collection, Grantee shall pay to the Department a service fee of \$15.00 or five percent (5%) of the face amount of the returned check or draft, whichever is greater.

19. Single Audit Act. The Grantee is required to complete a Single Audit Act certification form through the Department of State grants management system at <https://dosgrants.com/>. Each grantee, other than a grantee that is a State agency, shall submit to an audit pursuant to 2 CFR 200, Subpart F - Audit Requirements, and Section 215.97, *Florida Statutes*. See Attachment B for additional information regarding this requirement.

20. Retention of Accounting Records. Financial records, supporting documents, statistical records, and all other records including electronic storage media pertinent to the Project shall be retained for a period of five (5) years after the close out of the grant. If any litigation or audit is initiated, or claim made, before the expiration of the five-year period, the records shall be retained until the litigation, audit, or claim has been resolved.

- 21. Obligation to Provide State Access to Grant Records.** The Grantee must make all grant records of expenditures, copies of reports, books, and related documentation available to the Department or a duly authorized representative of the State of Florida for inspection at reasonable times for the purpose of making audits, examinations, excerpts, and transcripts.
- 22. Obligation to Provide Public Access to Grant Records.** The Department reserves the right to unilaterally cancel this Agreement in the event that the Grantee refuses public access to all documents or other materials made or received by the Grantee that are subject to the provisions of Chapter 119, *Florida Statutes*, known as the *Florida Public Records Act*. The Grantee must immediately contact the Department's Contract Manager for assistance if it receives a public records request related to this Agreement.
- 23. Restrictive Covenants.** The Grantee and the Property Owner(s), if different, shall execute and file Restrictive Covenants with the Clerk of the Circuit Court in the county where the property is located, prior to initial release of final payment. The Restrictive Covenants shall include at a minimum the following provisions:
- a. The Restrictive Covenants shall run with the title of the property, shall encumber the property and shall be binding upon the Grantee and the Property Owner(s), if different, and their successors in interest for ten (10) years from the date of the recordation of the Restrictive Covenants for projects involving improvements to Real Property.
 - b. The Grantee and Property Owner(s) shall permit the Department to inspect the property at all reasonable times to determine whether the Grantee and Property Owner(s) are in compliance with the terms of the Restrictive Covenants.
 - c. In the case of Historic Properties, the Grantee and Property Owner(s) shall maintain the property in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties.
 - d. In the case of Cultural Facilities, the Grantee and Property Owner(s) shall maintain the property as a building which is be used primarily for the programming, production, presentation, exhibition or any combination of the above functions of any of the cultural disciplines defined in Section 265.283(7), Florida Statute. These disciplines include, but are not limited to music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.
 - e. The Grantee and Property Owner(s) agree that no modifications will be made to the property, other than routine repairs and maintenance, without advance review and approval of the plans and specifications by the Department.
 - f. The Restrictive Covenants shall contain the following amortization schedule of the repayment of grant funds, should the Grantee or Property Owner(s) or their successors in interest violate the Restrictive Covenants.
 - i. Amortization Schedule for projects involving improvements to Real Property:
If the violation occurs within the first five (5) years of the effective date of these covenants, the Department shall be entitled to return of the entire grant amount. If the violation occurs after the first five (5) years, the Department shall be entitled to return of the entire grant amount, less 10% for each year past the first five (5).
 - g. Other provisions as agreed upon by the Department and the Grantee.
- 24. Noncompliance with Grant Requirements.** Any Grantee that has not submitted required reports or satisfied other administrative requirements for this grant or other grants from any other Florida Department of State (DOS) Division will be in noncompliance status and subject to the DOS Grants Compliance Procedure. Grant compliance issues must be resolved before a grant award agreement may be executed, and before grant payments for any DOS grant may be released.
- 25. Accounting Requirements.** The Grantee must maintain an accounting system that provides a complete record of the use of all grant funds as follows:
- a. The accounting system must be able to specifically identify and provide audit trails that trace the receipt, maintenance, and expenditure of state funds;

- b. Accounting records must adequately identify the sources and application of funds for all grant activities and must classify and identify grant funds by using the same budget categories that were approved in the grant application. If Grantee's accounting system accumulates data in a different format than the one in the grant application, subsidiary records must document and reconcile the amounts shown in the Grantee's accounting records to those amounts reported to the Department.
 - c. An interest-bearing checking account or accounts in a state or federally chartered institution may be used for revenues and expenses described in the Scope of Work and detailed in the Estimated Project Budget.
 - d. The name of the account(s) must include the grant award number;
 - e. The Grantee's accounting records must have effective control over and accountability for all funds, property, and other assets; and
 - f. Accounting records must be supported by source documentation and be in sufficient detail to allow for a proper pre-audit and post-audit (such as invoices, bills, and canceled checks).
- 26. Availability of Funds.** The State of Florida's performance and obligation to pay under this Agreement are contingent upon an annual appropriation by the Florida Legislature, or the United States Congress in the case of a federally funded grant. In the event that the state or federal funds upon which this Agreement is dependent are withdrawn, this Agreement will be automatically terminated and the Department shall have no further liability to the Grantee, beyond those amounts already released prior to the termination date. Such termination will not affect the responsibility of the Grantee under this Agreement as to those funds previously distributed. In the event of a state revenue shortfall, the total grant may be reduced accordingly.
- 27. Independent Contractor Status of Grantee.** The Grantee, if not a state agency, agrees that its officers, agents and employees, in performance of this Agreement, shall act in the capacity of independent contractors and not as officers, agents, or employees of the state. The Grantee is not entitled to accrue any benefits of state employment, including retirement benefits and any other rights or privileges connected with employment by the State of Florida.
- 28. Grantee's Subcontractors.** The Grantee shall be responsible for all work performed and all expenses incurred in connection with this Agreement. The Grantee may subcontract, as necessary, to perform the services and to provide commodities required by this Agreement. The Department shall not be liable to any subcontractor(s) for any expenses or liabilities incurred under the Grantee's subcontract(s), and the Grantee shall be solely liable to its subcontractor(s) for all expenses and liabilities incurred under its subcontract(s). The Grantee must take the necessary steps to ensure that each of its subcontractors will be deemed to be "independent contractors" and will not be considered or permitted to be agents, servants, joint ventures, or partners of the Department.
- 29. Liability.** The Department will not assume any liability for the acts, omissions to act, or negligence of, the Grantee, its agents, servants, or employees; nor may the Grantee exclude liability for its own acts, omissions to act, or negligence, to the Department.
- a. The Grantee shall be responsible for claims of any nature, including but not limited to injury, death, and property damage arising out of activities related to this Agreement by the Grantee, its agents, servants, employees, and subcontractors. The Grantee, other than a Grantee which is the State or the State's agencies or subdivisions, as defined in Section 768.28, *Florida Statutes*, shall indemnify and hold the Department harmless from any and all claims of any nature and shall investigate all such claims at its own expense. If the Grantee is governed by Section 768.28, *Florida Statutes*, it shall only be obligated in accordance with that Section.
 - b. Neither the state nor any agency or subdivision of the state waives any defense of sovereign immunity, or increases the limits of its liability, by entering into this Agreement.
 - c. The Department shall not be liable for attorney fees, interest, late charges or service fees, or cost of collection related to this Agreement.
 - d. The Grantee shall be responsible for all work performed and all expenses incurred in connection with the Project. The Grantee may subcontract as necessary to perform the services set forth in this Agreement, including entering into subcontracts with vendors for services and commodities; and provided that it is understood by the Grantee that the Department shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.
- 30. Strict Compliance with Laws.** The Grantee shall perform all acts required by this Agreement in strict conformity with all applicable laws

and regulations of the local, state and federal law.

31. No Discrimination. The Grantee may not discriminate against any employee employed under this Agreement, or against any applicant for employment because of race, color, religion, gender, national origin, age, pregnancy, disability or marital status. The Grantee shall insert a similar provision in all of its subcontracts for services under this Agreement.

32. Breach of Agreement. The Department will demand the return of grant funds already received, will withhold subsequent payments, and/or will terminate this agreement if the Grantee improperly expends and manages grant funds, fails to prepare, preserve or surrender records required by this Agreement, or otherwise violates this Agreement.

33. Termination of Agreement.

a. Termination by the Department. The Department will terminate or end this Agreement if the Grantee fails to fulfill its obligations herein. In such event, the Department will provide the Grantee a notice of its violation by letter, and shall give the Grantee fifteen (15) calendar days from the date of receipt to cure its violation. If the violation is not cured within the stated period, the Department will terminate this Agreement. The notice of violation letter shall be delivered to the Grantee's Contract Manager, personally, or mailed to his/her specified address by a method that provides proof of receipt. In the event that the Department terminates this Agreement, the Grantee will be compensated for any work completed in accordance with this Agreement, prior to the notification of termination, if the Department deems this reasonable under the circumstances. Grant funds previously advanced and not expended on work completed in accordance with this Agreement shall be returned to the Department, with interest, within thirty (30) days after termination of this Agreement. The Department does not waive any of its rights to additional damages, if grant funds are returned under this Section.

b. Termination for convenience. The Department or the Grantee may terminate the grant in whole or in part when both parties agree that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds. The two parties will agree upon the termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated.

c. Termination by Grantee. The Grantee may unilaterally cancel the grant at any time prior to the first payment on the grant although the Department must be notified in writing prior to cancellation. After the initial payment, the Project may be terminated, modified, or amended by the Grantee only by mutual agreement of the Grantee and the Department. Request for termination prior to completion must fully detail the reasons for the action and the proposed disposition of the uncompleted work.

34. Preservation of Remedies. No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or violation by either party under this Agreement, shall impair any such right, power or remedy of either party; nor shall such delay or omission be construed as a waiver of any such breach or default, or any similar breach or default.

35. Non-Assignment of Agreement. The Grantee may not assign, sublicense nor otherwise transfer its rights, duties or obligations under this Agreement without the prior written consent of the Department, which consent shall not unreasonably be withheld. The agreement transferee must demonstrate compliance with the requirements of the Project. If the Department approves a transfer of the Grantee's obligations, the Grantee shall remain liable for all work performed and all expenses incurred in connection with this Agreement. In the event the Legislature transfers the rights, duties, and obligations of the Department to another governmental entity pursuant to Section 20.06, *Florida Statutes*, or otherwise, the rights, duties, and obligations under this Agreement shall be transferred to the successor governmental agency as if it was the original party to this Agreement.

36. Required Procurement Procedures for Obtaining Goods and Services.

a. The Grantee shall provide maximum open competition when procuring goods and services related to the grant-assisted project. Procurement documentation supporting maximum open competition must be submitted to the Department for review and approval prior to execution of project contracts.

b. Grantee's procurement standards must be consistent with 2 C.F.R. §§ 200.317 – 200.327, as applicable. All procurement

transactions for goods or services must be conducted in a manner providing full and open competition, consistent with the standards outlined in 2 C.F.R. §200.320, which allows for non-competitive procurements only in circumstances where at least one of the four applicable conditions provided are met; *provided, however*, that 2 C.F.R. §200.320(c)(4) is not applicable to SLFRF program awards.

37. **Conflicts of Interest.** The Grantee hereby certifies that it is cognizant of the prohibition of conflicts of interest described in Sections 112.311 through 112.326, *Florida Statutes*, and affirms that it will not enter into or maintain a business or other relationship with any employee of the Department of State that would violate those provisions. The Grantee further agrees to seek authorization from the General Counsel for the Department of State prior to entering into any business or other relationship with a Department of State Employee to avoid a potential violation of those statutes.
38. **Binding of Successors.** This Agreement shall bind the successors, assigns and legal representatives of the Grantee and of any legal entity that succeeds to the obligations of the Department of State.
39. **No Employment of Unauthorized Aliens.** The employment of unauthorized aliens by the Grantee is considered a violation of Section 274A (a) of the Immigration and Nationality Act. If the Grantee knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.
40. **Severability.** If any term or provision of the Agreement is found to be illegal and unenforceable, the remainder will remain in full force and effect, and such term or provision shall be deemed stricken.
41. **Americans with Disabilities Act.** All programs and facilities related to this Agreement must meet the standards of Sections 553.501-553.513, *Florida Statutes*, and the Americans with Disabilities Act of 1990 as amended (42 U.S.C. 12101, *et seq.*), which is incorporated herein by reference.
42. **Governing Law.** This Agreement shall be construed, performed, and enforced in all respects in accordance with the laws and rules of Florida. Venue or location for any legal action arising under this Agreement will be in Leon County, Florida.

43. Entire Agreement. The entire Agreement of the parties consists of the following documents:

- a. This Agreement
- b. Estimated Project Budget (Attachment A)
- c. Single Audit Act Requirements and Exhibit I (Attachment B)
- d. Federal Special Conditions (Attachment C)
- e. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions (Attachment D)

In acknowledgment of this grant, provided from funds appropriated in the Florida FY2021-22 General Appropriation Act, the Florida FY2022-23 General Appropriation Act and the federal Coronavirus State Fiscal Recovery Fund (Public Law 117-2), I hereby certify that I have read this entire Agreement, and will comply with all of its requirements.

Department of State: By: _____ Division Director _____ Division of _____ _____ Date	Grantee: By: _____ Authorizing Official for the Grantee _____ Typed name and title _____ Date
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ATTACHMENT A

Estimated Project Budget

Description	Grant Funds	Cash Match	In Kind Match
Other			
Construction of the expansion project	\$470,000	\$0	\$0
<i>Subtotals</i>	<i>\$470,000</i>	<i>\$0</i>	<i>\$0</i>
Totals	\$470,000	\$0	\$0

ATTACHMENT B

FEDERAL AND STATE OF FLORIDA SINGLE AUDIT ACT REQUIREMENTS

AUDIT REQUIREMENTS

The administration of resources awarded by the Department of State to the Grantee may be subject to audits and/or monitoring by the Department of State as described in this Addendum to the Grant Award Agreement.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and section 215.97, Florida Statutes (F.S.), as revised (see AUDITS below), monitoring procedures may include, but not be limited to, on-site visits by Department of State staff, limited scope audits as defined by 2 CFR §200.425, or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures or processes deemed appropriate by the Department of State. In the event the Department of State determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by Department of State staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

Part I: Federally Funded

This part is applicable if the recipient is a state or local government or a nonprofit organization as defined in 2 CFR §200.90, §200.64, and §200.70.

1. A recipient that expends \$750,000 or more in federal awards in its fiscal year must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. EXHIBIT 1 to this agreement lists the federal resources awarded through the Department of State by this agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of State. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR §§200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR §200.514 will meet the requirements of this Part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR §§200.508-512.
3. A recipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. If the recipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than federal entities).

The Internet web addresses listed below will assist recipients in locating documents referenced in the text of this agreement and the interpretation of compliance issues.

U.S. Government Printing Office www.ecfr.gov

Part II: State Funded

This part is applicable if the recipient is a nonstate entity as defined by section 215.97(2), F.S.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a state single or project-specific audit for such fiscal year in accordance with section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement lists the state financial assistance awarded through the Department of State by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of State, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for federal program matching requirements.
2. For the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of section 215.97(8), F.S. This includes submission of a financial reporting package as defined by section 215.97(2), F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal years ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of section 215.97, F.S., is not required. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, F.S., the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than state entities).

The Internet web addresses listed below will assist recipients in locating documents referenced in the text of this agreement and the interpretation of compliance issues.

State of Florida Department of Financial Services (Chief Financial Officer)

<http://www.myfloridacfo.com/>

State of Florida Legislature (Statutes, Legislation relating to the Florida Single Audit Act) <http://www.leg.state.fl.us/>

Part III: Report Submission

1. Copies of reporting packages for audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and required by Part I of this agreement shall be submitted, when required by 2 CFR §200.512, by or on behalf of the recipient directly to each of the following:
 - A. The Department of State through the <https://dosgrants.com/> grants management system.
 - B. The Federal Audit Clearinghouse (FAC) as provided in 2 CFR §200.36 and §200.512.

The FAC's website provides a data entry system and required forms for submitting the single audit reporting package. Updates to the location of the FAC and data entry system may be found at the OMB website.
2. Copies of financial reporting packages required by Part II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:
 - A. The Department of State through the <https://dosgrants.com/> grants management system.
 - B. The Auditor General's Office at the following address:

Auditor General
 Local Government Audits/342
 Claude Pepper Building, Room 401

111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<https://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Any reports, management letters, or other information required to be submitted to the Department of State pursuant to this agreement shall be submitted timely in accordance with 2 CFR §200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
4. Recipients, when submitting financial reporting packages to the Department of State for audits done in accordance with 2 CFR 200, Subpart F - Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

Part IV: Record Retention

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award(s) and this agreement for a period of five years from the date the audit report is issued, and shall allow the Department of State, or its designee, the CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of State, or its designee, the CFO, or Auditor General upon request for a period of at least three years from the date the audit report is issued, unless extended in writing by the Department of State.

EXHIBIT 1

FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Department of the Treasury, Coronavirus State and Local Fiscal Recovery Funds, Assistance Listing number (formerly known as CFDA number) 21.027. \$470,000

COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

As contained in 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and 31 CFR Part 35, Subpart A – Coronavirus State and Local Fiscal Recovery Funds.

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Not applicable

MATCHING RESOURCES FOR FEDERAL PROGRAMS:

Not applicable.

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

Not applicable.

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

Not applicable.

ATTACHMENT C

FEDERAL SPECIAL CONDITIONS

In addition to the terms and conditions contained in this agreement and the program guidelines generally applicable to grants awarded by the Department, African-American Cultural and Historical Grants, as federal pass-through grants, are also subject to additional federal requirements for use of SLFRF funds. The SLFRF awards are generally subject to the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (the "Uniform Guidance"). In all instances, Applicant Organizations should review the Uniform Guidance requirements applicable to your organization's use of SLFRF funds, and SLFRF-funded projects.

The following sections provide a general summary of compliance responsibilities under applicable federal statutes and regulations, including the Uniform Guidance, as described in the 2020 OMB Compliance Supplement Part 3. Compliance Requirements (issued August 18, 2020). Note that the descriptions below are only general summaries and all recipients and subrecipients of SLFRF funds are advised to carefully review the Uniform Guidance requirements and any additional regulatory and statutory requirements applicable to the program.

Grantee, as a subrecipient of federal funds, should ensure they remain in compliance with all SLFRF Award Terms and Conditions.

1. **Allowable Costs/Cost Principles.** As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. As such, the Department will implement robust internal controls and effective monitoring of subrecipients to ensure compliance with the Cost Principles, which are important for building trust and accountability. SLFRF Funds may be, but are not required to be, used along with other funding sources for a given project. Note that SLFRF Funds may not be used for a non-Federal cost share or match where prohibited by other Federal programs, e.g., funds may not be used for the State share for Medicaid.
2. **Cash Management.** SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR part 205 or 2 CFR 200.305(b)(8)-(9). As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award.
3. **Equipment and Real Property Management.** Any purchase of equipment or real property with SLFRF funds (as approved by the Department) must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.
4. **Period of Performance.** All SLFRF funds remain subject to statutory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December 31, 2026. Any funds not used must be returned to Treasury.
5. **Procurement, Suspension & Debarment.** Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable. The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate. Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance requires an infrastructure for competitive

bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, State, and federal procurement laws and regulations.

6. **Program Income.** Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federal awards and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records. The Uniform Guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Treasury intends to provide additional guidance regarding program income and the application of 2 CFR 200.307(e)(1), including with respect to lending programs.
7. **Reporting.** All recipients of federal funds must complete financial, performance, and compliance reporting. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1. Your organization should appropriately maintain accounting records for compiling and reporting accurate, compliant financial data, in accordance with appropriate accounting standards and principles. In addition, where appropriate, your organization needs to establish controls to ensure completion and timely submission of all mandatory performance and/or compliance reporting to the Department, for use in its required reporting to Treasury.
8. **SAM.gov Requirements.** All eligible recipients are also required to have an active registration with the System for Award Management (SAM) (<https://www.sam.gov>). To ensure timely receipt of funding, Treasury has stated that Non-entitlement Units of Government (NEUs) who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.
9. **Recordkeeping Requirements.** Generally, your organization must maintain records and financial documents for five years after all funds have been expended or returned to Treasury. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats. Your organization must agree to provide or make available such records to Treasury upon request, and to any authorized oversight body, including but not limited to the Government Accountability Office ("GAO"), Treasury's Office of Inspector General ("OIG"), and the Pandemic Relief Accountability Committee ("PRAC").
10. **Single Audit Requirements.** Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements. Recipients and subrecipients may also refer to the Office of Management and Budget (OMB) Compliance Supplements for audits of federal funds and related guidance and the Federal Audit Clearinghouse to see examples and single audit submissions.
11. **Civil Rights Compliance.** Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23. In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status.

12. **General Federal Regulations.** Recipients shall comply with the regulations listed in 2 CFR 200, 48 CFR 31, and 40 U.S.C. 1101 *et sequence*.
13. **Rights to Patents and Inventions Made Under a Contract or Agreement.** Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 U.S.C. 200 through 212.
14. **Compliance with the Trafficking Victims Protection Act of 2000 (2 CFR Part 175).** Recipients, their employees, subrecipients under this award, and subrecipients' employees may not:
- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
15. **Whistleblower Protection.** Recipients shall comply with U.S.C. §4712, Enhancement of Recipient and Subrecipient Employee Whistleblower Protection. This requirement applies to all awards issued after July 1, 2013 and effective December 14, 2016 has been permanently extended (Public Law (P.L.) 114-261).
- i. This award, related subawards, and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards, and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).
 - ii. Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.
 - iii. The Recipient shall insert this clause, including this paragraph C, in all subawards and in contracts over the simplified acquisition threshold related to this award; best efforts should be made to include this clause, including this paragraph C in any subawards and contracts awarded prior to the effective date of this provision.
16. **Notification of Termination (2 CFR § 200.340).** In accordance with 2 CFR § 200.340, in the event that the Agreement is terminated prior to the end of the period of performance due to the Recipient's or subcontractor's material failure to comply with Federal statutes, regulations or the terms and conditions of this Agreement or the Federal award, the termination shall be reported to the Office of Management and Budget (OMB)-designated integrity and performance system, accessible through System for Award Management (SAM) currently the Federal Awardee Performance and Integrity Information System (FAPIS). The Non-Federal Entity will notify the Recipient of the termination and the Federal requirement to report the termination in FAPIS. See 2 CFR § 200.340 for the requirements of the notice and the Recipient's rights upon termination and following termination.
17. **Additional Lobbying Requirements.**
- i. The Recipient certifies that no funds provided under this Agreement have been used or will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.
 - ii. The Lobbying Disclosure Act of 1995, as amended (2 U.S.C. §1601 *et seq.*), prohibits any organization described in Section 501(c)(4) of the Internal Revenue Code, from receiving federal funds through an award, grant (and/or subgrant) or loan unless such organization warrants that it does not, and will not engage in lobbying activities prohibited by the Act as a special condition of such an award, grant (and/or subgrant), or loan. This restriction does not apply to loans made pursuant to approved revolving loan programs or to contracts awarded using proper procurement procedures.
 - iii. Pursuant to 2 CFR §200.450 and 2 CFR §200.454(e), the Recipient is hereby prohibited from using funds provided by this

Agreement for membership dues to any entity or organization engaged in lobbying activities.

18. **Compliance with Assurances.** Recipients shall comply with any and all applicable assurances made by the Department or the Recipient to the Federal Government during the Grant application process.
19. **Federal Reporting Requirements (FFATA).** Grant Recipients awarded a new Federal grant greater than or equal to \$30,000 awarded on or after October 1, 2015, are subject to the FFATA the Federal Funding Accountability and Transparency Act (“FFATA”) of 2006. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov. The Grantee agrees to provide the information necessary, within one (1) month of execution, for the Department to comply with this requirement.
20. **2 CFR Part 200 Appendix 2 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards** In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.
- i. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
 - ii. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
 - iii. Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#) all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” ([60 FR 12319, 12935, 3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
 - iv. Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#) and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#) “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#) “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

The Davis-Bacon Act requirements do not apply to projects funded solely with award funds from the SLFRF. Recipients may be otherwise subject to the requirements of the Davis-Bacon Act, when SLFRF award funds are used on a construction project in conjunction with funds from another federal program that requires enforcement of the Davis-Bacon Act.

- v. Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of

a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- vi. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- vii. Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- viii. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- ix. Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- x. Procurement of Recovered Materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- xi. Prohibition on Certain Telecommunications and video surveillance services or equipment. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - A. Procure or obtain;
 - B. Extend or renew a contract to procure or obtain; or
 - C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - 1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

2. Telecommunications or video surveillance services provided by such entities or using such equipment.
 3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- D. In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- E. See [Public Law 115-232](#), section 889 for additional information.
- F. See also 2 CFR [§ 200.471](#).
- xii. Domestic Preferences for Procurements.
- A. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- B. For purposes of this section:
1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

ATTACHMENT D

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 45 CFR 1183.35, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ ATTACHED INSTRUCTIONS)

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**MEMORANDUM OF AGREEMENT
BETWEEN THE CHAPPIE JAMES MUSEUM OF PENSACOLA, INC
AND THE CITY OF PENSACOLA RELATING TO GENERAL CHAPPIE
JAMES MUSEUM AND FLIGHT ACADEMY BUILDING EXPANSION**

This Memorandum of Agreement (“Agreement”) is made and entered into by and between the Chappie James Museum of Pensacola, Inc. (the “Museum”), a registered not-for-profit and the City of Pensacola, a municipal corporation created and existing under the laws of the State of Florida, (hereinafter referred to as “City”).”

WITNESSETH

WHEREAS, the City has prepared design plans and allocated partial funding for expansion of the General Chappie James Museum and Flight Academy Building, addressed at 1606 and 1608 Dr. MLK Jr. Drive, Pensacola, Florida (the “Project”); and

WHEREAS, the Museum has applied for and has been awarded an African American Cultural and Historical Grant in the amount of \$470,000 from the State of Florida to support the Project (the “Grant”); and

WHEREAS, to facilitate effective and efficient construction of the Project, the City intends to manage and serve as fiduciary of the grant funds, on behalf of the Museum;

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

Section 1. Purpose of the Agreement

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

1.2 Purpose. The purpose of this Agreement is to establish the conditions and mechanisms whereby the City and Museum will work in good faith and cooperatively to complete the Project in compliance with the grant requirements.

Section 2. Scope of Project

2.1. The Project will include expansion of the General Chappie James Museum and Flight Academy Building, addressed at 1606 and 1608 Dr. MLK Jr. Drive, Pensacola, Florida.

2.2 Responsibilities of the Parties

- a) The City shall be responsible for procuring, overseeing and managing the Project, including compliance, reporting, invoicing, and close out.

- b) The Museum shall fully cooperate with the City and the Grantor to facilitate full construction of the Project and receipt of the Grant funds.
- c) The Museum, upon receipt of Grant funds, shall remit an amount equal to the amount of Grant funds received, to the City within ten (10) calendar days of receipt.
- d) The Museum shall not violate the Restrictive Covenant the parties must execute as a condition of receipt of the Grant funds.

2.3 Term and Termination. This Agreement shall commence upon the date last executed and run concurrent with the completion of the Project and close out of the Grant, including the City's receipt of an amount equal to the amount of the Grant funds.

Section 3. Miscellaneous Provisions.

3.1 Liability. The Museum agrees to fully indemnify, defend and save harmless, the City of Pensacola, its officers, agents, elected officials, and employees from and against all actions, damages, costs, liabilities, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable incurred by the City of Pensacola's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing any terms of this Agreement (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of the Museum arising from the matters covered by this Agreement. This shall be a continuing indemnity and shall remain in effect until revoked in writing. Nothing herein is intended to serve as a waiver of sovereign immunity by the City or any of the City's defenses against being sued by third parties in any matter arising out of this Agreement. This Agreement is not intended to create third-party beneficiaries. The City does not by this Agreement consent to be sued. The Museum shall cooperate with all reasonable requests of the City to ensure compliance with all federal, state, and local laws, ordinances, rules, and regulations relating to the matters within the scope of this Agreement.

3.2 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, which consent shall not be unreasonably withheld.

3.3 All Prior Agreements Superseded:

- (a) 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 up any prior representations or Agreements whether oral or written.

- (b) 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.

3.4 Headings: Headings and subtitled 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.

3.5 Survival: All provisions, which by their inherent character, sense and context are intended to survive termination of this Agreement, shall survive the termination of this Agreement.

3.6 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 referenced herein. 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.

- a) If either party discovered any material discrepancy, deficiency, ambiguity, error or omission in this Agreement or is otherwise in doubt as to the meaning of any provisions of the Agreement, it shall immediately notify the other party and request clarification of its interpretation of this Agreement.
- b) 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 of the terms or provisions hereto.

3.7 Severability: The invalidity or non-enforceability of any portion or provisions 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 of provision.

3.8 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.

3.9 Governing Law.

This Agreement is governed and construed in accordance with the laws of the State of Florida. The law of the State of Florida shall be the law applied in the resolution of any claim, actions, or proceedings arising out of this Agreement. Venue for any and all proceedings shall be Escambia County, Florida.

3.10 Venue.

Venue for any claim, actions, or proceedings arising out of this Agreement shall be Escambia County, Florida.

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

MUSEUM
Chappie James
Museum of Pensacola
Attn: President
1606 Dr. MLK Jr. Dr.
Pensacola, FL 32503

CITY
City of Pensacola

Attn: Chief Finance Officer
222 W. Main Street
Post Office Box 12910
Pensacola, FL 32521

3.12 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

3.13 Public Records Act.

The parties acknowledge and agree to fulfill all obligations respecting required contract provisions in any contract entered into or amended after July 1, 2016, in full compliance pursuant to Section 119.0701, *Florida Statutes*, and obligations respecting termination of a contract for failure to provide public access to public records. The parties expressly agree specifically that the contracting parties hereto shall comply with the requirements within Attachment "A" attached hereto and incorporated by reference.

3.14 Mandatory Use of E-Verify System.

In compliance with the provisions of F.S. 448.095, the parties to this contract and any subcontractors engaged in the performance of this contract hereby certify that they have registered with and shall use the E-Verify system of the United States Department of Homeland Security to verify the work authorization status of all newly hired employees, within the meaning of the statute.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed and sealed the day and year first above written.

**CHAPPIE JAMES MUSEUM
OF PENSACOLA, INC.**

**THE CITY
OF PENSACOLA, FLORIDA**

President

Mayor, D.C. Reeves

Marion Williams, PhD

Attest: _____
City Clerk, Ericka L. Burnett

Attest: _____
Corporate Secretary

Approved as to Substance:

CRA Manager

Legal in form and execution:

City Attorney

Attachment "A"

PUBLIC RECORDS: Consultant shall comply with Chapter 119, Florida Statutes. Specifically, Consultant shall:

- A. Keep and maintain public records required by the city to perform the service.
- B. Upon request from the City's custodian of public records, provide the City 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 Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. 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 Contract term and following the completion of the Contract if Consultant does not transfer the records to the City.
- D. Upon completion of the Contract, transfer, at no cost, to the City, all public records in possession of consultant or keep and maintain public records required by the City to perform the service. If Consultant transfers all public records to the City upon completion of the Contract, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of the Contract, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request of the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure by Consultant to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Contract by the City.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE PUBLIC RECORDS COORDINATOR AT:

THE OFFICE OF THE CITY CLERK, (850) 435-1715

PUBLICRECORDS@CITYOFPENSACOLA.COM

222 WEST MAIN STREET, PENSACOLA, FL 32502



Memorandum

File #: 23-00237

City Council

5/11/2023

LEGISLATIVE ACTION ITEM

SPONSOR: D.C. Reeves, Mayor

SUBJECT:

FIRST AMENDED AND RESTATED LEASE AGREEMENT WITH THE CHAPPIE JAMES MUSEUM OF PENSACOLA INC.

RECOMMENDATION:

That City Council approve the First Amended and Restated Lease Agreement with the Chappie James Museum of Pensacola, Inc. for operation of the commemorative Chappie James Museum located at 1606 Dr. Martin Luther King, Jr. Drive.

HEARING REQUIRED: No Hearing Required

SUMMARY:

On December 14, 2017, City Council approved a Lease Agreement with the Chappie James Museum of Pensacola, Inc. for operation of the Chappie James Museum at 1606 Dr. Martin Luther King, Jr. Drive. The lease currently expires on February 8, 2028.

The City of Pensacola Community Redevelopment Agency (CRA) has recently completed design of an expansion project to provide additional programming space for the Museum and the Chappie James Flight Academy, which also occupies the site with the building addressed as 1608 Dr. Martin Luther King, Jr. Drive. To provide supplemental funding for the project, the Museum applied for and was awarded an African American Historical and Cultural (AAHC) grant. The grant requires that the property addressed as 1606 Dr. Martin Luther King, Jr. Drive be used for a commemorative museum a period of ten (10) years via a restrictive covenant recorded in the Official Records. To ensure compliance with the grant and to establish the re-organization of lease space upon completion of the expansion project, an amendment to the lease is necessary.

The amendment includes:

- Re-establishing the term of the lease to be for a period of ten years beginning upon recordation of the covenant.
- Requiring that any modifications to the property comply with the terms of the covenant.
- Revising the separation of leased space and common areas to reflect the re-organization of space upon completion of the expansion project.
- Establishing parameters for cooperation between the Museum and the City during

construction of the expansion project.

PRIOR ACTION:

December 14, 2017 - City Council approved a Lease Agreement with the Chappie James Museum of Pensacola, Inc.

FUNDING:

N/A

FINANCIAL IMPACT:

The lease generates \$100 in annual revenue.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

4/28/2023

STAFF CONTACT:

Kerrith Fiddler, City Administrator
David Forte, Deputy City Administrator
Sherry Morris - Development Services Director
Victoria D'Angelo -CRA Division Manager
Deana Stallworth - Lease Manager

ATTACHMENTS:

- 1) First Amended and Restated Lease Agreement
- 2) Exhibit B - Leased Premises
- 3) Exhibit C - Leased Premises - Post Expansion

PRESENTATION: No

**FIRST AMENDED AND RESTATED
LEASE AGREEMENT BETWEEN THE CITY OF PENSACOLA AND
THE CHAPPIE JAMES MUSEUM OF PENSACOLA, INC.**

THIS FIRST AMENDED AND RESTATED LEASE AGREEMENT (“Lease”) effective this ___ day of _____, 202_, by and between the City of Pensacola (“City”), a municipal corporation of the State of Florida and Chappie James Museum of Pensacola, Inc. (“Lessee”), a registered not-for-profit, each at times referred to as a “party” or collectively as “Parties.”

WHEREAS, the City and the Lessee entered into a lease agreement dated February 8, 2018 (“Original Lease”);

WHEREAS, City intends to expand the footprint of the Leased Premises with major additions and capital renovations (the “Expansion Project”); and

WHEREAS, the Property includes common areas shared with another Lessee of the Property, which as of the date of this Lease is the General Daniel “Chappie” James Flight Academy, Inc., (the “Flight Academy”); and

WHEREAS, an African American Cultural and Historical Grant (the “AACH Grant”) has been received by the Lessee to support the Expansion Project; and

WHEREAS, the AACH Grant was awarded to the Lessee on the basis that the Expansion Project would support the operations of the Lessee and Flight Academy within the Property; and

WHEREAS, the AACH Grant requires that a restrictive covenant be placed on the portion of the Property addressed as 1606 Dr. Martin Luther King, Jr. Dr., Pensacola, Florida, which is occupied by the Lessee (the “Covenant”); and

WHEREAS, the Covenant requires that 1606 Dr. Martin Luther King, Jr. Dr., Pensacola, Florida be used for the cultural purposes defined in the AACH Grant Agreement for a period of ten (10) years beginning from the date of recordation of the Covenant; and

WHEREAS, to facilitate the long-term occupancy and use of the Property by the Lessee and Flight Academy, in compliance with the Covenant, the Lessee desires and City agrees to reestablish the term of the Lease for a period of ten (10) years beginning from the date of recordation of the Covenant with an option to renew for one (1) five (5) year term following the initial term of ten (10) years; and

WHEREAS, to clarify the extent of the City’s planned expansion project and to reestablish the term of the lease, the Parties intend by this Agreement to amend the existing lease agreement and to restate the Agreement herein by this Amended and Restated Lease Agreement, the execution of which shall supersede and take effect in place of the existing provisions of the Original Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, it is agreed by the City and the Lessee that the Original Lease, as amended, shall be Amended and

fully restated by the following, superseding agreement: the mutual promises herein, the parties agree as follows:

1. RECITALS.

The parties agree the recitals above are true and correct and are hereby incorporated as material terms of this Lease by this reference.

2. STATEMENT OF PURPOSE.

City owns certain real property known as the General Daniel “Chappie” James Memorial Park located at 1606 and 1608 Dr. Martin Luther King, Jr. Drive, Pensacola Florida, 32503, City of Pensacola, Escambia County, Florida (“Property”). Lessee leases a portion of the space at the Property, as described below, for operation of the General “Chappie” James Museum (“Museum”), such purposes as further described in Exhibit A attached hereto and incorporated herein by this reference.

3. PREMISES LEASED.

City hereby leases to Lessee for Lessee’s exclusive use, the space depicted on Exhibit B attached hereto and incorporated by this reference (the “Leased Premises”). Lessee hereby understands and agrees, that upon completion of the Expansion Project described in Section 12, the Leased Premises shall be modified as depicted on Exhibit C, attached hereto and incorporated by this reference, subject to the terms, provisions and conditions of this Lease. Lessee may also reasonably access the common areas, pursuant to applicable terms and conditions herein, and otherwise any access to the Property to be in the City’s sole discretion.

4. TERM AND RENEWALS.

The term of this Lease shall commence upon the date first written above, and shall continue for a period of ten (10) years (“Term”). This Lease shall be renewable, in the sole discretion of the Mayor of the City, for up to one (1) five (5) year renewal term (“Renewal Terms”).

5. LEASE PAYMENTS.

The City agrees to lease the Leased Premises to Lessee at an annual rent of One Hundred Dollars (\$100) on or prior to January 1 of each year.

6. LIMITATIONS ON USE OF PREMISES AND CONDITIONS OF USE.

The Leased Premises shall be used by Lessee solely for the museum described in Exhibit “A”. Use of common areas is restricted to use by the building tenants only. Use of any other portions of the Property is subject to prior written City approval. Lessee shall keep the Leased Premises in good operating condition and repair at all times, as required in this Lease, and shall conform as required in this Lease respecting any potential shared use of the common areas or Property. Lessee shall comply with all terms of the Restrictive Covenant and otherwise comply with the terms applicable to the AACH Grant referenced herein.

7. INSTALLATION OF LEASEHOLD IMPROVEMENTS.

Lessee shall submit to City the design plans and specifications for any proposed leasehold improvements on the Leased Premises. Any improvements performed by the Lessee shall be in compliance with the requirements and provisions of the Covenant. Upon approval of the City, Lessee shall commence installation of the improvements on the Leased Premises, and

Lessee shall be fully responsible for the cost and development of the leasehold improvements to the Leased Premises at Lessee's sole cost and expense and shall comply with all applicable building regulations pursuant to the terms and conditions of this Lease.

8. TITLE TO IMPROVEMENTS.

Title to leasehold improvements upon the Leased Premises by Lessee shall vest in City upon termination of the Lease. Lessee acknowledges and agrees that Lessee shall have no right to remove such fixed or permanent leasehold improvements, however, Lessee shall, upon City request, remove any improvements and restore the Leased Premises to the original condition at the time of commencement of the Lease, normal wear and tear excepted.

9. CITY ACCESS.

During the term of the Lease and any renewal or extension hereof, Lessee shall permit the representatives of City access to the Leased Premises at all times deemed necessary by the City.

10. NO MORTGAGES OR ENCUMBRANCES.

Lessee shall not mortgage, encumber, or allow any liens to be placed against any portion of the Property, the Leased Premises or Lessee's leasehold interest therein. Lessee shall immediately remove any liens or encumbrances placed against the Leased Premises on account of Lessee's activities or occupation of the Property during the term of this Lease or as it may be renewed. If Lessee fails to remove any such lien from the Property, within thirty (30) days of the recording or other reasonable notice of any lien or encumbrance, such failure shall constitute a breach of the Lease, and the City may, in the City's sole discretion, terminate the lease immediately upon written notice to Lessee, and further, upon receipt of such notice, Lessee shall immediately surrender to the City the Leased Premises and all fixtures and equipment thereon.

11. UTILITIES, REPAIRS, AND MAINTENANCE.

- (i) The City will provide electrical, gas, water, sewer, and garbage services for the Leased Premises, therefore, the City reserves the right to install, maintain, repair, replace, or remove and replace any utility lines for or about the Leased Premises, along with the right to enter the Leased Premises in order to accomplish the foregoing, or to accomplish any need of the City; provided, however, that City shall take reasonable precautions to avoid the disruption of the Lessee's authorized activity under this Lease.
- (ii) The City will perform structural repairs to the roof, floor, exterior walls and windows of the Leased Premises unless damage is due to the Lessee's actions or omissions, limited general maintenance and upkeep of the grounds, and pest control services for the Leased Premises, provided however, should the City be required to make any repairs or improvements under the provisions herein contained, the City shall not be liable to Lessee for any cause or damage arising from such repair or improvements.
- (iii) The City will provide limited custodial services; provided, however, Lessee shall keep all interior and exterior areas of the Leased Premises and the common areas or surrounding Property in a neat, clean, safe, sanitary and orderly condition and attractive appearance, and free at all times of all paper, rubbish and debris, with all

trash and debris resulting from its operations in its premises deposited by Lessee in containers approved by the City.

- (iv) In the event Lessee fails to maintain the Leased Premises or common areas or other portions of the Property in accordance with this Lease for more than three (3) days following date of receipt of written notice from City to Lessee of such failure to maintain, the City reserves the right to take any action to cure said failure, in the City's sole discretion and Lessee shall pay to the City an amount equal to the City's cost for such actions plus a ten percent (10%) administrative charge.

12. EXPANSION OF LEASED PREMISES.

The City intends to construct major additions and capital improvements upon the Property. Such additions and improvement will modify the Property and the leased space exclusively available to the Lessee as depicted in Exhibit C ("Expansion Project"). The City reserves the right to enter the Leased Premises to accomplish the foregoing, provided, however, that the City shall take reasonable precautions to avoid the disruption of the Lessee's authorized activity under this Lease. Lessee shall fully cooperate with the City and any other lessees of the Property to facilitate completion of the Expansion Project.

13. INSURANCE AND INDEMNIFICATION.

General:

The Lessee shall insure its contents and personal property within the building and shall procure and maintain insurance of the types and to the limits specified.

The term City as used in this section of the Lease is defined to mean the City of Pensacola itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents.

The Lessee and the City understand and agree that the minimum limits and types of insurance herein required may become inadequate during the term of the Lease. The Lessee agrees that it will increase or change such coverage as required by the City within ninety (90) days upon receipt of written notice from the City.

Property Insurance:

To the extent it is available, the City will maintain property insurance on the insurable portions of the City owned Property. The City will not purchase or maintain property insurance on the Lessee's contents, Lessee's personal property or the Museum Collection.

14. INSURANCE REQUIREMENTS.

Insurance shall be issued by an insurer whose business reputation, financial stability and claims payment reputation is satisfactory to the City, for the City's protection only. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:

Worker's Compensation: The Lessee shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations as legally required. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least \$100,000 each person-accident, \$100,000 each person disease, \$500,000 aggregate-disease.

Commercial General Insurance – Including Fire Legal Liability: The Lessee shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability Policy filed by the Insurance Services Office. The City shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of \$1,000,000 per occurrence, and per accident, must be provided.

Coverage must be provided which includes bodily injury and property damage liability for premises, operations, contractual, products and completed operations, and independent contractors. The coverage shall be written on an occurrence-type basis. Fire Legal Liability coverage must be included with a minimum limit of \$100,000 per occurrence. The City shall be listed as an additional insured and such coverage shall be at least as broad as that provided to the Named Insured under the policy for the terms and conditions of this agreement.

Builder's Risk Insurance:

If the Lessee constructs improvements on the Leased Premises, the Lessee or its contractor must provide Builder's Risk Insurance afforded on an Inland Marine "All-Risk" type form which includes collapse coverage.

The Amount of Insurance is to be 100% of the completed value of the work. Such coverage will additionally include an amount equal to 10% of the Amount of Insurance of the completed value of the work for materials and equipment stored off the construction site, in transit or delivery, including loading and unloading.

The policy must be specifically endorsed to eliminate any "Occupancy" clause or similar warranty or representation that the premises in the course of construction shall not be occupied or used without specific endorsement of the policy. The policy must be endorsed to provide that the Builder's Risk Coverage will continue to apply until final acceptance of the work. Acceptance shall not be deemed to have been made solely on account of occupancy of any portion of the premises.

The City shall be listed as Additional Insured by endorsement on the policy as well as the Certificate of Insurance.

The policy shall contain a "Waiver of Subrogation" clause in favor of the City, any subsidiaries or affiliates, its elected and appointed officials, employees, volunteers, representatives, and agents which would waive any subrogation against any of them.

The policy shall contain no exclusion which would exclude damage or loss caused by breakage, freezing, temperature extremes or temperature change, water, flood, leakage, or seepage.

Certificates of Insurance:

Required insurance shall be documented in the Certificates of Insurance that provide that the City shall be notified in advance of cancellation, non-renewal or adverse change or restriction in coverage. This Lease shall be listed on each Certificate. If required by the City, the Lessee shall furnish copies of the Lessee's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by the City, an ACORD 25. The Lessee shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies acceptable to the City and shall file with the City Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the City, the Lessee shall, upon instructions of the City, cease all operations under the Lease until directed by the City, in writing, to resume operations. The "Certificate Holder" address should read: City of Pensacola, Risk Management, Post Office Box 12910, Pensacola, FL 32521.

Insurance of the Lessee Primary:

The Lessee's required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the Lessee's coverage. The Lessee's policies of coverage will be considered primary as relates to all provisions of the Lease.

Loss Control and Safety:

The Lessee shall retain control over its employees, agents, servants and subcontractors, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, the Lessee shall not be deemed to be an agent of the City. Precaution shall be exercised at all times by the Lessee for the protection of all persons, including employees, and Property. The Lessee shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

15. BACKGROUND CHECKS.

Lessee shall cause all Lessee's Board Members, employees, volunteers, invitees and affiliates who will have contact with children to undertake and pass a Level Two (2) Background Check at Lessee's expense prior to any contact with children. Lessee shall immediately provide all such background checks, as updated accordingly, now and in the future, of any individuals that may have such contact, to the City's Parks and Recreation Director.

16. HOLD HARMLESS.

The Lessee shall indemnify and hold harmless the City of Pensacola, its officers and employees, from any and all 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 Lessee and persons employed or utilized by the Lessee in the performance of this agreement. The Lessee's obligation shall not be limited

by, or in any way to, insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

17. SIGNS.

Lessee shall not permit signs, logos, or advertising displays placed or erected in any manner upon the Leased Premises, or in or on any improvements or additions on the Leased Premises, without the prior written approval of the City's Parks and Recreation Director. Signs identifying Lessee shall conform to reasonable standards established by the City, with respect to type, size, design, condition and location.

18. NO ASSIGNMENT, NO SUBLETTING.

Lessee shall not assign or sublet any portion of this Lease. Any assignment or sublet of this Lease is prohibited and shall be null and void and of no effect.

19. NO WAIVER BY CITY.

A failure by City to take any action with respect to any default or violation by Lessee of any of the terms, covenants, or conditions of this Lease shall not in any respect limit, prejudice, diminish or constitute a waiver of any rights or remedies of City to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default. The acceptance by City of payment for any period or periods after a default or violation of any of the terms, conditions, and covenants of this Lease shall not constitute a waiver or diminution of, nor create any limitation upon any right of City pursuant to this Lease to terminate this Lease for subsequent violation or default, or for continuation or repetition of the original violation or default.

20. SURRENDER UPON TERMINATION.

Upon the expiration or termination of this Lease, for any reason whatsoever, Lessee shall peaceably surrender to the City possession of the Leased Premises. Lessee warrants to City that any and all improvements, alterations, or fixtures previously constructed by Lessee shall remain free and clear of any claims or interests of Lessee, Lessee's contractors or subcontractors, creditors, invitees, or any other third party. Should Lessee violate this provision, without waiver of other action by City for City's own benefit, Lessee shall pay to remove any encumbrance, lien or debt associated with Lessee's occupation of the Leased Premises and hereby warrants that Lessee shall hold the City harmless therefrom. Excepting personal Property of Lessee, upon surrender, City may in the Parks and Recreation Director's sole discretion, assume ownership of any fixture or Property within the Leased Premises or require Lessee, at Lessee's sole cost and expense to remove any Property or fixture.

21. ATTORNEY'S FEES.

The prevailing Party in any action, claim or proceeding arising out of this Lease shall be entitled to attorney's fees and costs from the losing Party.

22. FORCE MAJEURE.

Neither the City nor Lessee shall be deemed in violation of this Lease if it is prevented from performing any of the obligations hereunder by any reason of strikes, boycotts, labor disputes,

embargoes, shortage of material, acts of God, weather conditions, or for any other circumstance for which it is not responsible or which is not within its control.

23. RELATIONSHIP OF PARTIES.

Lessee represents and warrants Lessee is not in any way or for any purpose a partner or joint venture with or agent of the City. Lessee shall act as an independent contractor in the performance of its duties pursuant to this Lease.

24. BOARD MEMBERSHIP.

Lessee shall maintain an active board membership list, including board member names and contact information, and shall provide such list, in writing, to the City's Parks and Recreation Director. Any changes to board membership shall be documented and an updated list provided to the City's Parks and Recreation Director upon occurrence.

25. NOTICES.

All notices by either party to the other shall be made either by utilizing the registered or certified mail of the United States of America, postage prepaid, or by utilizing any other method of delivery requiring signature for receipt, and such notice shall be deemed to have been delivered and received on the date of such utilization.

All notices to the City shall be mailed to:

Parks and Recreation Director
City of Pensacola
222 W. Main Street
Pensacola, Florida 32502

With an additional copies to:
City Administrator
City of Pensacola
222 West Main Street
Pensacola, Florida 32502

CRA Manager
City of Pensacola
222 West Main Street
Pensacola, Florida 32502

All notices to Lessee shall be mailed to:

Marion Williams, Ph.D., President
Chappie James Museum of Pensacola, Inc.
1606 Dr. Martin King, Jr.
Pensacola, FL 32503

The parties from time to time may designate in writing changes in the address stated.

26. ENTIRE LEASE.

This writing, together with all the attached exhibits, constitutes the entire agreement of the parties. This Lease supersedes all prior agreements, if any, between the City and Lessee, and no representations, warranties, inducements, or oral agreements that may have been previously made between the parties shall continue in effect unless stated herein. This Lease shall not be modified except in writing, signed by the City and Lessee.

27. PARTIAL INVALIDITY.

If any term or condition of this Lease or the application thereof to any person or event shall to any extent be deemed invalid and unenforceable, the remainder of this Lease and the application of such term, covenant, or condition to persons or events other than those to which it is held unenforceable shall not be affected, and each term, covenant and condition of this Lease shall be valid and enforced to the fullest extent permitted by law.

28. SUCCESSOR.

The provisions, covenants and conditions of this Lease shall bind and inure to the benefit of the legal representatives, successors and assigns of each of the parties.

29. CONSENTS AND APPROVALS.

Where this Lease requires approval from the City, prior written approval from the Parks and Recreation Director shall be considered to fulfill such requirements.

30. GOVERNING LAW.

This Lease is governed and construed in accordance with the laws of the State of Florida. The law of the State of Florida shall be the law applied in the resolution of any claim, actions or proceedings arising out of this Lease.

31. VENUE.

Venue for any claim, actions or proceedings arising out of this Lease shall be Escambia County, Florida.

32. HEADINGS.

The headings contained in this Lease are inserted only as matter of convenience and for reference and do not define or limit the scope or intent of any provision of this Lease and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction of said terms and provisions.

33. PUBLIC RECORDS ACT.

The parties acknowledge and agree to fulfill all obligations respecting required contract provisions in any contract entered into or amended after July 1, 2016, in full compliance pursuant to Section 119.0701, *Florida Statutes*, and obligations respecting termination of a contract for failure to provide public access to public records. The parties expressly agree specifically that the contracting parties hereto shall comply with the requirements within Attachment "A" attached hereto and incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have signed this instrument the day and year first above written.

Attest:

City of Pensacola,
a Florida municipal corporation

Ericka Burnett, City Clerk

By: _____
D.C. Reeves, Mayor

Chappie James Museum of Pensacola, a Not for Profit
Organization

Attest:

By: _____
Printed Name: Marion Williams, Ph. D.
Title: President

Corporate Secretary

Approved As To Form and Execution:

Approved As To Content:

By: _____
City Attorney

By: _____
CRA Manager

Attachment "A"

PUBLIC RECORDS: Consultant/Contractor/Vendor shall comply with Chapter 119, Florida Statutes. Specifically, Consultant/ Contractor/Vendor shall:

- A. Keep and maintain public records required by the City to perform the service.
- B. Upon request from the City's custodian of public records, provide the City 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 Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. 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 term and following the completion of the Agreement if Consultant/ Contractor/Vendor does not transfer the records to the City.
- D. Upon completion of the Agreement, transfer, at no cost, to City, all public records in possession of Consultant/Contractor/Vendor or keep and maintain public records required by the City to perform the service. If Consultant/Contractor/Vendor transfers all public records to City upon completion of the Agreement, Consultant/ Contractor/Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant/Contractor/Vendor keeps and maintains public records upon completion of the Agreement, Consultant/Contractor/Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request of the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure by Consultant/Contractor/Vendor to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by City.

IF CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: THE OFFICE OF THE CITY ATTORNEY, (850) 435-1715, PUBLICRECORDS@CITYOFPENSACOLA.COM, 222 WEST MAIN STREET, PENSACOLA, FL 32502.

EXHIBIT A
STATEMENT OF PURPOSE

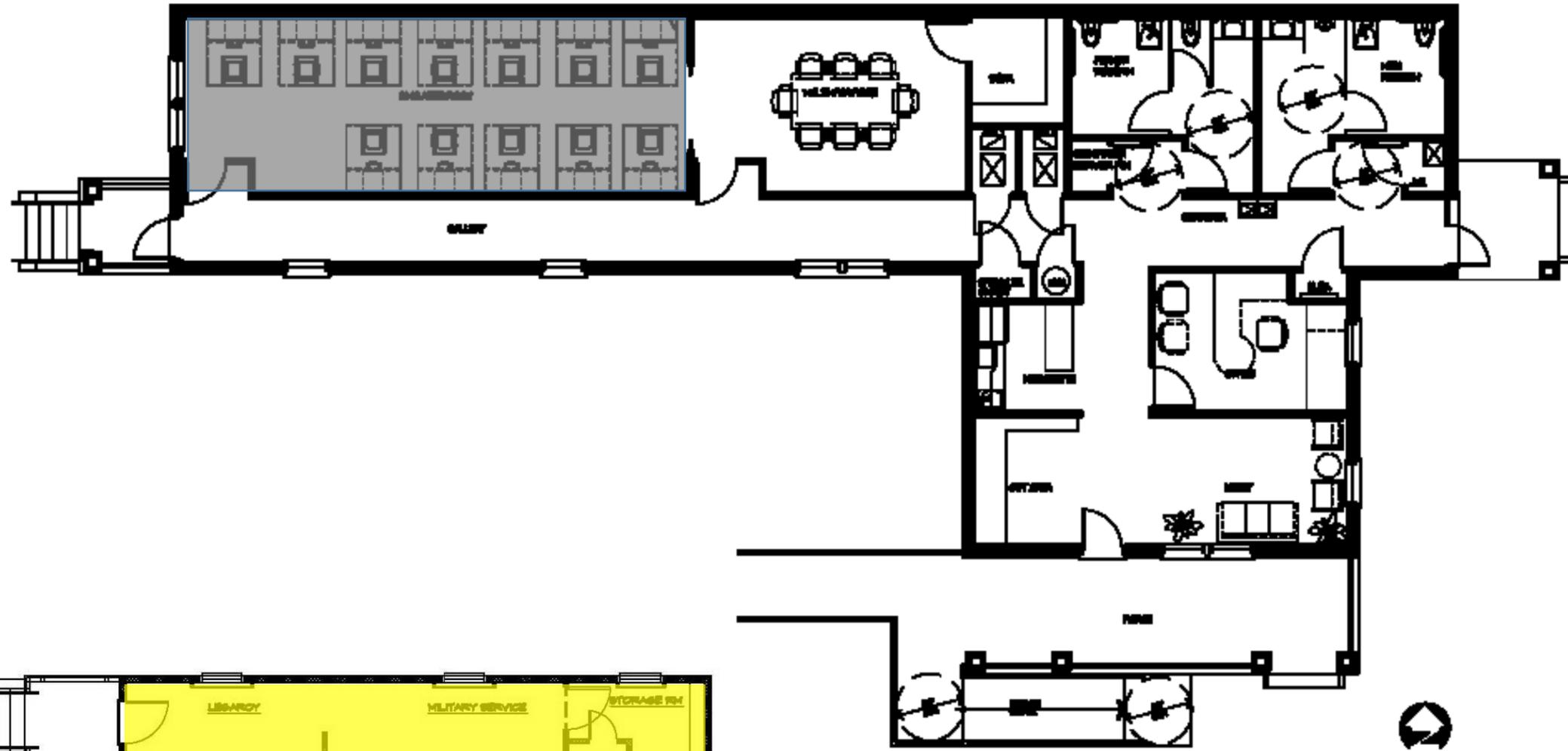
Lessee intends to use the premises for the following purposes: Aviation Career Education, Tutoring and Community Outreach.

Lessee shall supply, equip, maintain and staff the facility and all programs at the Chappie James Memorial home site to serve as the base for the Summer Flight Academy program and its support operations throughout the year. The Flight Academy program's five areas of primary focus are: Aviation Basics/Aerodynamics; Academic Excellence; Independent Thinking/Decision-Making; Presentation/Public Speaking Skills; and Financial Life Skills. The Academy offers first level exposure to the aviation industry, providing aviation career exploration for middle and high school students. The program is designed to expose youth to the wide variety of career opportunities in aviation, provide STEM tutoring and introductory aviation training services to targeted youth.

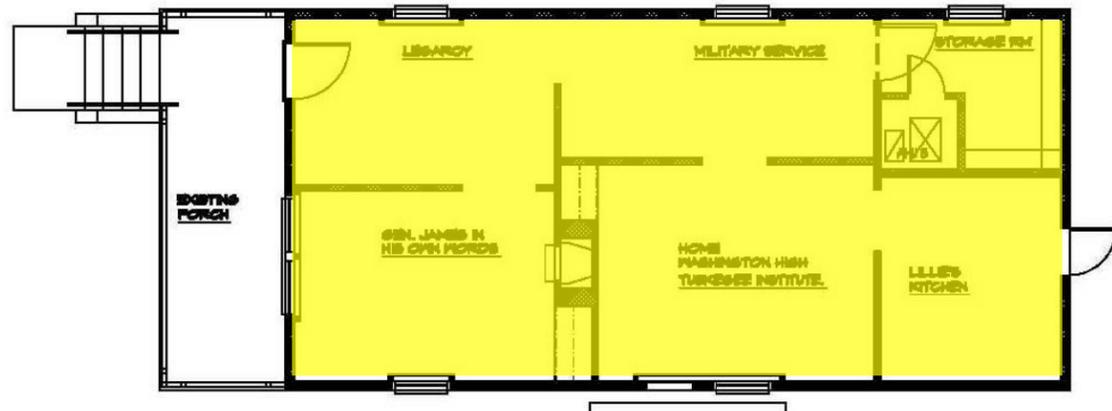
EXHIBIT B
LEASED PREMISES

EXHIBIT C
LEASED PREMISES – POST EXPANSION

EXHIBIT B
LEASED PREMISES
MUSEUM



-  Exclusive Use Space
-  Common Area
-  Non-Lease Space



**EXHIBIT C
LEASED PREMISES – POST EXPANSION
MUSEUM**





Memorandum

File #: 23-00238

City Council

5/11/2023

LEGISLATIVE ACTION ITEM

SPONSOR: D.C. Reeves, Mayor

SUBJECT:

SECOND AMENDED AND RESTATED LEASE AGREEMENT WITH THE DANIEL CHAPPIE JAMES FLIGHT ACADEMY, INC.

RECOMMENDATION:

That City Council approve the Second Amended and Restated Lease Agreement with the Daniel Chappie Flight Academy, Inc. for operation of a youth flight academy located at 1608 Dr. Martin Luther King, Jr. Drive.

HEARING REQUIRED: No Hearing Required

SUMMARY:

On August 10, 2017, City Council approved a Lease Agreement with the Daniel Chappie James Flight Academy, Inc. for operation of the Chappie James Flight Academy at 1608 Dr. Martin Luther King, Jr. Drive. The lease was subsequently amended on December 14, 2017 and an addendum issued on October 17, 2019. The lease currently expires on March 12, 2028.

The City of Pensacola Community Redevelopment Agency (CRA) has recently completed design of an expansion project to provide additional programming space for the Flight Academy and the Chappie James Museum of Pensacola, Inc., which also occupies the site within the building addressed as 1606 Dr. Martin Luther King, Jr. Drive. To provide supplemental funding for the project, the Museum applied for and was awarded an African American Historical and Cultural (AAHC) grant. The grant requires that the property addressed as 1606 Dr. Martin Luther King, Jr. Drive be used for a commemorative museum a period of ten (10) years via a restrictive covenant recorded in the Official Records. To ensure consistency in lease term between the Chappie James Museum and Flight Academy tenants, compliance with the grant and to establish the re-organization of lease space upon completion of the expansion project, an amendment to the lease is necessary.

The amendment includes:

- Re-establishing the term of the lease to be for a period of ten years beginning upon recordation of the covenant.
- Requiring that any modifications to the property comply with the terms of the covenant.
- Revising the separation of leased space and common areas to reflect the re-organization of

space upon completion of the expansion project.

- Establishing parameters for cooperation between the Flight Academy and the City during construction of the expansion project.

PRIOR ACTION:

August 10, 2017 - City Council approved a Lease Agreement with the Daniel Chappie James Flight Academy

December 14, 2017 - City Council approved a First Amended and Restated Lease Agreement with the Daniel Chappie James Flight Academy

FUNDING:

N/A

FINANCIAL IMPACT:

The lease generates \$100 in annual revenue.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

4/28/2023

STAFF CONTACT:

Kerrith Fiddler, City Administrator
David Forte - Deputy City Administrator
Sherry Morris - Development Services Director
Victoria D'Angelo - CRA Division Manager
Deana Stallworth - Lease Manager

ATTACHMENTS:

- 1) Second Amended and Restated Lease Amendment
- 2) Exhibit B - Leased Premises
- 3) Exhibit C - Leased Premises - Post Expansion

PRESENTATION: No

**SECOND AMENDED AND RESTATED
LEASE AGREEMENT BETWEEN THE CITY OF PENSACOLA AND GENERAL
DANIEL CHAPPIE JAMES FLIGHT ACADEMY, INC.**

THIS SECOND AMENDED AND RESTATED LEASE AGREEMENT (“Lease”) effective this ___ day of _____, 202_, by and between the City of Pensacola (“City”), a municipal corporation of the State of Florida and General Daniel Chappie James Flight Academy, Inc. (“Lessee”), a registered not-for-profit, each at times referred to as a “party” or collectively as “Parties.”

WHEREAS, the City and the Lessee entered into a lease agreement dated August 1, 2017 (“Original Lease”), which lease was amended on March 12, 2018; and

WHEREAS, City intends to expand the footprint of the Leased Premises with major additions and capital renovations (the “Expansion Project”); and

WHEREAS, the Property includes common areas shared with another Lessee of the Property, which as of the date of this Lease is the Chappie James Museum of Pensacola, Inc. (the “Museum”); and

WHEREAS, an African American Cultural and Historical Grant (the “AACH Grant”) has been received by the Museum to support the Expansion Project; and

WHEREAS, the AACH Grant was awarded to the Museum on the basis that the Expansion Project would support the operations of the Museum and Lessee within the Property; and

WHEREAS, the AACH Grant requires that a restrictive covenant be placed on the portion of the Property addressed as 1606 Dr. Martin Luther King, Jr. Blvd, Pensacola, Florida, which is occupied by the Museum (the “Covenant”); and

WHEREAS, the Covenant requires that 1606 Dr. Martin Luther King, Jr. Blvd, Pensacola, Florida be used for the cultural purposes defined in the AACH Grant Agreement for a period of ten (10) years beginning from the date of recordation of the Covenant; and

WHEREAS, to facilitate the long-term occupancy and use of the Property by the Lessee and Museum, in compliance with the Covenant, the Lessee desires and City agrees to reestablish the term of the Lease for a period of ten (10) years beginning from the date of recordation of the Covenant with an option to renew for one (1) five (5) year term; and

WHEREAS, to clarify the extent of the City’s planned expansion project and to reestablish the term of the lease, the Parties intend by this Agreement to amend the existing lease agreement and to restate the Agreement herein by this Amended and Restated Lease Agreement, the execution of which shall supersede and take effect in place of the existing provisions of the Original Lease and its first amendment recited above.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, it is agreed by the City and the Lessee that the Original Lease, as amended, shall be Amended and

fully restated by the following, superseding agreement: the mutual promises herein, the parties agree as follows:

1. RECITALS.

The parties agree the recitals above are true and correct and are hereby incorporated as material terms of this Lease by this reference.

2. STATEMENT OF PURPOSE.

City owns certain real property known as the General Daniel “Chappie” James Memorial Park located at 1606 and 1608 Dr. Martin Luther King, Jr. Drive, Pensacola Florida, 32503, City of Pensacola, Escambia County, Florida (“Property”). Lessee leases a portion of the space at the Property, as described below, as the base for a community-based youth flight academy program whose mission is to introduce disadvantaged children to aviation career fields, and such purposes as further described in Exhibit A attached hereto and incorporated herein by this reference.

3. PREMISES LEASED.

City hereby leases to Lessee for the Lessee’s exclusive use the space depicted on Exhibit B attached hereto and incorporated by this reference (the “Leased Premises”). Lessee hereby understands and agrees, that upon completion of the Expansion Project described in Section 12, the Leased Premises shall be modified as depicted on Exhibit C, attached hereto and incorporated by this reference, subject to the terms, provisions and conditions of this Lease. Lessee may also reasonably access the common areas, pursuant to applicable terms and conditions herein, and otherwise any access to the Property to be in the City’s sole discretion.

4. TERM AND RENEWALS.

The term of this Lease shall commence upon the date first written above, and shall continue for a period of ten (10) years (“Term”). This Lease shall be renewable, in the sole discretion of the Mayor of the City, for up to one (1) five (5) year renewal term (“Renewal Terms”).

5. LEASE PAYMENTS.

The City agrees to lease the Leased Premises to Lessee at an annual rent of One Hundred Dollars (\$100) on or prior to January 1 of each year.

6. LIMITATIONS ON USE OF PREMISES AND CONDITIONS OF USE.

The Leased Premises shall be used by Lessee solely for the non-profit youth flight academy program described in Exhibit “A”. Use of common areas is restricted to use by the building tenants only. Use of any other portions of the Property are subject to prior written City approval. Lessee shall keep the Leased Premises in good operating condition and repair at all times, as required in this Lease, and shall conform as required in this Lease respecting any potential shared use of the common areas or Property.

7. INSTALLATION OF LEASEHOLD IMPROVEMENTS.

Lessee shall submit to City the design plans and specifications for any proposed leasehold improvements on the Leased Premises. Any improvements performed by the Lessee shall be in compliance with the requirements and provisions of the Covenant. Upon approval of the

City, Lessee shall commence installation of the improvements on the Leased Premises, and Lessee shall be fully responsible for the cost and development of the leasehold improvements to the Leased Premises at Lessee's sole cost and expense and shall comply with all applicable building regulations pursuant to the terms and conditions of this Lease.

8. TITLE TO IMPROVEMENTS.

Title to leasehold improvements upon the Leased Premises by Lessee shall vest in City upon termination of the Lease. Lessee acknowledges and agrees that Lessee shall have no right to remove such fixed or permanent leasehold improvements, however, Lessee shall, upon City request, remove any improvements and restore the Leased Premises to the original condition at the time of commencement of the Lease, normal wear and tear excepted.

9. CITY ACCESS.

During the term of the Lease and any renewal or extension hereof, Lessee shall permit the representatives of City access to the Leased Premises at all times deemed necessary by the City.

10. NO MORTGAGES OR ENCUMBRANCES.

Lessee shall not mortgage, encumber, or allow any liens to be placed against any portion of the Property, the Leased Premises or Lessee's leasehold interest therein. Lessee shall immediately remove any liens or encumbrances placed against the Leased Premises on account of Lessee's activities or occupation of the Property during the term of this Lease or as it may be renewed. If Lessee fails to remove any such lien from the Property, within thirty (30) days of the recording or other reasonable notice of any lien or encumbrance, such failure shall constitute a breach of the Lease, and the City may, in the City's sole discretion, terminate the lease immediately upon written notice to Lessee, and further, upon receipt of such notice, Lessee shall immediately surrender to the City the Leased Premises and all fixtures and equipment thereon.

11. UTILITIES, REPAIRS, AND MAINTENANCE.

- (i) The City will provide electrical, gas, water, sewer and garbage services for the Leased Premises, therefore, the City reserves the right to install, maintain, repair, replace, or remove and replace any utility lines for or about the Leased Premises, along with the right to enter the Leased Premises in order to accomplish the foregoing, or to accomplish any need of the City, provided, however, that City shall take reasonable precautions to avoid the disruption of the Lessee's authorized activity under this Lease.
- (ii) The City will perform structural repairs to the roof, floor, exterior walls and windows of the Leased Premises unless damage is due to the Lessee's actions or omissions, limited general maintenance and upkeep of the grounds, and pest control services for the Leased Premises, provided however, should the City be required to make any repairs or improvements under the provisions herein contained, the City shall not be liable to Lessee for any cause or damage arising from such repair or improvements.
- (iii) The City will provide limited custodial services, provided however, Lessee shall keep all interior and exterior areas of the Leased Premises and the common areas or surrounding Property in a neat, clean, safe, sanitary and orderly condition and

attractive appearance, and free at all times of all paper, rubbish and debris, with all trash and debris resulting from its operations in its premises deposited by Lessee in containers approved by the City.

- (iv) In the event Lessee fails to maintain the Leased Premises or common areas or other portions of the Property in accordance with this Lease for more than three (3) days following date of receipt of written notice from City to Lessee of such failure to maintain, the City reserves the right to take any action to cure said failure, in the City's sole discretion and Lessee shall pay to the City an amount equal to the City's cost for such actions plus a ten percent (10%) administrative charge.

12. EXPANSION OF LEASED PREMISES.

The City intends to construct major additions and capital improvements upon the Property. Such additions and improvement will modify the Property and the leased space exclusively available to the Lessee as depicted in Exhibit C ("Expansion Project"). The City reserves the right to enter the Leased Premises to accomplish the foregoing, provided, however, that the City shall take reasonable precautions to avoid the disruption of the Lessee's authorized activity under this Lease. Lessee shall fully cooperate with the City and any other lessees of the Property to facilitate completion of the Expansion Project.

13. INSURANCE AND INDEMNIFICATION.

General:

The Lessee shall insure its contents and personal property within the building and shall procure and maintain insurance of the types and to the limits specified.

The term City as used in this section of the Lease is defined to mean the City of Pensacola itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents.

The Lessee and the City understand and agree that the minimum limits and types of insurance herein required may become inadequate during the term of the Lease. The Lessee agrees that it will increase or change such coverage as required by the City within ninety (90) days upon receipt of written notice from the City.

Property Insurance:

To the extent it is available, the City will maintain property insurance on the insurable portions of the City owned Property. The City will not purchase or maintain property insurance on the Lessee's contents, Lessee's personal property.

14. INSURANCE REQUIREMENTS.

Insurance shall be issued by an insurer whose business reputation, financial stability and claims payment reputation is satisfactory to the City, for the City's protection only. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:

Worker's Compensation: The Lessee shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations as legally required. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least \$100,000 each person-accident, \$100,000 each person disease, \$500,000 aggregate-disease.

Commercial General Insurance – Including Fire Legal Liability: The Lessee shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability Policy filed by the Insurance Services Office. The City shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of \$1,000,000 per occurrence, and per accident, must be provided. Coverage must be provided which includes bodily injury and property damage liability for premises, operations, contractual, products and completed operations, and independent contractors. The coverage shall be written on an occurrence-type basis. Fire Legal Liability coverage must be included with a minimum limit of \$100,000 per occurrence. The City shall be listed as an additional insured and such coverage shall be at least as broad as that provided to the Named Insured under the policy for the terms and conditions of this agreement.

Builder's Risk Insurance:

If the Lessee constructs improvements on the Leased Premises, the Lessee or its contractor must provide Builder's Risk Insurance afforded on an Inland Marine "All-Risk" type form which includes collapse coverage.

The Amount of Insurance is to be 100% of the completed value of the work. Such coverage will additionally include an amount equal to 10% of the Amount of Insurance of the completed value of the work for materials and equipment stored off the construction site, in transit or delivery, including loading and unloading.

The policy must be specifically endorsed to eliminate any "Occupancy" clause or similar warranty or representation that the premises in the course of construction shall not be occupied or used without specific endorsement of the policy. The policy must be endorsed to provide that the Builder's Risk Coverage will continue to apply until final acceptance of the work. Acceptance shall not be deemed to have been made solely on account of occupancy of any portion of the premises.

The City shall be listed as Additional Insured by endorsement on the policy as well as the Certificate of Insurance.

The policy shall contain a "Waiver of Subrogation" clause in favor of the City, any subsidiaries or affiliates, its elected and appointed officials, employees, volunteers, representatives, and agents which would waive any subrogation against any of them.

The policy shall contain no exclusion which would exclude damage or loss caused by breakage, freezing, temperature extremes or temperature change, water, flood, leakage, or seepage.

Certificates of Insurance:

Required insurance shall be documented in the Certificates of Insurance that provide that the City shall be notified in advance of cancellation, non-renewal or adverse change or restriction in coverage. This Lease shall be listed on each Certificate. If required by the City, the Lessee shall furnish copies of the Lessee's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by the City, an ACORD 25. The Lessee shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies acceptable to the City and shall file with the City Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the City, the Lessee shall, upon instructions of the City, cease all operations under the Lease until directed by the City, in writing, to resume operations. The "Certificate Holder" address should read: City of Pensacola, Risk Management, Post Office Box 12910, Pensacola, FL 32521.

Insurance of the Lessee Primary:

The Lessee's required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the Lessee's coverage. The Lessee's policies of coverage will be considered primary as relates to all provisions of the Lease.

Loss Control and Safety:

The Lessee shall retain control over its employees, agents, servants and subcontractors, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, the Lessee shall not be deemed to be an agent of the City. Precaution shall be exercised at all times by the Lessee for the protection of all persons, including employees, and Property. The Lessee shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

15. BACKGROUND CHECKS.

Lessee shall cause all Lessee's Board Members, employees, volunteers, invitees and affiliates who will have contact with children to undertake and pass a Level Two (2) Background Check at Lessee's expense prior to any contact with children. Lessee shall immediately provide all such background checks, as updated accordingly, now and in the future, of any individuals that may have such contact, to the City's Parks and Recreation Director.

16. HOLD HARMLESS.

The Lessee shall indemnify and hold harmless the City of Pensacola, its officers and employees, from any and all 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 Lessee and persons employed or utilized by the Lessee in the performance of this agreement. The Lessee's obligation shall not be limited by, or in any way to, insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

17. SIGNS.

Lessee shall not permit signs, logos, or advertising displays placed or erected in any manner upon the Leased Premises, or in or on any improvements or additions on the Leased Premises, without the prior written approval of the City's Parks and Recreation Director. Signs identifying Lessee shall conform to reasonable standards established by the City, with respect to type, size, design, condition and location.

18. NO ASSIGNMENT, NO SUBLETTING.

Lessee shall not assign or sublet any portion of this Lease. Any assignment or sublet of this Lease is prohibited and shall be null and void and of no effect.

19. NO WAIVER BY CITY.

A failure by City to take any action with respect to any default or violation by Lessee of any of the terms, covenants, or conditions of this Lease shall not in any respect limit, prejudice, diminish or constitute a waiver of any rights or remedies of City to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default. The acceptance by City of payment for any period or periods after a default or violation of any of the terms, conditions, and covenants of this Lease shall not constitute a waiver or diminution of, nor create any limitation upon any right of City pursuant to this Lease to terminate this Lease for subsequent violation or default, or for continuation or repetition of the original violation or default.

20. SURRENDER UPON TERMINATION.

Upon the expiration or termination of this Lease, for any reason whatsoever, Lessee shall peaceably surrender to the City possession of the Leased Premises. Lessee warrants to City that any and all improvements, alterations, or fixtures previously constructed by Lessee shall remain free and clear of any claims or interests of Lessee, Lessee's contractors or subcontractors, creditors, invitees, or any other third party. Should Lessee violate this provision, without waiver of other action by City for City's own benefit, Lessee shall pay to remove any encumbrance, lien or debt associated with Lessee's occupation of the Leased Premises and hereby warrants that Lessee shall hold the City harmless therefrom. Excepting personal Property of Lessee, upon surrender, City may in the Parks and Recreation Director's sole discretion, assume ownership of any fixture or Property within the Leased Premises or require Lessee, at Lessee's sole cost and expense to remove any Property or fixture.

21. ATTORNEY'S FEES.

The prevailing Party in any action, claim or proceeding arising out of this Lease shall be entitled to attorney's fees and costs from the losing Party.

22. FORCE MAJEURE.

Neither the City nor Lessee shall be deemed in violation of this Lease if it is prevented from performing any of the obligations hereunder by any reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, weather conditions, or for any other circumstance for which it is not responsible or which is not within its control.

23. RELATIONSHIP OF PARTIES.

Lessee represents and warrants Lessee is not in any way or for any purpose a partner or joint venture with or agent of the City. Lessee shall act as an independent contractor in the performance of its duties pursuant to this Lease.

24. BOARD MEMBERSHIP.

Lessee shall maintain an active board membership list, including board member names and contact information, and shall provide such list, in writing, to the City’s Parks and Recreation Director. Any changes to board membership shall be documented and an updated list provided to the City’s Parks and Recreation Director upon occurrence.

25. NOTICES.

All notices by either party to the other shall be made either by utilizing the registered or certified mail of the United States of America, postage prepaid, or by utilizing any other method of delivery requiring signature for receipt, and such notice shall be deemed to have been delivered and received on the date of such utilization.

All notices to the City shall be mailed to:

Parks and Recreation Director
City of Pensacola
222 W. Main Street
Pensacola, Florida 32502

With an additional copies to:
City Administrator
City of Pensacola
222 West Main Street
Pensacola, Florida 32502

CRA Manager
City of Pensacola
222 West Main Street
Pensacola, Florida 32502

All notices to Lessee shall be mailed to:

Clifton Curtis, President
General Daniel Chappie James Flight Academy, Inc.
1608 Dr. Martin King, Jr.
Pensacola, FL 32503

The parties from time to time may designate in writing changes in the address stated.

26. ENTIRE LEASE.

This writing, together with all the attached exhibits, constitutes the entire agreement of the parties. This Lease supersedes all prior agreements, if any, between the City and Lessee, and no representations, warranties, inducements, or oral agreements that may have been previously made between the parties shall continue in effect unless stated herein. This Lease shall not be modified except in writing, signed by the City and Lessee.

27. PARTIAL INVALIDITY.

If any term or condition of this Lease or the application thereof to any person or event shall to any extent be deemed invalid and unenforceable, the remainder of this Lease and the application of such term, covenant, or condition to persons or events other than those to which it is held unenforceable shall not be affected, and each term, covenant and condition of this Lease shall be valid and enforced to the fullest extent permitted by law.

28. SUCCESSOR.

The provisions, covenants and conditions of this Lease shall bind and inure to the benefit of the legal representatives, successors and assigns of each of the parties.

29. CONSENTS AND APPROVALS.

Where this Lease requires approval from the City, prior written approval from the Parks and Recreation Director shall be considered to fulfill such requirements.

30. GOVERNING LAW.

This Lease is governed and construed in accordance with the laws of the State of Florida. The law of the State of Florida shall be the law applied in the resolution of any claim, actions or proceedings arising out of this Lease.

31. VENUE.

Venue for any claim, actions or proceedings arising out of this Lease shall be Escambia County, Florida.

32. HEADINGS.

The headings contained in this Lease are inserted only as matter of convenience and for reference and do not define or limit the scope or intent of any provision of this Lease and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction of said terms and provisions.

33. PUBLIC RECORDS ACT.

The parties acknowledge and agree to fulfill all obligations respecting required contract provisions in any contract entered into or amended after July 1, 2016, in full compliance pursuant to Section 119.0701, *Florida Statutes*, and obligations respecting termination of a contract for failure to provide public access to public records. The parties expressly agree specifically that the contracting parties hereto shall comply with the requirements within Attachment "A" attached hereto and incorporated by reference.

34. MANDATORY USE OF E-VERIFY SYSTEM

In compliance with the provisions of F.S. 448.095, the parties to this contract and any subcontractors engaged in the performance of this contract hereby certify that they have registered with and shall use the E-Verify system of the United States Department of Homeland Security to verify the work authorization status of all newly hired employees, within the meaning of the statute.

IN WITNESS WHEREOF, the parties hereto have signed this instrument the day and year first above written.

Attest:

City of Pensacola,
a Florida municipal corporation

Ericka Burnett, City Clerk

By: _____
D.C. Reeves, Mayor

General Daniel Chappie James Flight Academy, Inc.,
a Not for Profit Organization

Attest:

By: _____
Printed Name: Clifton Curtis, Jr.
Title: President

Corporate Secretary

Approved As To Form and Execution:

Approved As To Content:

By: _____
City Attorney

By: _____
CRA Manager

Attachment "A"

PUBLIC RECORDS: Consultant/Contractor/Vendor shall comply with Chapter 119, Florida Statutes. Specifically, Consultant/ Contractor/Vendor shall:

- A. Keep and maintain public records required by the City to perform the service.
- B. Upon request from the City's custodian of public records, provide the City 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 Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. 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 term and following the completion of the Agreement if Consultant/ Contractor/Vendor does not transfer the records to the City.
- D. Upon completion of the Agreement, transfer, at no cost, to City, all public records in possession of Consultant/Contractor/Vendor or keep and maintain public records required by the City to perform the service. If Consultant/Contractor/Vendor transfers all public records to City upon completion of the Agreement, Consultant/ Contractor/Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant/Contractor/Vendor keeps and maintains public records upon completion of the Agreement, Consultant/Contractor/Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request of the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure by Consultant/Contractor/Vendor to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by City.

IF CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: THE OFFICE OF THE CITY ATTORNEY, (850) 435-1715, PUBLICRECORDS@CITYOFPENSACOLA.COM, 222 WEST MAIN STREET, PENSACOLA, FL 32502.

EXHIBIT A
STATEMENT OF PURPOSE

Lessee intends to use the premises for the following purposes: Aviation Career Education, Tutoring and Community Outreach.

Lessee shall supply, equip, maintain and staff the facility and all programs at the Chappie James Memorial home site to serve as the base for the Summer Flight Academy program and its support operations throughout the year. The Flight Academy program's five areas of primary focus are: Aviation Basics/Aerodynamics; Academic Excellence; Independent Thinking/Decision-Making; Presentation/Public Speaking Skills; and Financial Life Skills. The Academy offers first level exposure to the aviation industry, providing aviation career exploration for middle and high school students. The program is designed to expose youth to the wide variety of career opportunities in aviation, provide STEM tutoring and introductory aviation training services to targeted youth.

EXHIBIT B
LEASED PREMISES

EXHIBIT C
LEASED PREMISES – POST EXPANSION

EXHIBIT B
LEASED PREMISES
FLIGHT ACADEMY

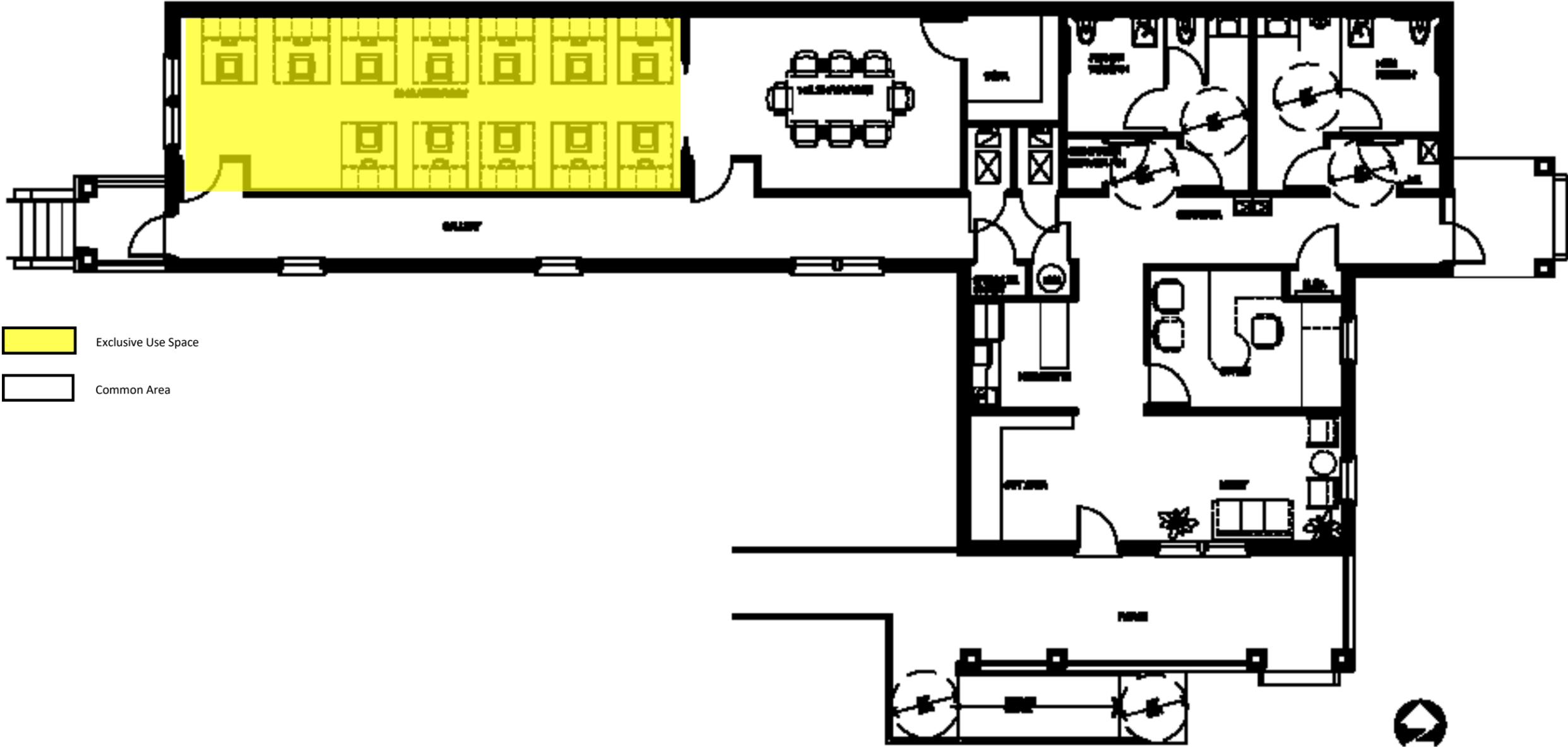


EXHIBIT C
LEASED PREMISES – POST EXPANSION
FLIGHT ACADEMY





Memorandum

File #: 23-00381

City Council

5/11/2023

LEGISLATIVE ACTION ITEM

SPONSOR: City Council Member Teniadé Broughton

SUBJECT:

INTERLOCAL AGREEMENT WITH THE COMMUNITY REDEVELOPMENT AGENCY FOR FUNDING OF STREETScape IMPROVEMENTS TO SPRING STREET PURSUANT TO A MASTER REDEVELOPMENT AGREEMENT

RECOMMENDATION:

That the City Council approve an interlocal agreement between the City of Pensacola (City) and the Community Redevelopment Agency (CRA), to permit the City to issue to the CRA a loan of up to \$1,482,278 plus \$139,329.48 in capitalized interest for a total value of \$1,621,597.48 to fund streetscape improvements along Spring Street from Garden to Romana Streets pursuant to the Master Redevelopment Agreement between the CRA, the City and 200 West Garden LLC and 27 Spring Condos, LLC. Provided, however, that the CRA may pre-pay the balance of the loan in whole or in part at any time, without penalty. Finally, that the City Council authorize the Mayor to execute the agreement, consistent with the terms of the agreement and the Mayor's Executive Powers as granted in the City Charter.

HEARING REQUIRED: No Hearing Required

SUMMARY:

On February 6, 2023, Bearing Point Properties presented their proposed plans for a mixed-use development including 328 residential rental units, 54 for-sale condominium units, a large-scale grocery retail space, two pocket parks, and a multi-level structured parking facility including approximately 175 ungated parking spaces. The proposed project is a master-planned redevelopment located at the intersection of Garden and Spring Streets, which is slated for redevelopment by developers, 200 West Garden, LLC and 97 Spring Condos LLC.

As a component of the redevelopment project, the developers have requested to partner with the CRA to undertake streetscape improvements along Spring Street from Garden Street to Romana Street. The Developer is requesting a redevelopment incentive of up to \$1,482,278 towards the full cost of the streetscape improvements, estimated to be \$2,371,645 pursuant to a Master Redevelopment Agreement (MRA). The proposed MRA requires the Developer to construct the full mixed-use redevelopment project, except for the 54-condominium units to receive the redevelopment incentive.

Pursuant to the MRA, the CRA would escrow the redevelopment incentive with a mutually acceptable escrow agent upon completion of the streetscape improvements and completion and opening of the parking garage and grocery retail space to the public. The escrow agent would be instructed to release the redevelopment incentive to the Developer upon substantial completion of the 328 residential rental units. The Developer must complete the remaining 328 residential units within thirty-six (36) months of the escrow of the redevelopment incentive or it will be subject to repayment. The project encompassed by the MRA is estimated to have a total taxable value of \$45,000,000.

To fund the project, a City loan can be issued to the CRA. The loan would be issued ten days prior to escrow of the redevelopment incentive. Principal and interest, at a rate of 4.5%, would be repaid to the City semi-annually. The CRA may prepay the principal balance of the loan in whole or in part at any time, without penalty. The CRA would escrow the redevelopment incentive to the Developer upon completion of the streetscape improvements and completion and opening of the parking garage and grocery retail space to the public, in accordance with the MRA with the Developer.

An interlocal agreement between the CRA and City is required to provide for the City loan. The repayment schedule, assuming no pre-payment, is attached as Attachment A within the interlocal agreement.

Implementation of this project will further the goals and objectives set forth in the Urban Core Redevelopment Plan, which expressly contemplates and encourages redevelopment and enhancement of public rights-of-way and pedestrian walkways and provides private sector participation in remediating and preventing blighted conditions.

PRIOR ACTION:

February 6, 2023 - Bearing Point Properties presented to the CRA proposed plans for a mixed-use development at Spring and Garden Streets.

FUNDING:

Budget:	\$ 1,621,597.48	
Actual:	\$ 1,482,278.00	Loan Principal
	<u>\$ 139,319.48</u>	Loan Interest (4.5%)
	\$ 1,621,597.48	

FINANCIAL IMPACT:

The City would provide the CRA a loan of up to \$1,482,278 plus \$139,319.48 in capitalized interest for a total loan value of \$1,621,597.48 for a 3-year term.

STAFF CONTACT:

Don Kraher, Council Executive
David Forte, Deputy City Administrator
Sherry Morris, Development Services Director
Victoria D'Angelo, CRA Division Manager
Amy Lovoy, Chief Financial Officer

ATTACHMENTS:

- 1) Interlocal Agreement - City-CRA - Spring St. Streetscape

PRESENTATION: No

INTERLOCAL AGREEMENT

between

THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PENSACOLA,
FLORIDA

and

THE CITY OF PENSACOLA, FLORIDA

This **INTERLOCAL AGREEMENT** (the "Agreement"), is made and entered into as of this ____ day of _____ 2023, between **THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PENSACOLA, FLORIDA**, a public body corporate and politic of the State of Florida (the "Agency"), and the **CITY OF PENSACOLA, FLORIDA**, a Florida municipal corporation created under the laws of the State of Florida (the "City").

WITNESSETH:

WHEREAS, pursuant to Resolution No. 54-80 adopted by the City Council on September 25, 1980, and as confirmed and ratified pursuant to Resolution 65-81 adopted by the City Council on September 22, 1981, the City Council found and determined that an area designated therein as the "Pensacola Inner City" is a blighted area as therein described, that a combination of rehabilitation, conservation and redevelopment of the Pensacola Inner City is necessary, that there exists a need for a community redevelopment agency to function in the City to carry out community redevelopment purposes pursuant to Part III, Chapter 163, Florida Statutes (the "Act"), and that the Pensacola Inner City is appropriate for community redevelopment projects and is thereby designated a community redevelopment area; and

WHEREAS, pursuant to Resolution No. 55-80 adopted by the City Council on September 25, 1980, and as readopted and reaffirmed pursuant to Resolution 65-81 adopted by the City Council on September 22, 1981, the City Council declared itself to be the "Community Redevelopment Agency" in the City and vested all rights, powers, duties, privileges and immunities vested in a community redevelopment agency pursuant to Part III, Chapter 163, Florida Statutes, in the City Council; and

WHEREAS, pursuant to Resolution 65-81 adopted by the City Council on September 22, 1981, the City Council designated the boundaries and found and determined that an area designated therein as the "Urban Core Community Redevelopment Area" (the "Urban Core Redevelopment Area") is a blighted area as therein described and that the rehabilitation, conservation and redevelopment is necessary and in the public interest; and

WHEREAS, pursuant to Ordinance No. 13-84 enacted by the City Council on March 8, 1984, the Urban Core Community Redevelopment Trust Fund (the "Trust Fund") was established into which the tax increment paid by each taxing authority each year is deposited in accordance with section 163.387, Florida Statutes, for the purpose of financing community redevelopment in the Redevelopment Area (the "Tax Increment"); and (the "Trust Fund"); and

WHEREAS, on January 14, 2010, the City Council adopted Resolution No. 02-10 approving an "Urban Core Community Redevelopment Plan 2010" for the Redevelopment Area (as may be further amended from time to time, the "Redevelopment Plan"); and

WHEREAS, the Agency is responsible for implementation of community redevelopment plans providing for the redevelopment, rehabilitation and improvement of community redevelopment areas in the City; and

WHEREAS, the City and the Agency have determined to redevelop and revitalize the Urban Core Redevelopment Area as a visibly attractive, economically viable, and socially desirable area of the City; and

WHEREAS, in accordance with the intent and purpose of Section 163.01, Florida Statutes, the parties have elected to enter into this Agreement to jointly and collectively provide financing for the construction of the Spring Streetscape Project – Garden to Romana (the "Project") pursuant to a Master Redevelopment Agreement between the Agency, City and Developer ("Master Redevelopment Agreement"); and

WHEREAS, the Mayor of the City of Pensacola (the "Mayor"), City Council and the Agency have determined that this Agreement and the Project and expenditures contemplated hereunder serve public purposes and are appropriate and necessary undertakings in furtherance of redeveloping the Urban Core Redevelopment Area consistent with the Redevelopment Plan.

NOW, THEREFORE, in consideration of the mutual covenants of and benefits derived from this Agreement, the City and the Agency agree as follows:

ARTICLE 1: AUTHORITY AND PURPOSE

1.1. Authority. This Agreement is entered into pursuant to and under the authority of the City Charter; Section 163.01, Florida Statutes; the Community Redevelopment Act of 1969 (the "Act"), codified in Part III, Chapter 163, Florida Statutes; Chapter 166, *Florida Statutes*; City Council Resolution No. 55-80; City Council Ordinance No. 47-00; City Council Resolution 41-05; City Council Ordinance No. 16-05; City Council Ordinance 32-14; City Council Resolution No. 22-10; and other applicable law, as amended and supplemented.

1.2. Recitals. The City and Agency agree that the foregoing recitals are correct, complete and not misleading and are hereby incorporated as if fully set forth herein.

1.3. Purpose. The purpose of this Agreement is to provide for a source of additional funds to finance the construction of the Project.

1.4. Project Description. The Project contemplates the construction of streetscape improvements along Spring Street from Garden Street to Romana Street through a public-private partnership with 200 West Garden LLC and 97 Spring Condos, LLC (the "Developer") intended to facilitate construction of a mixed use development with an estimated total taxable value of not less than \$45,000,000 on the corner of Garden and Spring Streets (the "Development"), in furtherance of redeveloping the Urban Core Redevelopment Area consistent with the Redevelopment Plan. The description of the Project set forth herein shall be liberally construed to effectuate the purposes of this Agreement.

ARTICLE 2: FUNDING AND DISBURSEMENT

2.1. Project Cost. The cost of the Project is estimated to be \$2,371,645, of which the Developer will contribute \$889,367. The balance of funding necessary for the Project will be provided by a loan from the City to the Agency as provided hereunder.

2.2. Funding. The City of Pensacola shall provide a loan of up to \$1,482,278 plus \$139,319.48 in capitalized interest for a total loan value of \$1,621,597.48 for an 3 year term, (the "Loan") to the Agency for purposes of funding a portion of the Project, to be repaid from legally available funds of the Agency which may include but are not limited to tax increment revenues on deposit in the Trust Fund.

2.3. Disbursement. The principal amount of the loan shall be disbursed no less than seven (7) days prior to escrow or payment of the Redevelopment Incentive, as defined within the Master Redevelopment Agreement, pursuant to authorization by the City's Chief Financial Officer.

ARTICLE 3: REIMBURSEMENT

3.1. Loan Repayment. The Agency hereby covenants to fund, reimburse and repay the Loan from tax increment revenues on deposit in the Trust Fund (or any other funds of the Agency which are legally available for such purpose) in accordance with this Article 3. Such covenant to repay the Loan is cumulative and shall continue until the Loan, including all principal due thereupon, has been paid in full. To the extent that revenues on deposit in the Trust Fund are insufficient to make a payment to the City on any Loan payment date, the obligation to make such payment shall continue until tax increment revenues or other legally available funds of the Agency, in amounts sufficient to pay any then outstanding Loan payments, shall have actually been paid.

3.2 Repayment Schedule. Attachment A, incorporated herein by reference, sets forth an estimated repayment schedule for the Loan which contemplates disbursement of the full amount of the Loan by October 1, 2027, and repayment commencing on October 1, 2030 with semi-annual payments due on October 1st and April 1st of each year to include all principal and interest accrued to that date thereafter, with the balance to be repaid by October 1, 2033, unless tax increment revenues generated by the Development, in an amount sufficient to repay all or a portion of the Loan, are generated earlier. Early repayment may be made upon adoption of the Agency's annual budget authorizing such repayment. When the full principal amount of the Loan is fully disbursed to the Agency, the City's Chief Financial Officer shall prepare a final Loan repayment schedule reflecting the total amount drawn and the actual debt service payments. Such final Loan repayment schedule will be appended hereto as Attachment B and incorporated herein by reference.

3.3. Prepayment. The Agency may repay the principal balance of the Loan in whole or in part at any time, without penalty.

3.4. Subordination. The Agency's obligation to fund, reimburse and repay the Loan shall be subordinate to any other debt issuance secured by tax increment revenues on deposit in the Trust Fund.

ARTICLE 4: TERM

4.1. Term. This Agreement shall become effective upon execution by the Parties and filing thereof in the public records of Escambia County, Florida, pursuant to Section 163.01(11), *Florida Statutes* and continue in full force and effect until the loan authorized by this Agreement, including principal and accumulated interest, has been fully repaid and amortized.

ARTICLE 5: MISCELLANEOUS

5.1. Amendments. This Agreement may be amended by the mutual written agreement of all parties at any time and from time to time, which amendments shall become effective upon filing thereof in the public records of Escambia County, Florida, pursuant to Section 163.01(11), *Florida Statutes*.

5.2. Assignment. No party to this Agreement may, directly or indirectly, assign or transfer any or all of their duties, rights, responsibilities, or obligations under this Agreement to any other party or person not a party to this Agreement, without the express prior approval of the other party to this Agreement.

5.3. Severability. The provisions of this Agreement are severable, and it is the intention of the parties hereto to confer the whole or any part of the powers herein provided for and if any of the provisions of this Agreement or any other powers granted by this Agreement shall be held unconstitutional, invalid or void by any court of competent

jurisdiction, the decision of said court shall not affect or impair any of the remaining provisions of this Agreement. It is hereby declared to be the intent of the parties hereto that this Agreement would have been adopted, agreed to, and executed had such unconstitutional, invalid or void provision or power not been included therein.

5.4. Controlling Law; Venue. Any and all provisions of this Agreement and any proceeding seeking to enforce and challenge any provision of this Agreement shall be governed by the laws of the State of Florida. Venue for any proceeding pertaining to this Agreement shall be Escambia County, Florida.

5.5. Members Not Liable.

(1) All covenants, stipulations, obligations and agreements contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the City and the Agency, respectively, to the full extent authorized by the Act and provided by the Constitution and laws of the State of Florida.

(2) No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future individual member of a governing body or agent or employee of the Agency or the City in his or her individual capacity, and neither the members of the governing body of the Agency or the City or any official executing this Agreement shall individually be liable personally or shall be subject to any accountability by reason of the execution by the City or the Agency of this Agreement or any act pertaining hereto or contemplated hereby.

5.6. Third Party Beneficiaries. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto, any right, remedy, or claim, legal or equitable, under or by reason of this Agreement or any provision hereof.

5.7. Notices.

(1) Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given or filed with a party hereto shall be deemed sufficiently given or filed for all purposes of this Agreement if and when sent by registered mail, return receipt requested, transmitted by a facsimile machine with confirmation of delivery, or by personal hand delivery:

To the CRA:	Community Redevelopment Agency of The City of Pensacola, Florida 222 W. Main St. Pensacola, Florida 32502 Attention: CRA Manager
-------------	--

To the City: City of Pensacola
222 W. Main St.
Attention: Chief Financial Officer

(2) The addresses to which any notice, demand, direction or other instrument authorized to be given or filed may be changed from time to time by a written notice to that effect delivered to all the parties, which change shall be effective immediately or such other time as provided in the notice.

Until notice of a change of address is received, a party may rely upon the last address received. Notice shall be deemed given, if notice is by mail on the date mailed to the address set forth above or as changed pursuant to this Article.

5.8. Execution of Agreement. This Agreement shall be executed in the manner normally used by the parties hereto. If any officer whose signature appears on this Agreement ceases to hold office before all officers shall have executed this Agreement or prior to the filing and recording of this Agreement as provided in this Article, his or her signature shall nevertheless be valid and sufficient for all purposes. This Agreement shall bear the signature of, or may be signed by, such individuals as at the actual time of execution of this Agreement thereby shall be the proper and duly empowered officer to sign this Agreement and this Agreement shall be deemed to have been duly and properly executed even though on the Effective Date any such individual may not hold such office.

5.9. Limited Obligation. Neither the full faith and credit of the City, the Agency or of the State of Florida or any political subdivision thereof is pledged to meet the funding obligations hereunder, and no party shall ever have the right to compel any exercise of any ad valorem taxing power of the City, the Agency or of the State of Florida or any political subdivision thereof, directly or indirectly to enforce any payment or funding of money provided for hereunder. This Agreement shall not constitute a lien upon any property of the City or the Agency except in the manner and to the express extent described herein.

5.10. City and Agency Not Liable. Nothing contained in this Agreement shall be construed or deemed, nor is intended, or impose any obligation upon the City or the Agency except to the extent expressly assumed by the City or the Agency, respectively.

5.11. Filing with County Clerk of the Court. The City is hereby authorized and directed after approval of this Agreement by the Agency and the City and the execution hereof to submit this Agreement to the Clerk of the Court of Escambia County, Florida, for filing in the public records of Escambia County, Florida, as provided by Section 163.01(11), Florida Statutes.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto, by and through the undersigned, have entered into this Interlocal Agreement as of the day and year first above written.

COMMUNITY REDEVELOPMENT
AGENCY OF THE CITY OF PENSACOLA,
FLORIDA

Attest:

Teniade Broughton, Chairperson

Ericka L. Burnett, City Clerk

CITY OF PENSACOLA, FLORIDA

Legal in Form and Valid as Drawn:

D.C. Reeves, Mayor

_____, City Attorney

Attest:

Approved as to Content:

Ericka L. Burnett, City Clerk

Amy Lovoy
Chief Financial Officer

Approved as to Content:

Victoria D'Angelo
CRA Division Manager

ATTACHMENT A

ESTIMATED LOAN REPAYMENT SCHEDULE

Month	Beginning Balance	Interest	Principal	Total Payment	Ending Balance
10/1/2030	\$1,621,597.48	\$6,080.99	\$42,156.55	\$48,237.54	\$1,579,440.93
11/1/2030	\$1,579,440.93	\$5,922.90	\$42,314.64	\$48,237.54	\$1,537,126.30
12/1/2030	\$1,537,126.30	\$5,764.22	\$42,473.32	\$48,237.54	\$1,494,652.98
1/1/2031	\$1,494,652.98	\$5,604.95	\$42,632.59	\$48,237.54	\$1,452,020.40
2/1/2031	\$1,452,020.40	\$5,445.08	\$42,792.46	\$48,237.54	\$1,409,227.93
3/1/2031	\$1,409,227.93	\$5,284.60	\$42,952.94	\$48,237.54	\$1,366,275.00
4/1/2031	\$1,366,275.00	\$5,123.53	\$43,114.01	\$48,237.54	\$1,323,160.99
5/1/2031	\$1,323,160.99	\$4,961.85	\$43,275.69	\$48,237.54	\$1,279,885.31
6/1/2031	\$1,279,885.31	\$4,799.57	\$43,437.97	\$48,237.54	\$1,236,447.34
7/1/2031	\$1,236,447.34	\$4,636.68	\$43,600.86	\$48,237.54	\$1,192,846.48
8/1/2031	\$1,192,846.48	\$4,473.17	\$43,764.37	\$48,237.54	\$1,149,082.12
9/1/2031	\$1,149,082.12	\$4,309.06	\$43,928.48	\$48,237.54	\$1,105,153.64
10/1/2031	\$1,105,153.64	\$4,144.33	\$44,093.21	\$48,237.54	\$1,061,060.43
11/1/2031	\$1,061,060.43	\$3,978.98	\$44,258.56	\$48,237.54	\$1,016,801.87
12/1/2031	\$1,016,801.87	\$3,813.01	\$44,424.53	\$48,237.54	\$972,377.34
1/1/2032	\$972,377.34	\$3,646.42	\$44,591.12	\$48,237.54	\$927,786.21
2/1/2032	\$927,786.21	\$3,479.20	\$44,758.34	\$48,237.54	\$883,027.87
3/1/2032	\$883,027.87	\$3,311.35	\$44,926.19	\$48,237.54	\$838,101.69
4/1/2032	\$838,101.69	\$3,142.88	\$45,094.66	\$48,237.54	\$793,007.03
5/1/2032	\$793,007.03	\$2,973.78	\$45,263.76	\$48,237.54	\$747,743.27
6/1/2032	\$747,743.27	\$2,804.04	\$45,433.50	\$48,237.54	\$702,309.77
7/1/2032	\$702,309.77	\$2,633.66	\$45,603.88	\$48,237.54	\$656,705.90
8/1/2032	\$656,705.90	\$2,462.65	\$45,774.89	\$48,237.54	\$610,931.00
9/1/2032	\$610,931.00	\$2,290.99	\$45,946.55	\$48,237.54	\$564,984.46
10/1/2032	\$564,984.46	\$2,118.69	\$46,118.85	\$48,237.54	\$518,865.61
11/1/2032	\$518,865.61	\$1,945.75	\$46,291.79	\$48,237.54	\$472,573.82
12/1/2032	\$472,573.82	\$1,772.15	\$46,465.39	\$48,237.54	\$426,108.43
1/1/2033	\$426,108.43	\$1,597.91	\$46,639.63	\$48,237.54	\$379,468.80
2/1/2033	\$379,468.80	\$1,423.01	\$46,814.53	\$48,237.54	\$332,654.27
3/1/2033	\$332,654.27	\$1,247.45	\$46,990.09	\$48,237.54	\$285,664.19
4/1/2033	\$285,664.19	\$1,071.24	\$47,166.30	\$48,237.54	\$238,497.89
5/1/2033	\$238,497.89	\$894.37	\$47,343.17	\$48,237.54	\$191,154.72
6/1/2033	\$191,154.72	\$716.83	\$47,520.71	\$48,237.54	\$143,634.01
7/1/2033	\$143,634.01	\$538.63	\$47,698.91	\$48,237.54	\$95,935.10
8/1/2033	\$95,935.10	\$359.76	\$47,877.78	\$48,237.54	\$48,057.32
9/1/2033	\$48,057.32	\$180.21	\$48,057.33	\$48,237.54	\$0.00

ATTACHMENT B
FINAL LOAN REPAYMENT SCHEDULE
[TO COME]



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 2023-040

City Council

5/11/2023

LEGISLATIVE ACTION ITEM

SPONSOR: City Council Member Teniadé Broughton

SUBJECT:

RESOLUTION NO. 2023-040 - APPROVING MASTER REDEVELOPMENT AGREEMENT FOR SPRING STREETScape IMPROVEMENTS FROM GARDEN TO ROMANA

RECOMMENDATION:

That City Council adopt Resolution No. 2023-040:

A RESOLUTION OF THE CITY OF PENSACOLA, FLORIDA RELATING TO COMMUNITY REDEVELOPMENT WITHIN THE URBAN CORE COMMUNITY REDEVELOPMENT AREA; PROVIDING FINDINGS; APPROVING AND AUTHORIZING EXECUTION OF A MASTER REDEVELOPMENT AGREEMENT BETWEEN THE AGENCY, THE CITY OF PENSACOLA, FLORIDA, 200 WEST GARDEN LLC AND 97 SPRING CONDOS LLC PROVIDING FOR THE REDEVELOPMENT OF CERTAIN PROPERTY LOCATED IN THE REDEVELOPMENT AREA CONSISTING OF RIGHT OF WAY, STREETScape IMPROVEMENTS; AND PROVIDING AN EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

On February 6, 2023, Bearing Point Properties presented their proposed plans for a mixed-use development including 328 residential rental units, 54 for-sale condominium units, a large-scale grocery retail space, 2 pocket parks, and a multi-level structured parking facility including approximately 175 ungated parking spaces. The proposed project is a master-planned redevelopment located at the intersection of Garden and Spring Streets, which is slated for redevelopment by developers, 200 West Garden, LLC and 97 Spring Condos LLC (collectively, the "Developer").

As a component of the redevelopment project, the developers have requested to partner with the CRA to undertake streetscape improvements along Spring Street from Garden Street to Romana Street. The Developer is requesting a redevelopment incentive of up to \$1,482,278 towards the full cost of the streetscape improvements, estimated to be \$2,371,645 pursuant to a Master Redevelopment Agreement (MRA). The proposed MRA requires the Developer to construct the full mixed use redevelopment project, except for the 54-condominium units to receive the redevelopment

incentive. Pursuant to the MRA, the CRA would escrow the redevelopment incentive with a mutually-acceptable escrow agent upon completion of the streetscape improvements and completion and opening of the parking garage and grocery retail space to the public. The escrow agent would be instructed to release the redevelopment incentive to the Developer upon substantial completion of the 328 residential rental units. The Developer must complete the remaining 328 residential units within thirty-six (36) months of the escrow of the redevelopment incentive or it will be subject to repayment. The project encompassed by the MRA is estimated to have a total taxable value of \$45,000,000.

In the event that available CRA budgets are insufficient to cover the full cost of the redevelopment incentive at the time that payment is due to the Developer, the City will issue a loan to the CRA for the balance necessary to provide for the payment. The loan will be repaid to the City over a maximum of a three-year period along with 4.5 % interest.

Upon completion, and prior to acceptance of the streetscape improvements, the Developer will issue to the City a warranty bond that will serve as a guarantee for the streetscape improvements for a period of 18 months.

Implementation of this project will further the goals and objectives set forth in the Urban Core Redevelopment Plan, which expressly contemplates and encourages redevelopment and enhancement of public rights-of-way and pedestrian walkways and provides private sector participation in remediating and preventing blighted conditions.

PRIOR ACTION:

February 9, 2023 - Bearing Point Properties presented to the CRA proposed plans for a mixed-use development at Spring and Garden Streets.

FUNDING:

Budget:	\$ 1,621,597.48
Actual:	\$ 1,482,278.00 Redevelopment Incentive
	<u>\$ 139,319.48</u> (Estimated Interest)
	\$ 1,621,597.48

FINANCIAL IMPACT:

The CRA will provide a redevelopment incentive in an amount not to exceed \$1,482,278, which will be paid with Urban Core Redevelopment District Trust Fund Revenues. In the event that budget to cover the full amount of the redevelopment incentive is not available at the time of payment, the City will issue a loan to the CRA for the balance due plus 4.5% interest.

STAFF CONTACT:

Don Kraher, Council Executive
David Forte, Deputy City Administrator
Sherry Morris, Development Services Director
Victoria D'Angelo, CRA Division Manager
Amy Lovoy, Chief Financial Officer

ATTACHMENTS:

- 1) Resolution No. 2023-040
- 2) Master Redevelopment Agreement

PRESENTATION: No

RESOLUTION
NO. 2023-040

A RESOLUTION OF THE CITY OF PENSACOLA, FLORIDA RELATING TO COMMUNITY REDEVELOPMENT WITHIN THE URBAN CORE COMMUNITY REDEVELOPMENT AREA; PROVIDING FINDINGS; APPROVING AND AUTHORIZING EXECUTION OF A MASTER REDEVELOPMENT AGREEMENT BETWEEN THE AGENCY, THE CITY OF PENSACOLA, FLORIDA, 200 WEST GARDEN LLC AND 97 SPRING CONDOS LLC PROVIDING FOR THE REDEVELOPMENT OF CERTAIN PROPERTY LOCATED IN THE REDEVELOPMENT AREA CONSISTING OF RIGHT OF WAY, STREETSCAPE IMPROVEMENTS; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE GOVERNING BOARD OF THE COMMUNITY REDEVELOPMENT AGENCY AS FOLLOWS:

SECTION 1. AUTHORITY. This Resolution is adopted pursuant to and under the authority of the City Charter, the Community Redevelopment Act of 1969 codified in Part III, Chapter 163, Florida Statutes, Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. FINDINGS. It is hereby ascertained, determined and declared that:

(A) Pursuant to Resolution No. 54-80 adopted by the City Council of the City of Pensacola, Florida (the "City Council") on September 25, 1980, and as confirmed and ratified pursuant to Resolution 65-81 adopted by the City Council on September 22, 1981, the City Council found and determined that an area designated therein as the "Pensacola Inner City" is a blighted area as therein described, that a combination of rehabilitation, conservation and redevelopment of the Pensacola Inner City is necessary, that there exists a need for a community redevelopment agency to function in the City to carry out community redevelopment purposes pursuant to Part III, Chapter 163, Florida Statutes (the "Act"), and that the Pensacola Inner City is appropriate for community redevelopment projects and is thereby designated a community redevelopment area.

(B) Pursuant to Resolution No. 55-80 adopted by the City Council on September 25, 1980, and as readopted and reaffirmed pursuant to Resolution 65-81 adopted by the City Council on September 22, 1981, the City Council declared itself to be the "Community Redevelopment Agency" (the "Agency") in the City and vested all rights, powers, duties, privileges and immunities vested in a community redevelopment agency pursuant to the Act in the City Council.

(C) Pursuant to Resolution 65-81 adopted by the City Council on September 22, 1981, the City Council designated the boundaries and found and determined that an area designated therein as the "Urban Core Community Redevelopment Area" (the

"Redevelopment Area") is a blighted area as therein described and that the rehabilitation, conservation and redevelopment is necessary and in the public interest.

(D) Pursuant to Ordinance No. 13-84 enacted by the City Council on March 8, 1984, the Urban Core Community Redevelopment Trust Fund was established into which an amount equal to the tax increment paid by each taxing authority each year is deposited in accordance with section 163.387, Florida Statutes, for the purpose of financing community redevelopment in the Redevelopment Area (the "Tax Increment").

(E) On January 14, 2010, the City Council adopted Resolution No. 02-10 approving an "Urban Core Community Redevelopment Plan 2010" for the Redevelopment Area (as may be further amended from time to time, the "Redevelopment Plan").

(F) 200 West Garden LLC and 97 Spring Condos LLC (collectively, the "Developer") own certain parcels of real property located at the corner of Garden and Spring Streets, as further described in the form of Master Redevelopment Agreement attached hereto as Appendix A (the "Master Redevelopment Agreement") which parcels are within the boundaries of Redevelopment Area (the "Developer Parcels").

(G) The Developer is undertaking redevelopment of the Developer Parcels with various uses which includes approximately 328 residential rental units and 54 for-sale condominium units, a large-scale grocery retail space, two pocket parks, and a multi-level structured parking facility including approximately 175 ungated and open-access parking spaces (collectively, the "Developer Facilities"), all of which are generally contemplated by and are objectives of the Redevelopment Plan.

(H) The Developer desires to redevelop and improve the Spring Street right of way from Garden Street to Romana Street, which is a City right of way (the "Public Right of Way"), in conjunction with development and redevelopment of the Developer Parcels which are adjacent or in close proximity to the Affected Right of Way.

(I) The Developer has proposed to the City and the Agency that it will undertake all of the design, site work, construction and landscaping to modify the Public Right of Way and adjoining areas with streetscape improvements so that it is more walkable and pedestrian friendly and to include certain aesthetic enhancements (collectively, the "Project") as further described in the Master Redevelopment Agreement.

(J) The total estimated cost of the Project is \$2,371,645 a breakdown of which is included in the Project Cost Estimate included in the Master Redevelopment Agreement.

(K) The Developer has represented to the City and the Agency that it is willing to pay a substantial portion of the costs of the Project but will require financial assistance from the City and the Agency to undertake and complete the Project as herein set forth.

(L) The financial assistance to be provided by the City and Agency includes a grant in an amount not to exceed \$1,482,278, all or a portion of which will be funded with Tax Increment generated within the Urban Core Community Redevelopment Area (the "Redevelopment Incentive").

(M) The financial assistance to be provided by the City and the Agency as an inducement for installation and construction of the Project will result in creation of a vibrant, attractive and pedestrian friendly destination for residents and visitors of the Redevelopment Area.

(N) The Developer has proposed that it will install and construct the Project in conjunction with redevelopment of the Developer Parcels.

(O) The City hereby determines that the Project is consistent with the City's comprehensive plan.

(P) The Developer Facilities are reasonably expected to generate substantial ad valorem and sales tax revenues through the term of the Redevelopment Plan and beyond.

(Q) The Project is expected to act as a catalyst for additional high quality redevelopment in the Redevelopment Area, thus significantly benefiting the City's economy and its citizens and significantly advancing the community redevelopment objectives set forth in the Act and the Redevelopment Plan.

(R) The construction phase of the Developer Facilities and the Project is expected to create local jobs stemming from construction related activities, and upon completion, the Project is expected to create local jobs related to operation of the residential and commercial uses.

(S) Construction and operation of the Developer Facilities and Project is further expected to stimulate economic development in the City and the Redevelopment Area and to materially benefit the City and residents of the Redevelopment Area, the taxing authorities which contribute Tax Increment and their respective residents for many reasons, including but not limited to the increased direct and indirect funds that will be received from ad valorem tax revenue, sales tax revenue, utility revenue, and other revenues.

(T) The City therefore has an interest in the diverse economic benefits which would be created through construction of the Project and redevelopment of the Developer Parcels.

(U) The City desires to facilitate the successful construction of the Project in order to realize the public and community redevelopment benefits identified herein.

(V) Provision of the Project is a valid and important public purpose in light of the need to redevelop the land within the Redevelopment Area, and the City and the Agency

are authorized by the Act to expend Tax Increment proceeds in furtherance of the community redevelopment objectives of remedying blight and preserving and enhancing the tax base.

(W) The City hereby determines that the economic incentives and contributions contemplated herein are an advantageous means of inducing construction of the Project and which will serve a valid and paramount public purpose in that: (1) construction of the Project will directly promote redevelopment in the Redevelopment Area, as well as the overall economy of the City; (2) the Project will further the development of residential and commercial activities in the Redevelopment Area, thereby achieving essential objectives of the Redevelopment Plan and providing a more balanced and stable area economy and increased opportunities for gainful employment; (3) construction of the Project will stimulate and promote redevelopment in the Redevelopment Area as a whole; and (4) all economic incentives will be used for the public purposes described herein.

(X) The City now desires to approve and authorize execution of the Master Redevelopment Agreement in order to provide for installation and construction of the Project in furtherance of meeting the redevelopment goals and objectives set forth in the Redevelopment Plan.

(Y) The City hereby determines that it is necessary and in the best interests of the health, safety and welfare of the City and its inhabitants that the City make a grant to the Developer in the form of the Redevelopment Incentive to facilitate installation and construction of the Project, and that the Project shall constitute and serve the purposes of "community redevelopment" within the meaning and in accordance with the Act.

(Z) The Master Redevelopment Agreement has been prepared and reviewed by the Agency, the City and the Developer, and all are desirous of entering into the agreement to effectuate redevelopment of the Project Site upon the terms and conditions as set forth therein.

SECTION 3. APPROVAL OF MASTER REDEVELOPMENT AGREEMENT.

(A) The Master Redevelopment Agreement, in substantially the form attached hereto as Appendix A, is hereby approved

(B) The Mayor is authorized and directed to execute and deliver, and the City Clerk is authorized to attest, the Master Redevelopment Agreement, with such omissions, insertions, and variations as may be necessary and/or desirable and approved in consultation with the City Attorney prior to the delivery thereof, with such necessity and/or desirability and approval to be evidenced by the execution and delivery thereof, and to execute and deliver any and all papers and instruments to do and cause to be done all acts and things necessary or proper for carrying out the actions contemplated by this Resolution and the Master Redevelopment Agreement between the parties authorized hereunder.

SECTION 4. RATIFICATION AND CONFIRMATION. Based upon the findings herein, the Redevelopment Plan, and the public purpose advanced by redevelopment of the Redevelopment Area, all prior actions by the Agency associated with advancing redevelopment of the Project Site are in the public interest, serve public purposes and provide for accomplishing community redevelopment consistent with the Redevelopment Plan. The findings herein and all prior actions and plans of the City associated with redevelopment of the Project Site are hereby ratified and confirmed.

SECTION 5. GENERAL.

- (A) If any one or more of the provisions of this Resolution should be held contrary to any express provision of law or shall for any reason whatsoever be held invalid by a court of competent jurisdiction, then such provisions shall be null and void and shall be deemed separate from the remaining provisions of this Resolution.
- (B) It is not the City's intention, and nothing herein shall be so construed, to impair the effectiveness of any prior action or resolution taken or adopted by the City with respect to the creation and establishment of the Agency, community redevelopment, the issuance of any bonds or obligations, or any other associated action taken by such governmental bodies.

SECTION 6. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 7. This resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

APPENDIX A
FORM OF MASTER REDEVELOPMENT AGREEMENT

**MASTER REDEVELOPMENT AGREEMENT
(SPRING STREETScape PROJECT – GARDEN TO ROMANA)**

By and Among

THE CITY OF PENSACOLA, FLORIDA,

THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PENSACOLA,

200 WEST GARDEN, LLC,

and

97 SPRING CONDOS LLC

Dated as of _____, 2023

**MASTER REDEVELOPMENT AGREEMENT
(SPRING STREETSCAPE PROJECT – GARDEN TO ROMANA)**

TABLE OF CONTENTS

		Page
ARTICLE 1 DEFINITIONS		
Section 1.1	Definitions	4
Section 1.2	Use of Words and Phrases	7
Section 1.3	Florida Statutes	7
ARTICLE 2 PURPOSE: FINDINGS: INTENT		
Section 2.1	Purpose	7
Section 2.2	Findings	7
Section 2.3	Intent	8
Section 2.4	Project Funding & Cost Overruns	8
Section 2.5	Maintenance and Ownership of Improvements Comprising Project.	9
Section 2.6	Project Schedule & Completion Date	10
ARTICLE 3 REPRESENTATIONS, WARRANTIES, COVENANTS AND OBLIGATIONS OF THE DEVELOPER		
Section 3.1	Representations and Warranties	12
Section 3.2	Covenants of the Developer	13
Section 3.3	Obligations of the Developer	13
ARTICLE 4 REPRESENTATIONS, WARRANTIES, COVENANTS AND OBLIGATIONS OF THE CITY		
Section 4.1	Representations and Warranties	15
Section 4.2	Covenants of the City	16
Section 4.3	Obligations of the City	16

**ARTICLE 5
 REPRESENTATIONS, WARRANTIES, COVENANTS
 AND OBLIGATIONS OF THE AGENCY**

Section 5.1.	Representations and Warranties	17
Section 5.2	Covenants of the Agency	17
Section 5.3	Obligations of the Agency	18

**ARTICLE 6
 EVENTS OF TERMINATION AND DEFAULT**

Section 6.1	Events of Termination During the Preconstruction Period	18
Section 6.2	Events of Default, Notice, Cure and Remedies	19

**ARTICLE 7
 MISCELLANEOUS**

Section 7.1	Notices	20
Section 7.2	Consents and Approvals	21
Section 7.3	Invalid Provisions	21
Section 7.4	Applicable Law and Construction	21
Section 7.5	Submission to Jurisdiction	22
Section 7.6	Complete Agreement	22
Section 7.7	Captions	22
Section 7.8	Successors, Assigns and Grantees	22
Section 7.9	Holidays	23
Section 7.10	Appendices	23
Section 7.11	No Brokers	23
Section 7.12	Developer Not Agent of Agency or City	23
Section 7.13	Public Purpose	23
Section 7.14	Technical Amendments	23
Section 7.15	Agreement Not a Chapter 86-191 Laws of Florida Development Agreement	23
Section 7.16	Third Parties	24
Section 7.17	Waiver of Jury Trial	24
Section 7.18	Compliance with Laws	24
Section 7.19	Severability	24
Section 7.20	Time of Essence	24
Section 7.21	Effective Date	24
Section 7.22	Waiver of Consequential Damages	24

APPENDICES

A	Developer Parcels
B	Conceptual Project Plan
C	Project Cost Estimate
D	Project Schedule

ARTICLE 1	4
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DEFINITIONS	4
ARTICLE 2	8
PURPOSE: FINDINGS: INTENT	8
ARTICLE 3	13
REPRESENTATIONS, WARRANTIES, COVENANTS AND OBLIGATIONS OF THE DEVELOPER.....	13
ARTICLE 4	17
REPRESENTATIONS, WARRANTIES, COVENANTS	17
AND OBLIGATIONS OF THE CITY	17
ARTICLE 5	18
REPRESENTATIONS, WARRANTIES, COVENANTS	18
AND OBLIGATIONS OF THE AGENCY	18
ARTICLE 6	19
EVENTS OF TERMINATION AND DEFAULT	19
ARTICLE 7	21
MISCELLANEOUS.....	21

**MASTER REDEVELOPMENT AGREEMENT
(SPRING STREETSCAPE PROJECT – GARDEN TO ROMANA)**

THIS MASTER REDEVELOPMENT AGREEMENT (SPRING STREETSCAPE PROJECT – GARDEN TO ROMANA) ("Agreement") is made and entered into this ____ day of _____, 2023 by and among the **CITY OF PENSACOLA, FLORIDA**, a municipal corporation (the "City"), the **COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PENSACOLA**, a public body corporate and politic of the State of Florida created pursuant to Part III, Chapter 163, Florida Statutes, (the "Agency"), **200 WEST GARDEN, LLC**, a Louisiana limited liability company ("200 West"), and **97 SPRING CONDOS LLC**, a Louisiana limited liability company ("97 Spring" and, together with 200 West, the "Developer").

WITNESSETH:

WHEREAS, pursuant to Resolution No. 54-80 adopted by the City Council on September 25, 1980, and as confirmed and ratified pursuant to Resolution 65-81 adopted by the City Council on September 22, 1981, the City Council found and determined that an area designated therein as the "Pensacola Inner City" is a blighted area as therein described, that a combination of rehabilitation, conservation and redevelopment of the Pensacola Inner City is necessary, that there exists a need for a community redevelopment agency to function in the City to carry out community redevelopment purposes pursuant to Part III, Chapter 163, Florida Statutes (the "Act"), and that the Pensacola Inner City is appropriate for community redevelopment projects and is thereby designated a community redevelopment area; and

WHEREAS, pursuant to Resolution No. 55-80 adopted by the City Council on September 25, 1980, and as readopted and reaffirmed pursuant to Resolution 65-81 adopted by the City Council on September 22, 1981, the City Council declared itself to be the "Community Redevelopment Agency" in the City and vested all rights, powers, duties, privileges and immunities vested in a community redevelopment agency pursuant to Part III, Chapter 163, Florida Statutes, in the City Council; and

WHEREAS, pursuant to Resolution 65-81 adopted by the City Council on September 22, 1981, the City Council designated the boundaries and found and determined that an area designated therein as the "Urban Core Community Redevelopment Area" (the "Redevelopment Area") is a blighted area as therein described and that the rehabilitation, conservation and redevelopment is necessary and in the public interest; and

WHEREAS, pursuant to Ordinance No. 13-84 enacted by the City Council on March 8, 1984, the Urban Core Community Redevelopment Trust Fund was established into which the tax increment paid by each taxing authority each year is deposited in accordance with section 163.387, Florida Statutes, for the purpose of financing community redevelopment in the Redevelopment Area (the "Tax Increment"); and

WHEREAS, on January 14, 2010, the City Council adopted Resolution No. 02-10 approving an "Urban Core Community Redevelopment Plan 2010" for the Redevelopment Area (as may be further amended from time to time, the "Redevelopment Plan"); and

WHEREAS, the Developer owns certain parcels of real property located in the City as further described in Appendix A attached hereto (the "Developer Parcels") which parcels are within the boundaries of the Redevelopment Area; and

WHEREAS, the Developer is undertaking redevelopment of the Developer Parcels with various uses which may include residential rental units, grocery retail space and a structured parking facility (collectively, and as more specifically described below, the "Developer Facilities"), all of which are generally contemplated by and are objectives of the Redevelopment Plan; and

WHEREAS, the Developer desires to redevelop and improve the Spring Street right of way between Garden Street and Romana Street, which is a City right of way (the "Public Right of Way"), in conjunction with development and redevelopment of the Developer Parcels which are adjacent or in close proximity to the Public Right of Way; and

WHEREAS, the Developer has proposed to the City and the Agency that it will undertake all of the design, site work, construction and landscaping to modify the Public Right of Way and adjoining areas with Streetscape Improvements (as defined below) so that it is more walkable and pedestrian friendly and to include certain aesthetic enhancements (collectively, the "Project") as further described in the Conceptual Project Plan attached hereto as Appendix B; and

WHEREAS, the total estimated cost of the Project is \$2,371,645 (the "Project Cost Estimate"), a breakdown of which is included in the Project Cost Estimate attached hereto as Appendix C; and

WHEREAS, the Developer has represented to the City and the Agency that it is willing to pay a substantial portion of the costs of the Project but will require financial assistance from the City and the Agency to undertake and complete the Project as herein set forth; and

WHEREAS, the financial assistance to be provided by the City and Agency includes a grant of no more than \$1,482,278 (the "Redevelopment Incentive"); and

WHEREAS, the amount of the Redevelopment Incentive is reasonably estimated to be equal to or less than the Tax Increment generated by the Developer Parcels once improved with the Developer Facilities over the duration of the Redevelopment Plan; and

WHEREAS, the financial assistance to be provided by the City and the Agency as an inducement for installation and construction of the Project will result in creation of a vibrant, attractive and pedestrian friendly destination for residents and visitors of the Redevelopment Area; and

WHEREAS, the Developer has proposed that it will install and construct the Project in conjunction with redevelopment of the Developer Facilities; and

WHEREAS, the City has determined that the Project is consistent with the City's comprehensive plan; and

WHEREAS, the Developer Facilities are reasonably expected to generate substantial ad valorem and sales tax revenues through the term of the Redevelopment Plan and beyond; and

WHEREAS, the Project is expected to act as a catalyst for additional high quality redevelopment in the Redevelopment Area, thus significantly benefiting the City's economy and its citizens and significantly advancing the community redevelopment objectives set forth in the Act and the Redevelopment Plan; and

WHEREAS, the construction phase of the Developer Facilities and the Project is expected to create local jobs stemming from construction related activities, and upon completion, the Developer Facilities and the Project are expected to create local jobs related to operation of the residential and commercial uses; and

WHEREAS, construction and operation of the Developer Facilities and Project is further expected to stimulate economic development in the City and to materially benefit the City, the taxing authorities which contribute the Tax Increment and their respective residents for many reasons, including but not limited to the increased direct and indirect funds that will be received from ad valorem tax revenue, sales tax revenue, utility revenue, and other revenues; and

WHEREAS, the City and Agency therefore have an interest in the diverse economic benefits which would be created through construction of the Project and redevelopment of the Developer Parcels; and

WHEREAS, the City and Agency desire to facilitate the successful construction of the Project in order to realize the public and community redevelopment benefits identified herein; and

WHEREAS, provision of the Project is a valid and important public purpose in light of the need to redevelop the land within the Redevelopment Area, and the City and the Agency are authorized by the Act to expend Tax Increment proceeds in furtherance of the community redevelopment objectives of remedying blight and preserving and enhancing the tax base; and

WHEREAS, the City and Agency hereby determine that the economic incentives and contributions contemplated herein are an advantageous means of inducing construction of the Project and which will serve a valid and paramount public purpose in that: (1) construction of the Project will directly promote redevelopment in the Redevelopment Area, as well as the overall economy of the City; (2) the Project will further the development of residential and commercial activities in the Redevelopment Area, thereby achieving essential objectives of the Redevelopment Plan and providing a more balanced and stable area economy and increased

opportunities for gainful employment; (3) construction of the Project will stimulate and promote redevelopment in the Redevelopment Area as a whole; and (4) all economic incentives will be used for the public purposes described herein; and

WHEREAS, the parties now desire to enter into this Agreement in order to provide for installation and construction of the Project in furtherance of meeting the redevelopment goals and objectives set forth in the Redevelopment Plan; and

WHEREAS, the City has determined that it is necessary and in the best interests of the health, safety and welfare of the City and its inhabitants that the City make a grant to the Developer in the form of the Redevelopment Incentive to facilitate installation and construction of the Project, and that the Project shall constitute and serve the purposes of "community redevelopment" within the meaning and in accordance with the Act; and

WHEREAS, the parties acknowledge that redevelopment activities in the Redevelopment Area must be coordinated to insure their compliance and consistency with the Act and the Redevelopment Plan, and the parties mutually agree to cooperate to achieve such coordination, and

WHEREAS, this Agreement has been prepared and reviewed by the City, the Agency and the Developer, and all are desirous of entering into this Agreement to effectuate redevelopment of the Project Site upon the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.1 **Definitions.** Capitalized terms used herein shall have the meanings set forth in the Recitals above and as follows:

"Act" means Part III, Chapter 163, Florida Statutes known and referred to as the Community Redevelopment Act of 1969, as amended from time to time, and other applicable provisions of law.

"Agency" means the Community Redevelopment Agency of the City of Pensacola, Florida, created pursuant to Resolution No. 55-80 adopted by the City Council on September 25, 1980, as confirmed and ratified by Resolution No. 65-81 adopted by the City Council on September 22, 1981.

"Agreement" means this Master Redevelopment Agreement, including all Appendices and all amendments, modifications, addenda, supplements and revisions to this Agreement or

to any of the Appendices.

"Approval Delay" means any delay in achieving a construction or development milestone which is caused by the failure of any applicable governmental authority to timely issue a Building Permit which is required for the construction of the Project.

"Building Permit" means the permit, certificate, license or other approval by the City or other applicable governmental authority required to be obtained, issued, granted, or received as the final such permit, certificate, license or approval prior to commencement of construction, or equipping of any existing structure located on the Project Site.

"City" means the City of Pensacola, Florida, a Florida municipal corporation and its successors or assigns.

"Commencement Date" means the date when the Developer begins the installation and construction of the Project and/or Developer Facilities, occurring not later than December 31, 2024 (unless extended by consent and agreement of the parties or by Force Majeure or Approval Delay), as evidenced by a written Notice of Commencement provided to the CRA Manager.

"Completion Date" means the date when construction of the Project is completed as provided in Section 2.6 hereof.

"Conceptual Project Plan" means the site plan and narrative description of the conceptual plan for redevelopment of the Project Site prepared by the Developer and included herein as Appendix B.

"Construction Period" means the period of time beginning on the Commencement Date and ending on the Completion Date.

"Contract Documents" means the Design Documents, and the general contractor agreement executed by and between Developer and a general contractor for the completion of the Project.

"Design Documents" means the Interim Design Documents and the Final Design Documents for the Project.

"Developer" means, collectively, 200 West and 97 Spring, which is a wholly-owned subsidiary of 200 West, and their successors and assigns.

"Developer Facilities" means the proposed facilities to be constructed by the Developer on the Developer Parcels, which facilities shall include approximately 328 residential rental units, grocery retail space, two pocket parks, and a multi-level structured parking facility including approximately 175 ungated parking spaces for use by invitees of the grocery retail space, with an estimated total taxable assessed value of \$45,000,000, subject to appraisal and assessment by the applicable governmental authority. The Developer Facilities may be modified

by Developer in accordance with this Agreement.

"Developer Parcels" means the approximately 4.78 acre tax parcel owned by 200 West and the approximately 0.70 acre tax parcel owned by 97 Spring, each as described and shown in Appendix A.

"Effective Date" means _____, 2023, the effective date of this Agreement.

"Event of Termination" has the meaning ascribed to it in Article 7.

"Final Design Documents" means complete design documents which have been permitted by all applicable regulatory agencies, including a final narrative description and graphic depiction of the Project, including the final site plan, site elevation, design concept and any recommended Streetscape Improvements on or adjacent to the Project Site as prepared by or for the Developer.

"Force Majeure" means failure as a result of acts of God, (including fire, flood, earthquake, storm, hurricane or other natural disaster), epidemics, pandemics and related closures, war, invasion, act of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, or terrorist activities or any other cause which is out of the control of the affected party.

"Interim Design Documents" means 30%, 60% and 90% complete design documents, including interim narrative description and graphic depictions of the Project, including the site plan, site elevation, design concept and any recommended Streetscape Improvements on or adjacent to the Project Site, as prepared by or for Developer.

"Payment Bond" means a payment bond provided by the Developer prior to commencing construction of the Streetscape Improvements, as further described in Section 3.3J hereof., together with the "Performance Bond" referred to as the "Performance and Payment Bonds."

"Performance Bond" means a performance bond provided by the Developer prior to commencing construction of the Streetscape Improvements, as further described in Section 3.3J hereof., together with the "Payment Bond" referred to as the "Performance and Payment Bonds".

"Preconstruction Period" means the period of time commencing upon the Effective Date of this Agreement and ending upon the Commencement Date, which shall not exceed December 31, 2024 (unless extended by consent and agreement of the parties, which consent and agreement by the parties shall not be unreasonably withheld, conditioned or delayed, or by Force Majeure or Approval Delay).

"Project" means installation and construction of Streetscape Improvements to the Public Right of Way and the Developer Parcels as depicted within Appendix B, Conceptual Project Plan, as may be modified in accordance with this Agreement.

"Project Cost Estimate" means the estimate of all Project Costs included herein as Appendix C.

"Project Costs" means all costs, both direct and indirect, incurred by the Developer in designing, permitting, installing and constructing the Project.

"Project Schedule" means the schedule and sequence of events prepared by the Developer defined within Appendix D for the anticipated commencement, progression, and completion of the design, construction, rehabilitation, equipping and furnishing of the Project in connection with the redevelopment of the Developer Facilities and the Project, including revisions, amendments and changes thereto made from time to time as provided herein.

"Project Site" means the site of the Streetscape Improvements within the Public Right of Way and the Developer Parcels as depicted in Appendix B.

"Public Right of Way" means the portion of Spring Street between Garden Street and Romana Street, which is a City right of way.

"Streetscape Improvements" means pedestrian, walkway and street improvements to be installed and constructed within the Project Site, which may include but are not limited to asphalt roadway, roadway striping, stormwater infrastructure, curbs, sidewalks, lighting, signage, benches, bollards, sculptures, waste receptacles, fountains, street access points, including but not limited delivery access areas to the Developer Facilities (the "Delivery Area"), and utility relocations, if any, together with associated landscaping and park improvements, as further described in Appendix B, Conceptual Project Plan.

"Termination Date" means the date on which this Agreement is terminated and is no longer of any force and effect as provided herein in Article 6. However, where the context of the terms of this Agreement demand, certain terms and obligations shall survive termination.

"Warranty Bond" means a warranty bond provided by the Developer prior to receiving payment of the Redevelopment Incentive, as further described in Section 2.6.G.4 hereof.

Section 1.2 **Use of Words and Phrases.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number and the word "person" shall include corporations and associations, including public bodies, as well as natural persons. "Herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used.

Section 1.3 **Florida Statutes.** All references herein to "Florida Statutes" are to Florida Statutes (2022), as amended from time to time, unless specifically indicated otherwise.

ARTICLE 2
PURPOSE: FINDINGS: INTENT

Section 2.1 **Purpose.** The purpose of this Agreement is to outline the details of the transaction, and the commitments and responsibilities of each of the parties from conceptual planning through final Project completion, and to provide acceptable releases to each of the parties should the Project fail to proceed or be terminated pursuant to the provisions of this Agreement, at any point in time.

Section 2.2 **Findings.**

A. The City and the Agency do hereby find that the Project will advance the community redevelopment goals and objectives set forth in the Redevelopment Plan which expressly contemplates and encourages redevelopment and enhancement of public rights of way and pedestrian walkways in the Redevelopment Area and provides for private sector participation in remediating the blighted conditions therein.

B. The City and the Agency do hereby find that the Developer has represented to City and the Agency that the Developer needs financial assistance from the City and the Agency in order for the Project to proceed.

C. The City and the Agency do hereby find that there is, in fact, a need for financial assistance by the City and the Agency for the Project to proceed.

D. The City and the Agency do hereby find that the City has an interest in the diverse economic benefits resulting from the construction and operation of the Developer Facilities and the Project, and that the Project is consistent with and furthers the objectives of the Redevelopment Plan and is in the best interest of the citizens of the City.

E. The parties hereto recognize and acknowledge and do mutually find that but for the financial assistance provided for herein, the Developer would not undertake construction of the Project and redevelopment of the Project Site, and such assistance is a critical and important inducement without which such construction and redevelopment would not be undertaken.

Section 2.3 **Intent.** It is the intent of the parties hereto to efficiently, effectively and economically cause the successful construction of the Project in order to improve the Public Right of Way, specifically, and the conditions in the Redevelopment Area, in general, as well as implement the Redevelopment Plan and otherwise further the purposes of the Act. It is further the intent of the parties that the Developer shall permit, design, engineer, construct, equip, and otherwise complete the Project by the Completion Date defined in Section 2.6F. The parties mutually recognize and acknowledge that the Developer will require the City's and the Agency's financial assistance, the extent of which is set forth in Section 2.4.

Section 2.4 **Project Funding & Cost Overruns.**

A. The cost of the Project is estimated to be \$2,371,645 as further described in the Project Cost Estimate. The Developer shall be responsible for funding and financing installation and construction of the Project and payment of the Project Costs. Subject to the Developer installing and construction the Project in accordance with this Agreement, the City shall be responsible for contributing the Redevelopment Incentive as described below.

B. Section 163.387 of the Act authorizes "area reinvestment agreements" between a community redevelopment agency and private parties pursuant to which the increment computed for a specific area is reinvested in services or public or private projects, or both, including debt service, supporting one or more projects consistent with the community redevelopment plan that is identified in the agreement to be constructed within that area. It is the express intent of the parties hereto that this Agreement shall constitute and be construed as an area reinvestment agreement within the meaning of the Act.

C. The City hereby agrees to pay the Redevelopment Incentive to the Developer in accordance with the terms set forth herein, to induce the Developer to install and construct the Project.

D. The City shall contribute the Redevelopment Incentive in a total amount not to exceed 62.5% of the Project Costs, as evidenced by the Developer's contract with its general contractor or \$1,482,278, whichever is less, in accordance with the following terms:

1. Prior to commencement of construction, the Developer shall deliver to the City the Performance and Payment Bond described in Section 3.3.J hereof.

2. Upon substantial completion of the Project, the Developer shall request a final inspection from the City. The City shall inspect the Project for compliance with the approved Design Documents and this Agreement. Any material changes to the Project that occur during construction shall be subject to review and approval by the City.

3. The Agency shall deposit the Redevelopment Incentive with a mutually agreed escrow agent following the submittal of a reimbursement request to the CRA Manager for payment of the Redevelopment Incentive upon: i) the City's acceptance of the Project in accordance with Section 2.6.D below, ii) completion of the multi-level structured parking facility and opening of the approximately 175 ungated parking spaces for use by invitees of the grocery retail space, and iii) completion and opening of the grocery retail space to the public. Completion and opening of the parking facility and grocery retail space shall be evidenced by final inspection from the City. The Developer shall provide all supporting documentation showing proof of payment by the Developer for the Project Costs as part of its reimbursement request, including, but not limited to, receipts and canceled checks or other documentation reasonably acceptable to the City's Finance Director. The Redevelopment Incentive shall be released to the Developer upon substantial completion of the 328 residential rental units in accordance with this Agreement. To release the funds, the Agency will provide the escrow agent a copy of the

certificate of occupancy and direct the escrow agent to release the amount of the Redevelopment Incentive to the Developer within ten (10) calendar days of receipt of a complete reimbursement request from Developer.

4. The Developer shall achieve substantial completion of the 328 residential rental units in accordance with this Agreement within thirty-six (36) months of substantial completion of the Project. A certificate of occupancy issued by the City shall evidence substantial completion of the residential rental units. Should the Developer fail to achieve substantial completion of the residential rental units as required in this part, then the Redevelopment Incentive shall be withdrawn from the escrow account described in Section 2.4.D.3 and returned to the Agency pursuant to Section 6.2.C below.

5. Prior to deposit of the Redevelopment Incentive with the escrow agent, the Developer shall deliver or cause to be delivered to the City the Warranty Bond described in Section 2.6.g hereof.

6. Notwithstanding anything contained in this Section 2.4 to the contrary, the Developer shall be entitled to payment of the Redevelopment Incentive upon substantial completion of the Project but before substantial completion of the 328 residential rental units if, at its option, the Developer obtains a standby letter of credit with a reputable financial institution as the issuer, mutually agreed to by the Developer and the City in the sum of the Redevelopment Incentive payable to the City of Pensacola, on demand in Pensacola, Florida, to secure the Developer's obligation to construct the 328 residential rental units pursuant to this Agreement. Such standby letter of credit shall name the City of Pensacola as the beneficiary with payment in the event the Developer does not meet its obligations as described above. Upon substantial completion of the 328 residential rental units, the City shall promptly cancel and return the letter of credit. Should the Developer fail to meet its obligation to construct the 328 residential rental units pursuant to this Agreement, the City shall be entitled to present the letter of credit for payment.

E. The City intends to finance the Redevelopment Incentive with proceeds derived from the Tax Increment generated within the Urban Core Community Redevelopment Area.

F. Except for the contribution of the Redevelopment Incentive described above, all other Project Costs associated with the design, installation and construction of the Project shall be the responsibility of the Developer.

G. Cost overruns above the Project Cost Estimate, if any, which result from changes to the Project deemed necessary by the Agency for consistency with the Redevelopment Plan, Conceptual Project Plan, or this Agreement shall be paid by the Developer. Cost overruns above the Project Cost Estimate, if any, which result from changes to the Project which are necessary to comply with the City's land development code provisions or requirements of other applicable regulatory boards or agencies, including but not limited to the provisions of this Agreement, shall be paid by the Developer. Notwithstanding the foregoing, the City and the Agency acknowledge and agree that any cost overruns required by the City or the Agency as provided herein, or which

are incurred by the Developer after the Project has been permitted as a result of changes requested by the City or Agency, may be included in total Project Costs, and the Redevelopment Incentive increased by 62.5% of the resulting cost overruns, upon approval by the Agency and City. Cost overruns resulting from errors or omissions of the Developer or its general contractor in the Contract Documents shall be the sole responsibility of the Developer.

Section 2.5 **Maintenance and Ownership of the Improvements Comprising Project.** The City is and shall continue to be the owner of the Public Right of Way and shall be the owner of the Streetscape Improvements constructed within the Public Right of Way upon completion of the Project; provided, however, that (i) the Developer shall be responsible for maintenance and repair of the Delivery Area, private stormwater lines located within the Developer Parcels and the Public Right-of-Way which solely serve the Developer Facilities and feed into the public stormwater infrastructure located within the Public Right of Way, and the Streetscape Improvements constructed hereunder, with the exception of the asphalt roadway, roadway striping, signage, curbs, public sidewalks (subject to acceptance by the City for maintenance), lighting, street access points, and public stormwater infrastructure located within the Public Right of Way which shall be the responsibility of the City, the areas of such maintenance responsibilities of the City being highlighted in red on Appendix E, attached hereto and incorporated herein, and (ii) the Developer shall provide the Warranty Bond in accordance with Section 2.6.G hereof. Sidewalks eligible for City maintenance shall be limited to non-decorative or minimally decorative public sidewalks that conform to City standards. The City reserves the right to accept or reject, in its reasonable discretion, the extent of which decorative sidewalk design elements are acceptable for City maintenance. Sidewalks with decorative design elements that are not acceptable for City maintenance, as enumerated in this part, shall be the responsibility of the Developer. Except as expressly provided herein, the City and/or Agency shall assume no ownership or maintenance responsibility for any improvements installed or constructed by the Developer on the Developer Parcels or any other privately owned property.

Section 2.6 **Project Schedule & Completion Date.**

A. The Developer shall submit its Design Documents to the CRA Manager who shall route the Design Documents for comment and approval at 30%, 60%, and 90% completion (the "Approval Schedule"). Final Design Documents shall be submitted to the CRA Manager after permit approvals from all applicable regulatory agencies have been received. Design Documents shall be substantially consistent and compliant with the Conceptual Project Plan unless otherwise approved by the City. Materials used to construct the Project are subject to review and approval by the City.

B. The Developer shall install and construct the Project and the Developer Facilities in accordance with this Agreement. Modifications to the Developer Facilities that do not conform to the description of the Developer Facilities as defined within the Agreement shall be subject to approval by the Agency.

C. The planning, design, development, construction, equipping, and completion of

the Project by the Developer shall be undertaken, diligently continued, and completed in substantial accordance with this Agreement and by the dates set forth in the Project Schedule subject to revision as provided below.

1. Due to changes in circumstances, expectations, or assumptions of the parties not now known to or by the parties, the Project Schedule may be revised by the Developer from time to time by prior written notice of such revision to the City and the Agency, which revision shall be effective upon approval of such written notice by the City and the Agency. Such approval shall not be unreasonably withheld and if not approved or rejected within twenty (20) calendar days of receipt, then such revision shall be deemed approved.

D. Construction of the Project will be considered complete upon:

1. Receipt by the City of an affidavit from the Developer's contractor stating that the Project has been completed, subcontractors have been paid for construction of same and all construction or other liens related to same have been released; and

2. Acceptance of the Project by the City in accordance with City policies and standards for acceptance of public infrastructure by private developers, including but not limited to the provision of sealed as-built plans and a written release of all liens associated with the work. Such acceptance by the City shall not be unreasonably withheld, conditioned or delayed.

E. The Developer will provide periodic construction status updates to the City and the Agency and will notify the City of impending completion.

F. Notwithstanding anything herein or in the Project Schedule to the contrary, the Completion Date of the Project shall be no later than three (3) years after the Commencement Date, subject to Force Majeure and Approval Delays.

G. Correction Period

1. If within eighteen (18) months after the date the City accepts the Project, the City gives the Developer written notice that any portion of the Project was not installed and constructed in accordance with the requirements of the Contract Documents or any Federal, State or Local rules, laws, and ordinances in effect at the time permits were issued for the Contract Documents, then after receipt of such notice of the condition the Developer shall promptly, without cost to the City:

a. Furnish to the City a correction/remediation plan within thirty (30) days of the City furnishing its notice of the condition.

b. Upon the City's acceptance of the Developer's correction/remediation plan, the Developer shall correct the condition as set forth in Developer's correction/remediation plan.

2. The City shall give notice of any such condition within 30 days of the discovery that any portion of the Project was not installed and constructed in accordance with the requirements of the Contract Documents or any Federal, State or Local rules, laws, and ordinances in effect at the time permits were issued for the Contract Documents.

3. If, after receipt of a notice of defect within 30 days and within the correction period, the Developer does not furnish a correction/remediation plan, or in an emergency where delay would cause serious risk of loss or damage, the City may have the defective Project work corrected. The Developer shall pay, or cause to be paid, all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction (including but not limited to all costs of corrective work done by third parties). Except in an emergency where delay would cause serious risk of loss or damage, the City shall not undertake any corrective work, review, or studies without first furnishing Developer notice and the opportunity to make corrections or furnish a correction/remediation plan.

4. As a condition precedent to the City's acceptance of the Project and obligation to make final payment, the Developer shall furnish or cause to be furnished a Warranty Bond in the form of EJCDC® C 612, Warranty Bond (2018) with terms reasonably acceptable to the City. The Warranty Bond shall be issued for the sum of the final cost of the Project, as evidenced by an affidavit issued by the Developer's general contractor pursuant to all improvements, as built. The Warranty Bond shall list the City as a party to the bond. The Warranty Bond period will extend to a date eighteen (18) months after completion of the Project and is intended to secure the obligation of the Developer or the Developer and general contractor as joint obligors to correct work as provided in this Section 2.6.G. The Developer shall deliver or cause to be delivered the fully executed Warranty Bond to City prior to or with the final application for payment of the Redevelopment Incentive. Notwithstanding anything contained herein to the contrary, the Developer acknowledges and agrees that it shall be responsible for any damages to the Streetscape Improvements caused by its continued construction of any portion of the Developer Facilities after the acceptance of the Project by the City.

5. The Developer's obligations under this Section 2.6.G are in addition to all other obligations and warranties. The provisions of this Section 2.6.G are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 3
REPRESENTATIONS, WARRANTIES, COVENANTS AND OBLIGATIONS OF THE

DEVELOPER

Section 3.1 **Representations and Warranties.** The Developer represents and warrants to the City and Agency that each of the following statements is presently true and accurate as of the date hereof and can be relied upon by the City and Agency:

A. Each of 200 West and 97 Spring is a duly organized and validly existing limited liability company under the laws of the State of Louisiana, qualified to transact business in the State of Florida, has all requisite power and authority to carry on its business as now conducted, to own or hold properties and to enter into, and perform its obligations hereunder, and each instrument to which it is or will be a party, and is in good standing in the State of Louisiana and the State of Florida.

B. The principal place of business of the Developer is 6859 Jefferson Highway, Suite A, Baton Rouge, LA 70806. The manager(s) or managing member(s) thereof executing this Agreement on behalf of the Developer are authorized to act on behalf of the Developer and execute this Agreement on behalf of the Developer and any such actions by such manager(s) or managing member(s) shall be binding upon and enforceable against the Developer.

C. Each document in connection with the Project to which Developer is or will be a party has been duly authorized by all necessary action on the part of, and has been, or will be duly executed and delivered by, the Developer and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof (i) requires the approval and consent of any other party, except such as have been duly obtained, (ii) contravenes any existing law, judgment, government rule, regulation or order applicable to or binding on the Developer, or (iii) contravenes or results in any breach of, default under or results in the creation of any lien or encumbrance upon any property of the Developer other than the Developer Parcel under any indenture, mortgage, deed of trust, bank loan or credit agreement, the Developer's partnership or joint venture agreement, or any other agreement or instrument to which the Developer is a party.

D. This Agreement will constitute a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with the terms hereof, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which effect creditor's rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

E. There are no pending, or to the knowledge of the Developer, threatened actions or proceedings before any court or administrative agency against the Developer, which question this Agreement or the validity of any instrument or document contemplated hereunder or which are likely in any case, or in the aggregate, to materially adversely affect the successful development of the Project, the consummation of the transactions contemplated hereunder or the financial condition of the Developer.

F. The Developer has filed or caused to be filed all federal, state, local and foreign tax returns, if any, required to be filed by the Developer and has paid all taxes shown to be due and payable on such returns or on any assessments levied against the Developer.

Section 3.2 Covenants of the Developer. The Developer covenants with the City and the Agency that the Developer shall timely fulfill or cause to be fulfilled all of the conditions and obligations expressed herein which are within the control of the Developer or which are the responsibility of the Developer to fulfill.

Section 3.3 Obligations of the Developer.

A. The Developer shall permit, design, construct and improve the Project in accordance with the Design Documents and the Developer Facilities in accordance with this Agreement unless otherwise approved by the City and the Agency.

B. Upon execution of this Agreement, the Developer shall commence the process of designing the Project and shall forward the Design Documents to the CRA Manager in accordance with Section 2.6.

C. As provided in Section 7.15 hereof, this Agreement shall not be construed as a development approval or to convey development rights upon the Developer. Prior to commencing construction of the Project, the Developer must submit to the City appropriate development applications for development permits or other entitlements. The City shall accept from the Developer for processing and review all such applications, provided that such applications are submitted in accordance with all City rules, regulations and this Agreement, and all fees are timely and properly paid. All required permits and development approvals must be obtained prior to commencing construction. Nothing in this Agreement shall be construed to waive or modify applicable land development code and requirements of the City.

D. The Developer shall be responsible for engaging the professional services required and for the payment of all costs associated with design and construction of the Project.

E. The Developer shall coordinate with the City's engineer and the CRA Manager, or his or her designee, through the Completion Date to ensure design and construction of the Project in a manner consistent with City standards and the Design Documents. No construction efforts shall commence until the City and Agency have reviewed and accepted the Design Documents in the manner contemplated by Section 2.6 and this Section 3.3 and Developer has received all required Building Permits.

F. All design, engineering and construction by Developer shall be done in accordance with all applicable laws and regulations of the federal, state and local governments, including but not limited to, compliance with all building codes, planning ordinances and regulations and zoning ordinances and regulations of the City.

G. The Developer shall be responsible for and shall initiate, diligently continue and complete the Project as contemplated by this Agreement, including the preparation of the Design Documents, and the construction, and equipping of the Project substantially in accordance with the approved Building Permit(s).

H. The Developer shall ensure that the Project, including each component thereof, adheres to all applicable building, zoning, parking, life safety, growth management, and all other codes and ordinances that may apply to the Project and Project Site.

I. The Developer shall have no authority to borrow money secured by the Project (except and only to the extent any portion of the Streetscape Improvements is located on a Developer Parcel) or incur any debt or liability on behalf of the City or the Agency.

J. The Developer shall contract with a licensed and insured general or roadway contractor for the construction phase and ensure that the contractor chosen by the Developer uses its proper skill and care in constructing the Project. The Developer shall also ensure that such general contractor obtains Performance and Payment Bonds reasonably acceptable to the City and shall submit such bonds to the City prior to commencing construction of the Streetscape Improvements. Because the City is not a party to the construction contract between the Developer and its general contractor, the City shall be protected in the Performance and Payment Bonds between the Developer and its contractor by being named as an additional obligee through the execution of a Dual Obligee Rider for the protection of the City in the event of a default or non-payment by either Developer or its general contractor. At minimum, the Performance and Payment Bonds shall cover the cost of all improvements within the Public Right of Way, as evidenced by the Developer's contract with its general contractor. As noted above, the Performance and Payment Bonds shall list the City as an additional obligee.

K. The Developer hereby indemnifies the City and Agency against all claims, costs, losses, demands, actions, proceedings, judgments, settlements and liability arising out of any breach or non-observance of the Developer's obligations pursuant to this Agreement.

L. The Developer shall obtain and deliver to the City evidence of commercial general liability insurance in amounts reasonably satisfactory to the City, which insurance the Developer shall maintain at all times during the construction of the Project.

M. **LOSS CONTROL AND SAFETY.** The Developer shall retain control over its employees, agents, servants, and contractors, and subcontractors, as well as control over its invitees, and its activities on and about the Project Site and the manner in which such activities shall be undertaken, and to that end, the Developer shall not be deemed to be an agent of the City. Precaution shall be exercised at all times by the Developer for the protection of all persons, including employees and property. The Developer shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

ARTICLE 4
REPRESENTATIONS, WARRANTIES, COVENANTS
AND OBLIGATIONS OF THE CITY

Section 4.1 **Representations and Warranties.** The City represents and warrants to Developer that each of the following statements is presently true and accurate as of the date hereof and can be relied upon by Developer:

A. The City is a validly existing municipal corporation of the State of Florida, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations under this Agreement and each document contemplated hereunder to which it is or will be a part.

B. This Agreement has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, the City and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof (i) requires the approval and consent of any other party, (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the City or (iii) contravenes or results in any breach of, default under or result in the creation of any lien or encumbrance upon any party or the City, under any indenture, mortgage, deed of trust, bank loan or credit agreement, any special acts, ordinances, resolutions or any other agreement or instrument to which the City is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the City outstanding on the Effective Date.

C. This Agreement will constitute, a legal, valid and binding obligation of the City enforceable against the City in accordance with the terms hereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

D. This Agreement does not violate any laws, ordinances, rules, regulations, orders, contracts or agreements that are or will be applicable thereto.

Section 4.2 **Covenants of the City.** The City covenants with Developer that:

A. The City shall timely fulfill or cause to be fulfilled all of the conditions and obligations expressed herein which are within the control of the City or which are the responsibility of the City to fulfill.

B. The City shall not violate any laws, ordinances, rules, regulations, orders, contracts or agreements that are or will be applicable thereto, or, to the extent permitted by law, enact or adopt or urge or encourage the enactment or adoption of any laws, ordinances, resolutions, rules, regulations or orders or approve or enter into any contracts or agreements, including issuing any bonds, notes, or other forms of indebtedness, that will result in any

provision of this Agreement to be in violation thereof or which would materially impair the City's ability to perform its obligations under this Agreement.

Section 4.3 Obligations of the City.

A. The City agrees to timely and expeditiously process all applications received by the Developer for construction approvals and permits for the Project, provided that such applications are submitted in accordance with all City rules and regulations and all fees are timely and properly paid. All required permits and construction approvals, whether issued by the City or any other governmental agency, must be obtained prior to commencing construction. Nothing in this Agreement shall be construed to waive or modify applicable land development code provisions and requirements of the City. The Developer shall be solely responsible for obtaining any construction approvals and permits required by any governmental agency other than the City for construction and completion of the Project.

B. The City agrees to cooperate and expeditiously provide information, approvals and answers to the Developer upon written request, and shall not unreasonably withhold, condition or delay any such approvals.

ARTICLE 5
REPRESENTATIONS, WARRANTIES, COVENANTS
AND OBLIGATIONS OF THE AGENCY

Section 5.1 Representations and Warranties. The Agency represents and warrants to Developer that each of the following statements is presently true and accurate as of the date hereof and can be relied upon by Developer:

A. The Agency is a validly existing public body corporate and politic of the State of Florida, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations under this Agreement.

B. This Agreement has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, the Agency and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof (i) requires the approval and consent of any other party, (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the Agency or (iii) contravenes or results in any breach of, default under or result in the creation of any lien or encumbrance upon any party or the Agency, under any indenture, mortgage, deed of trust, bank loan or credit agreement, any special acts, ordinances, resolutions or any other agreement or instrument to which the Agency is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the Agency outstanding on the Effective Date.

C. This Agreement will constitute, a legal, valid and binding obligation of the Agency

enforceable against the Agency in accordance with the terms hereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

D. This Agreement does not violate any laws, ordinances, rules, regulations, orders, contracts or agreements that are or will be applicable thereto.

Section 5.2 **Covenants of the Agency.** The Agency covenants with Developer that:

A. The Agency shall timely fulfill or cause to be fulfilled all of the conditions and obligations expressed herein which are within the control of the Agency or which are the responsibility of the Agency to fulfill.

B. The Agency will not violate any laws, ordinances, rules, regulations, orders, contracts or agreements that are or will be applicable thereto, or, to the extent permitted by law, enact or adopt or urge or encourage the enactment or adoption of any laws, ordinances, resolutions, rules, regulations or orders or approve or enter into any contracts or agreements, including issuing any bonds, notes, or other forms of indebtedness, that will result in any provision of this Agreement to be in violation thereof or which would materially impair the Agency's ability to perform its obligations under this Agreement.

Section 5.3 **Obligations of the Agency.**

A. The Agency agrees to timely and expeditiously review the Design Documents and to negotiate in good faith any changes or revisions deemed by the Agency as necessary for the Design Documents to be consistent with the Redevelopment Plan.

B. The Agency agrees to cooperate and expeditiously provide information, approvals and answers to the Developer upon written request.

ARTICLE 6 **EVENTS OF TERMINATION AND DEFAULT**

Section 6.1 **Events of Termination During the Preconstruction Period.** Upon written notice to the other party during the Preconstruction Period, the respective party shall have the right to terminate this Agreement for any of the following Events of Termination. In any such Event of Termination, each party shall be responsible for its own costs.

A. Should the Developer fail to receive financing commitments, then the Developer may choose to terminate this Agreement.

B. Should the Developer fail to obtain all necessary development approvals and/or

permits during the Preconstruction Period, subject to extension for Force Majeure and/or Approval Delay, then any of the parties hereto may choose to terminate this Agreement.

C. Should the parties fail to reach agreement on the Design Documents or any of its material components after good faith efforts to do so, then either party may terminate this Agreement.

D. Should the parties fail to reach agreement on any substantive modifications to the Developer Facilities, as described in Section 2.6, then either party may terminate this Agreement.

E. Determination by the Developer that the costs for the Project are too high or not economically feasible.

Section 6.2 Events of Default; Notice, Cure and Remedies.

A. Each of the following is hereby declared an "Event of Default" with respect to this Agreement:

1. A default by any party in the due and punctual performance of the covenants, conditions, agreements and provisions contained in this Agreement.

2. Any representation or warranty of any party hereto shall prove to have been untrue in any material respect.

3. Any party admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors, consents to the appointment of a receiver or trustee for itself or shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof.

4. Any party is adjudged insolvent by a court of competent jurisdiction or is adjudged bankrupt on a petition of bankruptcy filed against the party, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the party, a receiver or trustee of the party or of the whole or any part of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof.

5. If, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the party or of the whole or any substantial part of its property and such custody or control shall not be terminated within ninety (90) consecutive days from the date of assumption of such custody or control.

B. Notice of Default; Right to Cure. Upon an Event of Default by any party to this Agreement, or said party's successors and assigns, with regard to this Agreement or of any of its terms or conditions, the party alleging such default or breach shall give the breaching party not

less than thirty (30) days "Notice of Default" in writing in the manner provided for giving notice as set forth in Section 7.1 of this Agreement. The time of notice shall be measured from the date of certified mailing. The Notice of Default shall specify the nature of the alleged default, and, where appropriate, the manner and period of time in which said default may be satisfactorily cured. During any period for curing the default, the party charged shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured, then no default shall exist, and the noticing party shall take no further action.

C. Remedies. If the default has not been cured after proper notice and the expiration of said period to cure default, the noticing party may elect to terminate this Agreement and, at its option and in addition to any other rights or remedies, may institute legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein, or to enjoin any threatened or attempted violation thereof; to recover damages for any default; or to obtain any remedies consistent with the purpose of this Agreement. Such legal actions must be instituted in the Circuit Court of the County of Escambia, State of Florida. This section shall not be interpreted as a pledge of ad valorem tax or other revenues by the City or the Agency. In the event that the Developer fails to construct the Developer Facilities in accordance with this Agreement, then any Redevelopment Incentive paid by the City or Agency to the Developer shall become due and payable to the Agency within 30 days' notice of default, subject any period to cure default.

D. Waiver. Failure or delay in giving Notice of Default or seeking enforcement of this Agreement, shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by another party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Section 6.3 Termination of Agreement in Full. This Agreement shall terminate upon the later of: i) the issuance of the Warranty Bond defined in Section G.4 above and payment of the Redevelopment Incentive to the Developer or ii) the completion of the Developer Facilities as evidenced by a certificate of occupancy issued by the City; provided, however, obligations as to maintenance, warranty and indemnity imposed by this Agreement will survive and continue beyond the termination of this Agreement as specifically provided herein.

ARTICLE 7 MISCELLANEOUS

Section 7.1 Notices. Unless otherwise specifically provided herein, all notices, demands, requests for approvals or other communications which may be or are required to be given by any party to the others shall be made in writing and shall be deemed given and delivered on the date delivered in person, faxed, or e-mailed, or on the on the date mailed by registered or

certified mail, postage prepaid, return receipt requested, and addressed:

To the City: City of Pensacola
222 W. Main St.
Pensacola, Florida 32502
Attention: City Administrator

With copy to: Office of the City Attorney
City of Pensacola
222 W. Main St.
Pensacola, Florida 32502

To the Agency: Community Redevelopment Agency of the City of Pensacola
222 W. Main St.
Pensacola, Florida 32502
Attention: CRA Manager

To the Developer: 200 West Garden, LLC
c/o John R. Buzzell
6859 Jefferson Highway, Suite A
Baton Rouge, LA 70806

97 Spring Condos, LLC
c/o John R. Buzzell
6859 Jefferson Highway, Suite A
Baton Rouge, LA 70806

With a copy to: Phelps Dunbar, LLP
c/o Randy P. Roussel and Trevor J. Haynes
400 Convention Street, Suite 1100
Baton Rouge, Louisiana 70802

The addresses to which notices are to be sent may be changed from time to time by a written notice of such change from the party changing its address delivered to the other parties. Until such a notice is received, a party may rely upon the last address received for the other party.

Section 7.2 Consents and Approvals.

(A) All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting by a party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any other act, except as expressly set forth herein to the

contrary.

(B) Unless expressly provided otherwise, all consents and approvals which may be given by a party under this Agreement shall not (whether or not so indicated elsewhere in this Agreement) be unreasonably withheld, delayed, or conditioned by such party and shall be given or denied within a reasonable time. Upon disapproval of any request for a consent or approval, the disapproving party shall, together with notice of such disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval.

Any amendments to this Agreement will require the approval of the Developer, the City Council for the City and the governing body of the Agency.

Section 7.3 **Invalid Provisions.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the requirements of applicable laws and if the remainder of this Agreement can substantially be reasonably performed without material hardship, so as to accomplish the intent and the goals of the parties hereto.

Section 7.4 **Applicable Law and Construction.** The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. The submission of this document to the parties for examination thereby does not constitute an offer to buy, or a reservation of or operation for the Project, the Project Site, or any part thereof. This Agreement has been negotiated by the City, Agency and the Developer, and this Agreement, including the appendices, and each of them, the City, the Agency, and the Developer shall be deemed to have participated in the preparation thereof.

Section 7.5 **Submission to Jurisdiction.**

A. Each party to this Agreement hereby submits to the jurisdiction of the State of Florida, Escambia County and the courts thereof for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.

B. If at any time during the term of this Agreement, the Developer is not a resident of the State of Florida or has no officer, employee, or agent thereof available for service of process who is a resident of the State of Florida, or if any permitted assignee thereof shall be a foreign corporation, partnership or other entity or shall have no officer, employee, agent, or general partner available for service of process in the State of Florida, the Developer for itself and its successors or assigns hereby designates the Secretary of State of the State of Florida as its agent for the service of process in any court action between it and the City or the Agency arising out of or related to this Agreement and such service shall be made as provided by the laws of the State of Florida for service upon a nonresident; provided, however, that at the time

of service on the Secretary of State, a copy of such service shall be mailed by prepaid, registered mail, return receipt requested, to the Developer at the address for notices as provided in Section 7.1 hereof.

Section 7.6 **Complete Agreement.** This Agreement, including the Appendices, and all of the terms and provisions contained herein, constitute the full and complete agreement between the parties hereto, and supersedes and controls over any and all prior agreements, understandings, representations, and statements, whether written or oral, made with regard to the matters addressed by this Agreement. This Agreement can be modified or amended only by a writing signed by all parties hereto.

Section 7.7 **Captions.** The section headings and captions of this Agreement and the table of contents preceding this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement, or any part thereof, or in any way affect this Agreement, or construe any article or section hereof.

Section 7.8 **Successors, Assigns and Grantees.** The terms herein contained shall bind and inure to the benefit of the City, the Agency, the Developer and its successors and assigns, except as may be otherwise specifically provided herein.

Section 7.9 **Holidays.** It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given or done on a Saturday or Sunday or on a legal holiday observed in the City of Pensacola, Florida, it shall be postponed to the next following business day not a Saturday, Sunday, or legal holiday.

Section 7.10 **Appendices.** Each Appendix referred to in and attached to this Agreement is an essential part of this Agreement. The Appendices, and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of and incorporated within this Agreement.

Section 7.11 **No Brokers.** The City, the Agency and the Developer hereby represent, agree and acknowledge that no real estate broker or other person is entitled to claim or to be paid a commission solely as a result of the execution and delivery of this Agreement.

Section 7.12 **Developer Not Agent of Agency or City.** The Developer and any contractor hired by Developer are not individually or collectively and shall not be deemed to be individually or collectively an agent or contractor of the Agency or the City, and are not subject to nor shall be required to comply with any laws, ordinances, regulations, orders, or policies of or applicable to the Agency or the City applicable or relating to public works projects of the Agency or the City or contractors retained by the Agency or the City for such types of projects. Nothing contained in this Agreement shall be construed or deemed to name, designate, or cause (either directly or indirectly) the Developer, or any contractor thereof, to be an agent for the Agency or the City.

Section 7.13 **Public Purpose.** This Agreement satisfies, fulfills, and is pursuant to

and for a public purpose and municipal purpose and is in the public interest, and is a proper exercise of the City's and Agency's redevelopment powers and authority under the Act.

Section 7.14 **Technical Amendments.** The Mayor, Chair of the Agency, and his or her respective designee, as to the City and Agency, are authorized to approve such changes and to execute amendments to this Agreement to address technical terms or correct scrivener's errors and to make and incorporate such amendments and corrections to this Agreement, or any Appendix hereto, or any other agreement contemplated hereby. Any such amendments or corrections shall require notice to, and approval of, the Developer.

Section 7.15 **Agreement Not a Chapter 86-191 Laws of Florida Development Agreement.** The City, Agency, and the Developer acknowledge and agree that it is their mutual intent that this Agreement, including any Appendix, is an agreement contemplated by Part III, Chapter 163, Florida Statutes, and is not a development agreement described in Sections 163.3220-163.3243, Florida Statutes, originally enacted as Chapter 86-191, Laws of Florida, entitled the "Local Government Development Agreement Act." Nothing herein shall be construed as a development approval or to convey development rights upon the Developer.

Section 7.16 **Third Parties.** This Agreement is solely for the benefit of the Developer, the City, and the Agency, and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Developer, the City, and the Agency any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement. Nothing contained in this Agreement shall limit or impair the Developer's right to protect its rights from interference by a third party.

Section 7.17 **Waiver of Jury Trial.** Each party hereto waives all right to trial by jury in any claim, action, proceeding or counterclaim the party may have against the other parties hereto regarding any matters arising out of or in any way connected with this Agreement.

Section 7.18 **Compliance with Laws.** The Developer will be solely responsible for obtaining all permitting, zoning, building, and other approvals required in conjunction with the proposed Project. The City agrees to cooperate with Developer with respect to obtaining any required approvals; however in entering into this Agreement the City expressly reserves its police power to review and determine all requested zoning and permit approvals in accordance with the City's obligations under federal, state, and local law. The Developer is responsible at all times for complying with all applicable federal, state, and local laws.

Section 7.19 **Severability.** If any portion of any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced

to the fullest extent determined by law.

Section 7.20 **Time of Essence.** Time is of the essence in each and every instance hereunder with respect to the covenants, undertakings, and conditions to be performed hereunder by the parties.

Section 7.21 **Effective Date.** The Effective Date of this Agreement shall be the day and year first above written.

Section 7.22 **Waiver of Consequential Damages.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES OR LOST OPPORTUNITY OR LOST PROFITS, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE AND NO MULTIPLIER OR SIMILAR CONCEPT SHALL BE APPLIED FOR PURPOSES OF CALCULATING LOSSES.

Section 7.23 **Developers Commitment to Fully Perform.** As a material condition of this Agreement, the Developer commits to construction of the Developer Facilities in accordance with this Agreement both upon, and subsequent to, issuance of the Redevelopment Incentive. Failure to complete the Developer Facilities in accordance with this Agreement may be deemed a default under this Agreement by the Developer, the sole remedy of which shall be the return of the Redevelopment Incentive paid to the Developer, if any, to the City and/or Agency.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City, the Agency and the Developer, by and through the undersigned, have entered into this Master Redevelopment Agreement as of the day and year first above written.

THE CITY OF PENSACOLA, FLORIDA

[Seal]

By: _____
Mayor

Attest:

City Clerk

IN WITNESS WHEREOF, the City, the Agency and the Developer, by and through the undersigned, have entered into this Master Redevelopment Agreement as of the day and year first above written.

**COMMUNITY REDEVELOPMENT
AGENCY OF THE CITY OF PENSACOLA**

[Seal]

By: _____
Chair

Attest:

City Clerk

IN WITNESS WHEREOF, the City, the Agency and the Developer, by and through the undersigned, have entered into this Master Redevelopment Agreement as of the day and year first above written.

**200 WEST GARDEN, LLC,
a Louisiana limited liability company**

By: 200 West Garden Development, LLC
Its: Manager

By: _____
Name: _____
Its: Manager

**97 SPRING CONDOS LLC,
a Louisiana limited liability company**

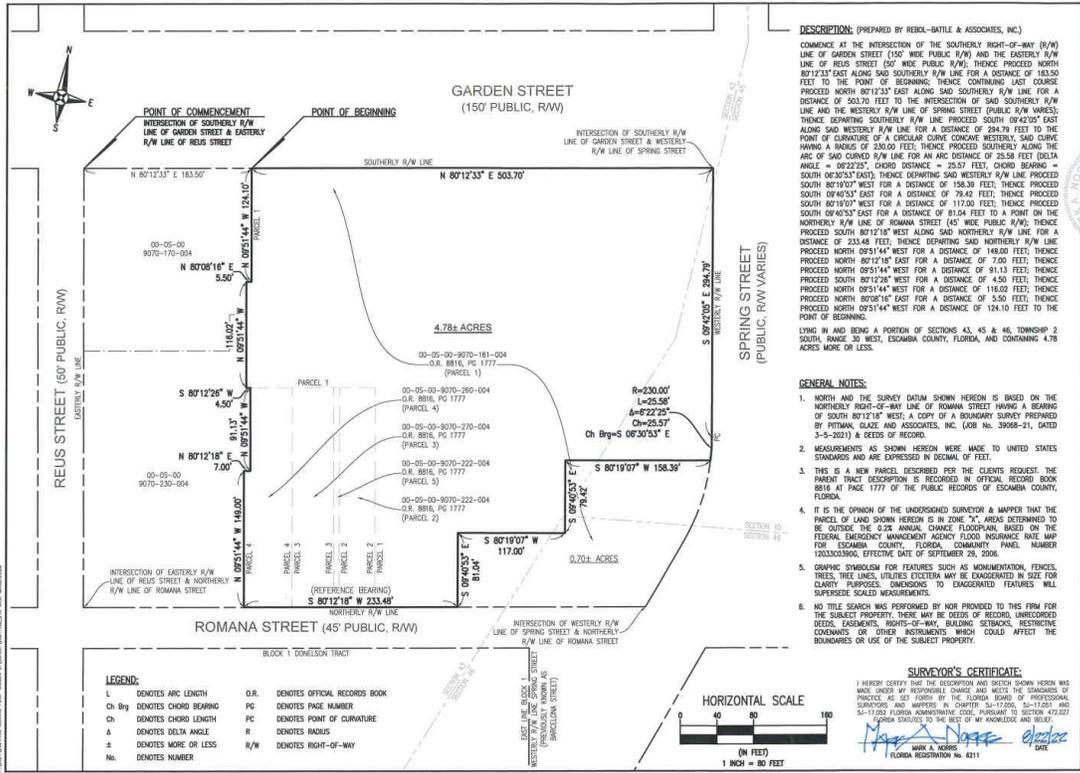
By: 200 West Garden, LLC
Its: Member

By: 200 West Garden Development, LLC
Its: Manager

By: _____
Name: _____
Its: Manager

APPENDIX A

DEVELOPER PARCELS



DESCRIPTION: (PREPARED BY REBOL-BATTLE & ASSOCIATES, INC.)
 COMMENCE AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY (R/W) LINE OF GARDEN STREET (150' WIDE PUBLIC R/W) AND THE EASTERLY R/W LINE OF REUS STREET (60' WIDE PUBLIC R/W), THENCE PROCEED NORTH 80°12'33" EAST ALONG SAID SOUTHERLY R/W LINE FOR A DISTANCE OF 183.50 FEET TO THE POINT OF BEGINNING, THENCE CONTINUE LAST COURSE PROCEED NORTH 80°12'33" EAST ALONG SAID SOUTHERLY R/W LINE FOR A DISTANCE OF 503.70 FEET TO THE INTERSECTION OF SAID SOUTHERLY R/W LINE AND THE WESTERLY R/W LINE OF SPRING STREET (PUBLIC R/W VARIES); THENCE DEPARTING SOUTHERLY R/W LINE PROCEED SOUTH 09°42'05" EAST ALONG SAID WESTERLY R/W LINE FOR A DISTANCE OF 204.24 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE WESTERLY, SAID CURVE HAVING A RADIUS OF 230.00 FEET, THENCE PROCEED SOUTHERLY ALONG THE ARC OF SAID CURVED R/W LINE FOR AN ARC DISTANCE OF 25.38 FEET (DELTA ANGLE = 09°22'25", CHORD DISTANCE = 25.37 FEET, CHORD BEARING = SOUTH 06°30'53" EAST), THENCE DEPARTING SAID WESTERLY R/W LINE PROCEED SOUTH 80°19'07" WEST FOR A DISTANCE OF 158.39 FEET; THENCE PROCEED SOUTH 09°49'53" EAST FOR A DISTANCE OF 81.94 FEET TO A POINT ON THE NORTHERLY R/W LINE OF ROMANA STREET (45' WIDE PUBLIC R/W), THENCE PROCEED SOUTH 80°12'18" WEST ALONG SAID NORTHERLY R/W LINE FOR A DISTANCE OF 233.48 FEET, THENCE DEPARTING SAID NORTHERLY R/W LINE PROCEED NORTH 09°14'44" WEST FOR A DISTANCE OF 149.00 FEET; THENCE PROCEED NORTH 80°18'18" EAST FOR A DISTANCE OF 7.00 FEET; THENCE PROCEED NORTH 09°14'44" WEST FOR A DISTANCE OF 81.13 FEET; THENCE PROCEED SOUTH 80°12'28" WEST FOR A DISTANCE OF 4.50 FEET; THENCE PROCEED NORTH 09°14'44" WEST FOR A DISTANCE OF 116.00 FEET; THENCE PROCEED NORTH 80°08'18" EAST FOR A DISTANCE OF 5.50 FEET; THENCE PROCEED NORTH 09°14'44" WEST FOR A DISTANCE OF 114.10 FEET TO THE POINT OF BEGINNING.
 LYING IN AND BEING A PORTION OF SECTIONS 43, 45 & 46, TOWNSHIP 2 SOUTH RANGE 30 WEST, ESCAMBA COUNTY, FLORIDA, AND CONTAINING 4.78 ACRES MORE OR LESS.

- GENERAL NOTES:**
- NORTH AND THE SURVEY DATUM SHOWN HEREON IS BASED ON THE NORTHERLY RIGHT-OF-WAY LINE OF ROMANA STREET HAVING A BEARING OF SOUTH 80°18'18" WEST, A COPY OF A BOUNDARY SURVEY PREPARED BY PITTMAN, GLAZE AND ASSOCIATES, INC. (JOB NO. 39088-21, DATED 3-5-2003) IS DEEDS OF RECORD.
 - MEASUREMENTS AS SHOWN HEREON WERE MADE TO UNITED STATES STANDARDS AND ARE EXPRESSED IN DECIMAL OF FEET.
 - THIS IS A NEW PARCEL DESCRIBED PER THE CLIENT'S REQUEST. THE PRESENT TRACT DESCRIPTION IS RECORDED IN OFFICIAL RECORD BOOK 8818 AT PAGE 1777 OF THE PUBLIC RECORDS OF ESCAMBA COUNTY, FLORIDA.
 - IT IS THE OPINION OF THE UNDERSIGNED SURVEYOR & MAPPER THAT THE PARCEL OF LAND SHOWN HEREON IS IN ZONE "X", AREAS DETERMINED TO BE COVERED BY THE 0.2% ANNUAL CHANCE FLOODPLAIN, BASED ON THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP FOR ESCAMBA COUNTY, FLORIDA, COMMUNITY PANEL NUMBER 12030C0300, EFFECTIVE DATE OF SEPTEMBER 28, 2006.
 - GRAPHIC SYMBOLISM FOR FEATURES SUCH AS MONUMENTATION, FENCES, TREES, TREE LINES, UTILITY'S EXCUTION MAY BE ENLARGED IN SIZE FOR CLARITY PURPOSES. DIMENSIONS TO ENLARGED FEATURES WILL SUPERSEDE SCALED MEASUREMENTS.
 - NO TITLE SEARCH WAS PERFORMED BY NOR PROVIDED TO THIS FIRM FOR THE SUBJECT PROPERTY. THERE MAY BE DEEDS OF RECORD, UNRECORDED DEEDS, EASEMENTS, RIGHTS-OF-WAY, BUILDING SETBACKS, RESTRICTIONS, COVENANTS OR OTHER INSTRUMENTS WHICH COULD AFFECT THE BOUNDARIES OR USE OF THE SUBJECT PROPERTY.

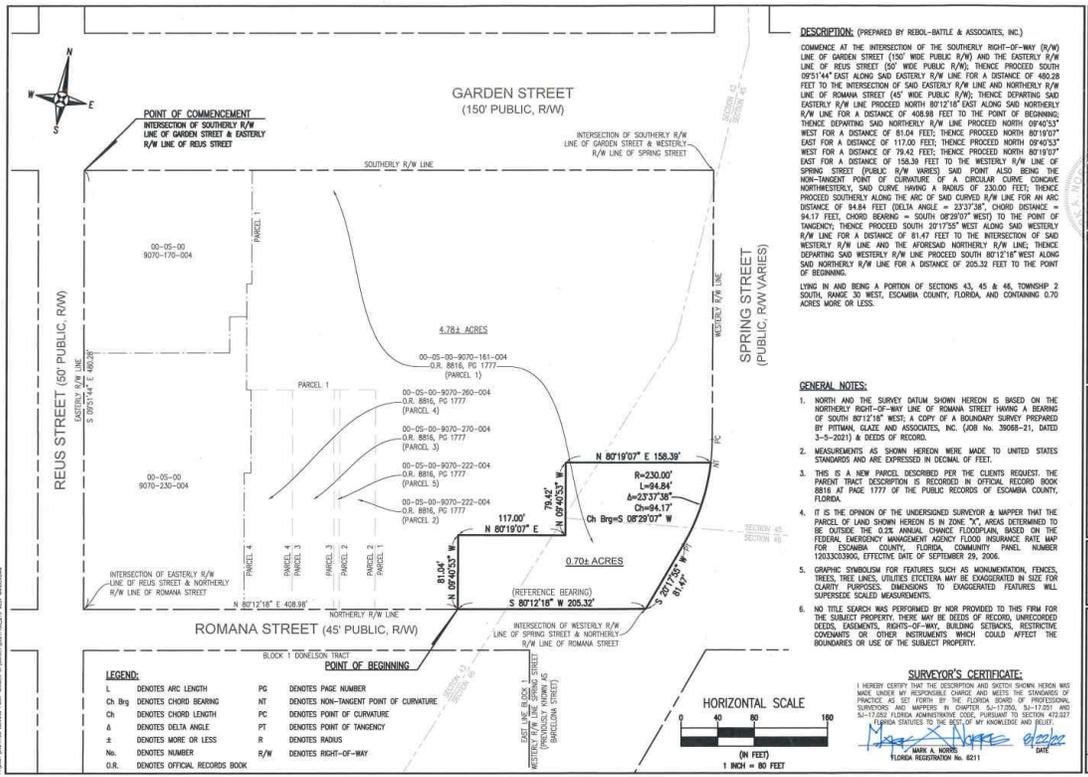
SURVEYOR'S CERTIFICATE:
 I HEREBY CERTIFY THAT THE DESCRIPTION AND SKETCH SHOWN HEREON WAS MADE UNDER MY SUPERVISION AND MEETS THE STANDARDS OF PRACTICE AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS, BY CHAPTER 475, PART 1, F.S. 475.01, 475.02, AND 475.03, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 475.022, F.S. (FLORIDA STATUTES) TO THE BEST OF MY KNOWLEDGE AND BELIEF.
 MARK A. REBOL
 FLORIDA REGISTRATION NO. 6211

RBA
REBOL-BATTLE & ASSOCIATES, INC.
REGISTERED PROFESSIONAL SURVEYOR
FLORIDA REGISTRATION NO. 12000

415 WEST GARDEN STREET
TALLAHASSEE, FLORIDA 32302
A PORTION OF
SECTION 43, TOWNSHIP 2 SOUTH RANGE 30 WEST, ESCAMBA COUNTY, FLORIDA

DESCRIPTION & SKETCH

1 of 1



REBOL-BATILE & ASSOCIATES, INC.
1000 W. UNIVERSITY BLVD., SUITE 100
GAINESVILLE, FLORIDA 32609
TEL: 352-333-1111
FAX: 352-333-1112
WWW.REBOL-BATILE.COM

415 WEST GARDEN STREET
ESCROWA COUNTY, FLORIDA 32609
A PORTION OF
SECTION 43 AND 46, TOWNSHIP 2 SOUTH
RANGE 30 WEST, ESCROWA COUNTY, FLORIDA

DESCRIPTION & SKETCH

RECORDED BY: [Signature]
DATE: [Date]

1 of 1

APPENDIX B

CONCEPTUAL PROJECT PLAN

SPRING ST (GARDEN ST - ROMANA ST)
EXISTING CONDITION



PROPOSED CONCEPT



APPENDIX C

PROJECT COST ESTIMATE

						
5/7/2022						
Conceptual Budget						
Spring Street Right-of-Way						
Garden St to Romana St						
Landscape	Description	Unit	Qty			
	Tree - 4" DBH	ea	60	\$	110,000	
	Shrubs - 1 Gal	ea	880	\$	13,200	
	Shrubs - 3 Gal	ea	1,500	\$	84,000	
	Irrigation	lump	1	\$	40,000	
				\$	197,200	
					Sub-Total	
Civil Site	Description	Unit	Qty			
	Curb-D/ Curb-Ribbon	In ft	2,005	\$	40,100	
	Concrete 4" - Pedestrian	sq ft	3,518	\$	75,000	
	Concrete 6" - Vehicular	sq ft		\$	-	
	Asphalt Patchwork	sq yd	100	\$	5,000	
	Asphalt w/ Base	sq yd	2,761	\$	140,000	
	Subgrade Prep	sq yd	450	\$	15,000	
	Cut to Grade/Haul	cu yd	500	\$	10,000	
	Select Fill Haul/Place/Compact	cu yd	500	\$	20,000	
	Final Grade	lump		\$	15,000	
	Stripe Thermo	In ft	1,100	\$	25,000	
				\$	345,100	
					Sub-Total	
Utilities/ Electrical	Description	Unit	Qty			
	Underground Utility Distribution	lump	1	\$	225,000	
	Overhead Utility Demolition	lump	1	\$	25,000	
	Sewer Services	lump	1	\$	30,000	
	Storm Drainage	lump	1	\$	150,000	
	Curb Inlets/Boxes/Manholes	lump	1	\$	15,000	
				\$	445,000	
					Sub-Total	
Landscape Site	Description	Unit	Qty			
	Paver - Pedestrian	sq ft	5,672	\$	75,000	
	Paver - Vehicular	sq ft	8,405	\$	390,000	
	Signage / Wayfinding	ea	5	\$	20,000	
	Landscape Tree Up-Lighting	ea	120	\$	55,000	
	Planters	ea	19	\$	10,000	
				\$	550,000	
					Sub-Total	
FFE	Description	Unit	Qty			
	Bench - 1	ea	4	\$	10,000	
	Litter Receptacle	ea	4	\$	15,000	
	Bollard Decorative	ea	8	\$	15,000	
	Bike Racks	ea	2	\$	10,000	
				\$	50,000	
					Sub-Total	
Lighting	Description	Unit	Qty			
	Street Light - City Standard	ea	8	\$	220,000	
				\$	220,000	
					Sub-Total	
General	Description	Quantity				
	Permitting	1		\$	15,000	
	Matl Testing (ac)	1		\$	10,000	
	Mobilization & Layout (ac)	1		\$	75,000	
	Clearing & Demo (ac)	1		\$	80,000	
	Traffic Control (ea)	1		\$	50,000	
	Erosion Control (sf)	1		\$	25,000	
				\$	255,000	
					Sub-Total	
				\$	2,062,300	
					Site Sub-Total	
CONTRACTOR CONTINGENCY				15.00%	\$	309,345
				\$	2,371,645	
					PROJECT TOTAL	

APPENDIX D

PROJECT SCHEDULE

Component	Date
Projected grocery, parking deck, and Streetscape Improvements / Project construction start	Summer 2023
Projected sitework complete and vertical start	Winter 2024
Projected condominium tower starts	Spring 2024
Projected grocery, parking deck, and Streetscape Improvements / Project delivery	Winter 2025
Projected clubhouse and first multifamily unit delivery	Spring 2025
Projected condominium construction complete	End of Year 2025
Projected final multifamily unit delivery	Winter 2026
Projected multifamily construction complete	Spring 2026

APPENDIX E

MAINTENANCE RESPONSIBILITY





Memorandum

File #: 23-00293

City Council

5/11/2023

LEGISLATIVE ACTION ITEM

SPONSOR: D.C. Reeves, Mayor

SUBJECT:

FY23 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM: STATE

RECOMMENDATION:

That City Council accept the Edward Byrne Memorial Justice Assistance Grant (JAG), Grant# 15PBJA-21-GG-00241-MUMU for C-8081:IN-CAR RADIOS FOR PPD OFFICERS in the amount of \$50,322.00. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer this grant, consistent with the terms of the grant and the Mayor's Executive Powers as granted in the City Charter. Also, that City Council adopt a supplemental budget resolution appropriating the grant funds.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The Pensacola Police Department (PPD) submitted a grant application to the U.S. Department of Justice, Bureau of Justice Assistance, under the Edward Byrne Memorial Justice Assistance Grant (JAG) Formula (State) to support efforts with purchasing eleven (11) in-car radios.

The Pensacola Police Department (PPD) has several patrol vehicles that do not have in-car radios. This problem has significant potential to develop in serious crisis for officers in the field. These scenarios could possibly place PPD officers and the general public in danger if vital communication is interrupted to the point that assistance could not be summoned.

Grant funding will be used to purchase eleven (11) in-car radios for PPD officers. The radios will provide the necessary communications equipment for PPD officers who are currently patrolling in police vehicles with only hand-held radios. The expected outcome will be an equipment upgrade that will enhance the officer's ability to communicate effectively and professionally while patrolling. This upgrade will also result in an added layer of safety for officers and the public.

Documentation and minimum performance required for drawdown of funds includes the completion of at least one activity described above as attested to on the financial expenditure report. The PPD will be responsible for ensuring the radios are installed. The maintenance and radio repairs/checks will be maintained by the department and will be available to OCJG upon request.

The Pensacola Police Department (PPD) submitted a grant application to the U.S. Department of Justice, Bureau of Justice Assistance, under the Edward Byrne Memorial Justice Assistance Grant (JAG) Formula (State) to support efforts with purchasing eleven (11) in-car radios.

The Pensacola Police Department (PPD) has several patrol vehicles that do not have in-car radios. This problem has significant potential to develop in serious crisis for officers in the field. These scenarios could possibly place PPD officers and the general public in danger if vital communication is interrupted to the point that assistance could not be summoned.

Grant funding will be used to purchase eleven (11) in-car radios for PPD officers. The radios will provide the necessary communications equipment for PPD officers who are currently patrolling in police vehicles with only hand-held radios. The expected outcome will be an equipment upgrade that will enhance the officer's ability to communicate effectively and professionally while patrolling. This upgrade will also result in an added layer of safety for officers and the public.

Documentation and minimum performance required for drawdown of funds includes the completion of at least one activity described above as attested to on the financial expenditure report. The PPD will be responsible for ensuring the radios are installed. The maintenance and radio repairs/checks will be maintained by the department and will be available to OCJG upon request.

The JAG Program blends the previous Byrne Formula and Local Law Enforcement Block Grant (LLEBG) Programs (under Title XI-Department of Justice Reauthorization) to provide agencies with the flexibility to prioritize and place justice funds where they are most needed. The JAG Program provides states, tribes, and local governments funding to support a broad range of activities to prevent and control crime based upon local needs and conditions. Matching funds are not required under the JAG Program.

PRIOR ACTION:

None

FUNDING:

Budget: \$50,322.00

Actual: \$ 4,574.72 (cost per in-car radio)
 X 11

\$50,321.92

FINANCIAL IMPACT:

The estimate grant award for the FY23 Edward Byrne Memorial Justice Assistance (JAG) Program: State is \$50,322.00, based on the 2023 Florida Local JAG Allocations. Projects to be funded from this grant award do not require a local match. Approval of the supplemental budget resolution will

appropriate funding for this grant.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

4/17/2023

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Eric Randall, Chief of Police

ATTACHMENTS:

- 1) Application and Summary of Grant Award C-8C081: IN-CAR RADIOS FOR PPD OFFICERS
- 2) Award Grant No. 15PBJA-21-GG-00241-MUMU
- 3) Supplemental Budget Resolution No. 2023-031
- 4) Supplemental Budget Explanation No. 2023-031

PRESENTATION: No



In-car radios for PPD officers

Prepared by Pensacola Police Department
for Florida Department of Law Enforcement JAG21 - Countywide

Submitted by Cindy West

Submitted on 03/13/2023 11:24 AM Eastern Standard Time

Opportunity Details

Opportunity Information

Title

JAG21 - Countywide

Description

This opportunity is available to select state agencies who receive annual appropriations under Florida's Justice Assistance Grant (JAG) Program.

Awarding Agency Name

U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance

Agency Contact Name

Agency Contact Phone

850-617-1250

Agency Contact Email

criminaljustice@fdle.state.fl.us

Fund Activity Categories

Category Explanation

Departments

Subjects

Opportunity Manager

Krista Sanders

Opportunity Posted Date

7/18/2022

Opportunity Archive Date

Announcement Type

Initial Announcement

Funding Opportunity Number

Agency Opportunity Number

Assistance Listings Number

16.738

Public Link

<https://www.gotomygrants.com/Public/Opportunities/Details/e250c72e-d859-4196-a860-8e8cbd085d88>

Is Published

Yes

Funding Information

Total Program Funding



\$6,595,246.00

Funding Sources

Federal Or Federal Pass Through

Funding Source Description

This funding is available under Florida's FY2021 Justice Assistance Grant award (15PBJA-21-GG-00241-MUMU). Additional information regarding this funding opportunity can be found on the FY2021 JAG - Countywide (JAGC) funding page: <http://www.fdle.state.fl.us/Grants/Documents/Funding-Opportunities/JAGC/FY2021.aspx>

Award Information

Award Period

10/01/2021 - 09/30/2024

Award Type

Non Competitive

Capital Grant

No

Indirect Costs Allowed

Yes

Restrictions on Indirect Costs

Yes

Matching Requirement

No

Submission Information

Submission Window

Opens 07/18/2022 12:00 AM

Submission Timeline Type

One Time

Allow Multiple Applications

Yes

Technical Assistance Session

Technical Assistance Session

No

Eligibility Information

Eligibility Type

Private

Eligible Applicants

- State Governments
- County Governments
- City or township governments
- Native American tribal governments (Federally recognized)



Additional Eligibility Information

Eligible applicants are limited to units of local government. A unit of local government is defined as a city, county, town, township, borough, parish, village, or other general-purpose political subdivision of the state, including Native American Tribes who perform law enforcement functions as determined by the Secretary of the Interior.

Additional Information

Additional Information URL

<https://www.fdle.state.fl.us/Grants/Home.aspx>

Additional Information URL Description

This site contains information regarding the various programs, funding opportunities, and forms managed by the Office of Criminal Justice Grants. Contact information and additional resources can also be found on this site.



Project Information

Application Information

Application Name

In-car radios for PPD officers

Award Requested

\$50,322.00

Total Award Budget

\$50,322.00

Primary Contact Information

Name

Cindy West

Email Address

Cewest@cityofpensacola.com

Address

711 N. Hayne St.
Pensacola, FL 32501

Phone Number

(850) 435-1932

Project Description

JAG Program - Project Overview

Eligible Recipient for JAG Funds

Eligible applicants are limited to units of local government. A unit of local government is defined as a city, county, town, township, borough, parish, village, or other general-purpose political subdivision of the state, including Native American Tribes who perform law enforcement functions as determined by the Secretary of the Interior. The eligible recipient cannot be a police department, sheriff's office, or other division of a unit of local government.

For the purposes of this opportunity, please provide the name of the eligible recipient below:

Eligible Recipient Name:

City of Pensacola

In which county is the Eligible Recipient located?

Escambia

What is the Eligible Recipient's SAM Unique ID number?

UBMRAF87HQF5

What is the Eligible Recipient's FEID or FLAIR account number?

59-6000406

Please select your desired reporting frequency for submitting payment requests AND performance reporting.

- Monthly
 Quarterly

Project Timeline

Desired Start Date of the Project

10/1/2022

Desired End Date of the Project

9/30/2023

Key Activities Timeline

	Estimated Completion Date	Description of Key Activity
QTR 1	12/31/2022	Initiate quotes for desired products/services
QTR 2	3/31/2023	Obtain final quotes and purchase for products/services
QTR 3	6/30/2023	Take delivery of purchase; begin installation/activation of equipment
QTR 4	9/30/2023	Equipment purchase complete; installation/activation complete; grant closeout.
QTR 5 (if applicable)		
QTR 6 (if applicable)		

	Estimated Completion Date	Description of Key Activity
QTR 7 (if applicable)		
QTR 8 (if applicable)		

JAG Program - Project Summary

Problem Identification (PID)

Instructions: The Problem Identification is a key element of any grant application. Responses in this section should describe the problem(s) to be addressed or solved with the funding in a clear, concise manner. Applicants may wish to consider and include relevant data (quantitative or qualitative) to support the issue identified. Applicants are strongly encouraged to use evidence-based practices in solving their identified problems. To search for evidence-based programs and practices, search <https://crimesolutions.ojp.gov/>.

PID1: Describe all hazards, risks, or concerns the funding will address.

At the present time, there are some Pensacola Police officers who do not have in-car police radios. This could result in crisis situations should the battery in their hand-held radios die or if their hand-held radio is lost/damaged/broken during a service call. Those two scenarios would make it virtually impossible for an officer(s) to summon back-up help or assistance.

Because of this shortage, the Pensacola Police Department would like to purchase 11 in-car radios plus the peripheral equipment that goes with them (such as batteries, microphones, holders, etc.). It would also include a three-year essential service warranty which will be included in the purchase price of each radio.

This purchase would enable the department to furnish all officers with in-car radios so that no one must face the uncertainty of an emergency without one.

PID2: Describe why this project is a priority for the agency, county, and/or state.

Purchasing these in-car radios is a priority for the Pensacola Police Department because police radios are the primary means for officers to communicate with the Communications Center and other officers while they are in the field. Without these radios, officers are limited to making phone calls, which are not recorded, and, if they are in a physical altercation, they are unable to summon assistance.

Going from call-to-call each day may leave little time for officers to charge their radios, which means the ones who do not have in-car radios are once again without communication connections.

This is an officer safety issue that needs to be resolved as soon as possible.

PID3: Describe any existing resources or actions being used to address the problem(s). If it is a new problem, please identify how you plan to address the issue.

The Pensacola Police Department is continuing its recruiting process and in so doing, is running short on equipment. One important/valuable piece of equipment is the in-car radios. Until these units can be purchased and installed, officers must rely upon their hand-held radios for communication while out in the field.

Review the program area definitions attached below:

JAG Program Area definitions.pdf

PID4: Select the appropriate program area for this project.

- 01 - Law Enforcement
- 02 - Crime Lab/Forensics
- 03 - Crime Prevention
- 04 - Prosecution
- 05 - Public Defense
- 06 - Courts
- 07 - Corrections
- 08 - Community Corrections
- 09 - Reentry Services
- 10 - Behavioral Health
- 11 - Assessment/Evaluation
- 12 - Crime Victim/Witness

PID5: Describe how the project aligns with the selected program area.

Because the Pensacola Police Department is a law enforcement agency, hand-held and in-car radios are important tools to help officers successfully complete their jobs. Without them it would be like asking someone to take a trip across country without a map or GPS as there would be no direction on what to do, where to go, etc. These radios will improve service delivery and public safety for the City of Pensacola by allowing officers to remain in contact with the department's Communications Center in addition to other officers while working the streets. This communication is vital to service delivery/public safety and for ensuring officer safety.

Federal/State Priorities

Federal priorities are identified in the program solicitation, and Florida's JAG strategic plan can be accessed below:

[JAG Strategic Plan](#)

PID6: Does the project align with a federal priority, or a priority identified in Florida's JAG strategic plan?

- Yes
- No

If yes, state which priority and briefly explain how this project addresses the identified priority.

Law enforcement funding for radio equipment to improve services offered within communities and for officers to communicate with other officers and the communications center.

PID7: Is the proposed project a continuation from the previous year?

- Yes
- No

Scope of Work (SOW)

Instructions: The Scope of Work provides important details on the tasks and activities to be completed under the grant award. Applicants are strongly encouraged to review the [OCJG Grant Writing Guide](#) for more information related to the Scope of Work and project deliverables.

NOTE: Information in this section will be used by OCJG's assigned grant manager to write the contract deliverables to satisfy state contracting requirements identified in [Section 215.971, Florida Statutes](#). It is important to provide clear responses to the questions below.

SOW1: Describe all major tasks and activities to be performed under the award.

Grant funding will be used to purchase the 11 currently needed in-car radios for police officers. This should equip all officers who are currently in police vehicles and will improve their communication abilities. The Pensacola Police Department will be responsible for ensuring the radios are installed. The purchase acquisitions, maintenance and radio repairs/checks will be maintained by the department and will be available to OCJG upon request.

SOW2: Describe the expected outcome as a result of the tasks/activities identified in SOW1.

All 11 radios will be installed in police vehicles as soon as possible once they are purchased.

SOW3: Describe who will benefit from the tasks, activities, and outcomes identified above.

Pensacola Police officers, the department's Communications Center and the public will benefit from these installations because they will allow officers improved and enhanced communications while being dispatched to calls, on calls and



afterward.

SOW4: Describe the entity (or entities) responsible for completing activities under this project.

The Pensacola Police Department will be responsible for using grant funding to purchase and install the equipment.

SOW5: Describe and/or provide the location of where project activities will be performed.

The project activities will be completed in Pensacola, FL.

SOW6: Describe how the performance and completion of EACH identified task/activity will be verified.

The Pensacola Police Department will submit work orders for the radios, and once they are completed, the completed installation reports will be forwarded to the department's fleet manager for verification.

SOW7: Describe what source documentation will be maintained and provided to OCJG for payment requests for EACH activity identified above.

The City of Pensacola will maintain the following documentation for the purchase of items and services, including but not limited to procurement records (including quotes, competitive solicitation/bids, etc.), purchase orders, packing slips, delivery/receivable documents, invoices, and proof of payment. These documents will be handled and maintained by the department's Budget & Planning Specialist.

JAG Program - Certifications & Forms

Required Forms/Certifications for All Applicants

Lobbying, Debarment, and Drug Free Workplace

All applicants are required to complete and submit the [Lobbying, Debarment, and Drug Free Workplace](#) Certification with each application submission.

Upload the completed certification below.

Lobbying Debarment and Drug Free Workplace Certification.pdf

Subrecipient Management Questionnaire

All applicants are required to complete and submit the [Subrecipient Management Questionnaire \(SMQ\)](#) form with their application. This form is used to help evaluate the applicant organization's existing internal controls related to the management of federal grant funds. FDLE will utilize this form as a "risk assessment" to determine the appropriate level of monitoring (desk or onsite) for the subaward.

Upload the completed SMQ form below.

Scanned SMQ in-car radios.pdf

Upload additional attachments to accompany your completed SMQ.

TVS form February 2023.pdf

Equal Employment Opportunity (EEO)

Civil Rights Training (*NEW*)

As a condition of the federal JAG award, FDLE requires applicants (and subrecipients) to complete a two part Civil Rights Training and provide copies of the training certificates upon request. To access the training, please visit our [Civil Rights Training for Grantees](#) webpage. At a minimum, the applicant grant manager must complete the training.

Have you completed the Civil Rights Training for Grantees modules?

- Yes
 No (a condition will be added to award)

Upload copy of Civil Rights Training for Grantees certificates.

Civil Rights training Module 1 certificate.pdf, Civil Rights training Module 2 certificate.pdf

EEO Certification (EEOC)

All applicants are required to submit an EEO Certification (EEOC) annually.

FDLE strongly recommends the use of the OJP Office for Civil Rights, [EEO Reporting Tool](#) to complete this certification, especially for applicants who are required to prepare an EEO Plan (EEOP), or Utilization Report. However, in absence of using the EEO Reporting Tool, you may choose to submit the [PDF certification](#) with your application.

Upload completed EEO Certification below.

EEO Certification 2022.pdf

EEO Plan (EEOP)

Applicants with more than 50 employees who also receive a single award of \$25,000 or more in funding from the U.S. Department of Justice (regardless of if it is passed through FDLE), must complete and submit their EEO Plan (EEOP), also known as a Utilization Report, to OJP's Office for Civil Rights.

This process must be completed using the [EEO Reporting Tool](#). OJP's Office for Civil Rights has published an [assistance tool](#) to assist applicants with this process.

Does your organization have 50 employees or more?

- Yes
- No

Does your organization receive a single award of \$25,000 or more from any U.S. Department of Justice grant program?

- Yes
- No

Has your agency completed an EEO Plan within the past two years?

- Yes
- No (a condition will be added to the award)

Upload your EEO Plan below.

EEO Plan 2022.pdf

EEOP Approval

Applicants with more than 50 employees who also receive a single award \$500,000 or more in funding from the U.S. Department of Justice (regardless of if it is passed through FDLE), must obtain an EEO Plan (EEOP) approval letter from OJP's Office for Civil Rights.

This process must be completed using the [EEO Reporting Tool](#). OJP's Office for Civil Rights has published an [assistance tool](#) to assist applicants with this process.

Does your organization receive a single award of \$500,000 or more from any U.S. Department of Justice grant program?

- Yes
- No

No approval letter required.

Based on your response, you are only required to submit the EEO Certification and Plan above. You may move to the next section.

Project Specific Certifications

Ballistic Vest Certification

Applicants proposing to use grant funds to procure ballistic vests must ensure the vests are American-made, ordered to fit the user, and are compliant with [NIJ Ballistic/Stab Standards](#). In addition, applicants purchasing routine-duty body armor must complete the [Ballistic Vests \(Mandatory Wear\) Certification](#) with their application.

Is this application proposing to use grant funds for ballistic vests?

- Yes
- No

Body Worn Camera Certification

Applicants proposing to use grant funds to procure body worn camera equipment and supplies must complete the [Body Worn Camera Policy Certification](#) with their application.

NOTE: Grant funds can only support licensing, storage, and warranties during the grant period. If these costs extend past the grant period they will be pro-rated from the date of purchase.

Is this application proposing to use grant funds for body cameras?

- Yes
 No

Confidential Funds Certification

Applicants proposing to use their grant to support confidential fund activities must complete the [Confidential Funds Certification](#) with their application. Additionally, applicants must have written policies and procedures to ensure confidential funds are managed in accordance with federal guidelines. Agencies who do not have a written policy may consider formalizing and adopting polices based off of our [example policy](#) provided on our website.

Is the applicant proposing to use the grant to support confidential fund activities?

- Yes
 No

Suitability to Work With Minors

Applicants proposing to use grant funds that involve interacting with minors must make a written determination of each individuals suitability to work with minors. For more information on this requirement, please review our [Suitability to Work with Minors](#) training slides.

In order to facilitate compliance with this requirement, FDLE has two forms that must be completed for any program involving interactions with minors:

- [Suitability to Work and/or Interact with Minors Certification \(SWIMC\)](#)
- [Suitability to Work and/or Interact with Minors Tracking \(SWIMT\)](#)

Is the applicant proposing to use grant funds for activities that directly involve working with or interacting with minors?

- Yes
 No

Telecommunications and Video Surveillance Services and/or Equipment

Applicants proposing to use grant funds to procure telecommunications and/or video surveillance equipment and/or services must complete a [TVS certification](#) with their application. For more information on this requirement, please review the [FAQs](#) and the [training](#) posted to our webpage.

Is the applicant proposing to use grant funds for telecommunications or video surveillance equipment/services?

- Yes
 No

Task Force Activities

Applicants proposing to use funds to support any task force activities (personnel, overtime, equipment, supplies, service agreements, etc.) must provide a task force personnel roster at the time of application. In addition, the applicant is responsible for ensuring all task force members complete the required [BJA Center for Task Force Integrity and Leadership online training](#) once every four years. The completion certificates for

each member on the roster must be provided to OCJG.

Note: For any task force members who have not completed the training or have expired training certificates, a withholding of funds condition will be placed on the award until valid certificates are provided for each member on the task force roster.

Is the applicant proposing to use grant funds to support task force activities?

- Yes
- No

NEPA

Applicants proposing to use funds for "minor renovations", mounting items to the exterior of an existing building/structure (i.e. surveillance cameras), meth lab clean up activities, and some forensic processing requires approval from BJA's National Environmental Policy Act (NEPA) coordinator. Any applicants proposing projects that meet the criteria for NEPA approval are required to complete the [BJA CATEX Checklist form](#) and upload it with their grant.

Note: Applicants should not expend any grant funds until NEPA approval is obtained. If BJA denies the approval, you will not be reimbursed for the NEPA related expenses.

Is the applicant proposing to use grant funds for any NEPA related activities?

- Yes
- No

JAG Pre-Approvals

JAG funds may not be used to pay for any of the following items unless pre-approved by the BJA Director:

1. Vehicles, vessels, and aircraft (excluding police cruisers, police boats, and police helicopters). **Note:** Pick-up trucks require BJA approval;
2. Luxury items;
3. Real estate;
4. Construction projects (other than correctional institutions); and/or
5. UAS/UAV/US systems and equipment.

See [BJA's JAG FAQs](#) for more information on the approval process. OCJG grant managers will review the application and seek more information for any items that may require BJA pre-approval.

JAG Program - Grant Contact Information

Recipient Grant Manager Contact Information

This individual serves as a primary point-of-contact and is responsible for:

- ensuring the project is progressing on time and promptly notifying their FDLE grant manager of any delays;
- overseeing all programmatic and financial reporting; and
- ensuring overall compliance with the grant agreement.

GM Name (First Last)

Jennifer Cole

GM Title

Budget & Planning Specialist

GM Address 1

711 N. Hayne St.

GM Address 2

GM City

Pensacola

GM State

FL

GM Zip Code+4 (XXXXXX-XXXX)

32501

GM Phone Number (XXX-XXX-XXXX)

8504351856

GM Email Address

JCole@cityofpensacola.com

Chief Official Contact Information

This individual is the agency head for the eligible recipient.

The eligible recipient for the JAG program is a state agency or unit of local government. Examples of Chief Officials may include: Chairperson, Mayor, Executive Director, Secretary, Commissioner, etc.

CO Name (First Last)

D.C. Reeves

CO Title

Mayor

CO Address 1

222 W. Main St.

CO Address 2

CO City

Pensacola



CO State

CO Zip Code+4 (XXXXXX-XXXX)

32502-5743

CO Phone Number (XXX-XXX-XXXX)

850-435-1625

CO Email Address

DCReeves@cityofpensacola.com

Will the Chief Official be designating another individual to execute agreements on their behalf?

- Yes
- No

If yes, upload written authorization of signature authority (i.e. letter, ordinance, charter, etc.)

Authority to sign - Kerrith Fiddler.pdf

Chief Financial Officer (CFO) Contact Information

This individual is responsible for the recipient's accounting system, financial management, and certifying claim reports submitted for payment.

CFO Name (First Last)

Amy Lovoy

CFO Title

Finance Director

CFO Address 1

222 W. Main St.

CFO Address 2

CFO City

Pensacola

CFO State

CFO Zip Code+4 (XXXXXX-XXXX)

32502-5743

CFO Phone Number (XXX-XXX-XXXX)

580-435-1821

CFO Email Address

Alovoy@cityofpensacola.com

Additional Grant Contact

Is there an additional grant point-of-contact (POC) you wish to add to the grant file?

- Yes
- No

POC Name (First Last)

Cindy West



POC Title

Accreditation/Grant Compliance Specialist

POC Phone Number (XXX-XXX-XXXX)

8504351932

POC Email Address

Cewest@cityofpensacola.com

JAG Program - Spending Plan

Personnel

This category includes paying costs for salaries and overtime. This section should not include any fringe benefits.

Will you be using funds to support personnel costs?

- Yes
 No

Fringe Benefits

This category includes costs associated with paying the fringe benefits associated with salaries and overtime costs above. This may include: FICA, Medicare, Retirement, Health Insurance, Life Insurance, Worker's Comp, etc.

Travel

This category includes costs associated with travel. NOTE: Registration fees do not go in the Travel Category; they should be reflected in the "Other Cost" category.

Will you be using grant funds to support travel costs?

- Yes
 No

Equipment

This category includes costs for non-consumable items in excess of the organization's capital outlay threshold, or in the absence of an established threshold \$5,000, that has a useful life of more than one year. This may include equipment that does not meet the preceding criteria but is inventoried by the recipient organization.

Will you be using grant funds to purchase equipment?

- Yes
 No

If yes, how much grant funding is being allocated to equipment costs?

\$50,322.00

Briefly describe how each equipment item listed in the budget is necessary for the success of the project.

The radios and peripheral equipment -batteries, microphones, holders, etc., are the basis for this grant request. Without each component, the system would not operate correctly. The three-year service warranty will be included in the purchase price for each radio.

Briefly describe the procurement method that will be used for each type of equipment listed in the budget.

The Pensacola Police Department will purchase radios and peripheral equipment from a sole source vendor it has done business with for more than 20 years, The company is the only one in the local area that provides tower service and repairs as needed to equipment. The purchase price would also include a three-year essential service warranty on each radio; the warranty will be included in the purchase price for each radio.

Does your organization have a written inventory policy/procedure?

- Yes
 No (a condition may be applied to the award)

Upload your organization's inventory policy.

J-8 Issuance and Return of Equipment clean copy with signature June 2022.pdf

Supplies

This category includes costs for small, consumable project supplies. These typically are below the organization's capital outlay threshold, have a useful life of less than a year, and/or are not inventoried on a regular schedule.

Will you be using grant funds to purchase supplies?

- Yes

No

Contractual Services

This category includes third-party agreements with a vendor, provider, consultant, etc. to assist in accomplishing the goals and objectives of the project.

There are two types of contractual relationships recognized under federal awards. For a visual flowchart of the two types and what is required for each, please see our "[Understanding Contractual Services under Federal Awards](#)" resource.

Will you be using funds to support third-party agreements (contractual services)?

Yes

No

Other Costs

This category includes costs that do not fall into any other category. These items may include things such as rental agreements, utilities, subscriptions, training registrations, etc.

Will you be using grant funds to support other costs?

Yes

No

Indirect Costs

Federal recipients may elect to use a portion of funding for indirect costs.

Will you be using grant funds to support indirect costs?

Yes

No

JAG Program - Program Income and Budget Review

Program Income (PGI)

Grant-funded activities may generate revenues for the recipient organization. Examples of program income activities include but are not limited to: asset seizures/forfeitures, registration/tuition fees, interest earned on grant funds, membership fees, court-ordered attorney's fees, and fees/fines for failed drug tests. All program income must be accounted for, reported, and expended in accordance with [Section 3.4 of the DOJ Grants Financial Guide](#).

Will any proposed grant activities generate Program Income?

- Yes
 No

Budget/Procurement Review

Sole Source

The use of noncompetitive procurement methods (i.e. sole source) for grant funded purchases and procurement contracts is strongly discouraged. However, there are three scenarios in which sole source is allowable:

1. The item or service is only available from one source. This does not mean a particular brand name of a product justifies a sole source, it is the item itself. For example, procuring electronic control devices cannot be a sole source because these less-lethal devices are available to purchase from Taser International and various other vendors.
2. A public emergency exists that will result in harmful delays if formal competition is required. This requires official written declaration of the public emergency by an authorized official (i.e. President, Governor, Mayor, etc.). The ability to purchase non-competitively under a declaration of public emergency expires when the written declaration expires.
3. Inadequate competition was noted after soliciting a number of sources. Documentation of the solicitations from each source must be maintained to support the noncompetitive procurement.

Applicants expecting to purchase grant-funded items non-competitively must complete the [OCJG Sole Source Justification Approval](#) form. If the total procurement, regardless of how much is grant funded, exceeds the federal simplified acquisition threshold (currently \$250,000), the OCJG grant manager must coordinate federal sole source approval, which may require additional information.

Are any items in the budget being procured noncompetitively?

- Yes
 No

Upload completed sole source justification form(s). Combine multiple forms into one document for upload.

Sole Source Form.pdf

State-Term or Alternate Source Contracts

Federal procurement regulations allow for grant-funded items to be piggybacked off of other existing contracts with other entities. This is often referred to as alternate source contracting and is often used by OCJG recipients when procuring off of a State-Term Contract. Applicants proposing to use this method of procurement are required to describe and provide the contract number they are using for the alternate source procurement.

Are any items in the budget being procured from an existing Florida State-Term Contract?

- Yes
 No



Are any items in the budget being procured from any other Alternate Source Contract?

- Yes
- No

Budget

Proposed Budget Summary

Expense Budget

	Grant Funded	Total Budgeted
D. Equipment		
In-car radios for PPD officers	\$50,322.00	\$50,322.00
Subtotal	\$50,322.00	\$50,322.00
Total Proposed Cost	\$50,322.00	\$50,322.00

Revenue Budget

	Grant Funded	Total Budgeted
Grant Funding		
Award Requested	\$50,322.00	\$50,322.00
Subtotal	\$50,322.00	\$50,322.00
Total Proposed Revenue	\$50,322.00	\$50,322.00

Proposed Budget Detail

See attached spreadsheet.

Proposed Budget Narrative

D. Equipment

List each NON-EXPENDABLE item to be purchased. Expendable items should be included in the supplies category. Each line item description MUST detail the calculation (unit price and quantity) used to arrive at the funded amount. EXAMPLE: 3 PC/Tablets @ \$1,500 each (including associated peripherals such as case, keyboard, docking station, etc.) = \$4,500.

In-car radios for PPD officers

The cost will be approximately \$4,574.72 each for 11 radios. This includes, for each radio, an enhanced 7/800 MHz mobile, 3-year essential service, wifi provisioning, TDMA operation, remote mount, trunking baud single system, wifi antenna, wifi capability, auxiliary speaker 7.5 watt, APX 02 Ch (gray), APX control head software, standard palm microphone, multikey operation, ADP only (non P25 cap compliant), low profile 3DB antenna, device programming. The 3-year essential service is warranty coverage and is included in the purchase price of each radio.

**State of Florida
Office of Criminal Justice Grants
Florida Department of Law Enforcement
2331 Phillips Road
Tallahassee, FL 32308**

AWARD AGREEMENT

Recipient: City of Pensacola

Recipient SAM UEI: UBMRAF87HQF5

Award Number: 8C081

Award Period: 10/01/2022 – 09/30/2023

Award Title: C-8C081: IN-CAR RADIOS FOR PPD OFFICERS

Federal Funds: \$50,322.00

Matching Funds: \$0.00

CFDA: 16.738

Federal Award Number: 15PBJA-21-GG-00241-MUMU

Federal Program: Edward Byrne Memorial Justice Assistance Grant (JAG)

Federal Awarding Agency: U.S. Department of Justice (USDOJ)

Pass-through Entity: Florida Department of Law Enforcement (FDLE)

Research & Development: No

Indirect Cost: No

An award agreement is entered into by and between the Florida Department of Law Enforcement (herein referred to as "FDLE" or "Department") and the City of Pensacola (herein referred to as "Recipient");

WHEREAS, the Department has the authority pursuant to Florida law and does hereby agree to provide federal financial assistance to the Recipient in accordance with the terms and conditions set forth in the award agreement, and

WHEREAS, the Department has available funds resulting from the federal award listed above, and

WHEREAS, the Recipient and the Department have each affirmed they have read and understood the agreement in its entirety and the Recipient has provided an executed agreement to the Department.

SCHEDULE OF APPENDICES

- Appendix A – Scope of Work
- Appendix B – Deliverables
- Appendix C – Approved Budget
- Appendix D – Award Contacts
- Appendix E – Special Conditions
- Appendix F – Standard Conditions

PERFORMANCE REPORTING

The Recipient shall provide **Quarterly Performance Reports** to the Department attesting to the progress towards deliverables. Performance Reports are due no later than 15 days after the end of each reporting

period. For example: If the monthly reporting period is July 1-31, the Performance Report is due August 15th; if the quarterly reporting period is January 1 – March 31, the Performance Report is due by April 15th.

The Recipient shall respond to the metrics in the electronic grant management system. Information provided by the Recipient will be used by the Department to compile reports on project progress and metrics to the U.S. Department of Justice.

Supporting documentation for performance must be maintained by Recipient and made available upon request for monitoring purposes. Examples of supporting documentation include but are not limited to timesheets, activity reports, meeting notices, delivery documents, public announcements, rosters, presentations, database statistics, etc.

Failure to submit performance reports by the deadline will result in a withholding of funds until performance reports are received.

FINANCIAL REPORTING

The State of Florida's performance and obligation to pay under this agreement is contingent upon an appropriation by the Legislature. The Department will administer and disburse funds under this agreement in accordance with ss. 215.97, 215.971, 215.981 and 215.985, F.S.

This is a cost reimbursement agreement. The Department will reimburse the Recipient for allowable expenditures included in the approved budget (**Appendix B**) incurred during each reporting period. The Recipient shall provide **Quarterly Payment Requests** to the Department attesting to expenditures made during the reporting period. These reports are due no later than 30 days after the end of each reporting period. For example: If the monthly reporting period is July 1-31, the Payment Request is due August 30th; if the quarterly reporting period is January 1 – March 31, the Payment Request is due by April 30th.

Using the electronic grant management system to record expenses, Payment Requests must clearly identify the dates of services, a description of the specific contract deliverables provided during the reporting period, the quantity provided, and the payment amount. All Payment Requests are reviewed and may be audited to the satisfaction of the Department. The Department's determination of acceptable expenditures shall be conclusive.

The final Payment Request shall be submitted to the Department no more than 60 days after the end date of the award. Any payment due under the terms of this agreement may be withheld until performance of services, all reports due are received, and necessary adjustments have been approved by the Department.

The Recipient must maintain original supporting documentation for all funds expended and received under this agreement in sufficient detail for proper pre- and post-audit and to verify work performed was in accordance with the deliverable(s). Payment shall be contingent upon the Department's grant manager receiving and accepting the invoice and the associated supporting documentation. Supporting documentation includes, but is not limited to: quotes, procurement documents, purchase orders, original receipts, invoices, canceled checks or EFT records, bank statements, etc. The state's Chief Financial Officer (CFO) reserves the right to require further documentation on an as needed basis.

Failure to comply with these provisions shall result in forfeiture of reimbursement.

Award Signatures

In witness whereof, the parties affirm they each have read and agree to the conditions set forth in **Appendix C and Appendix D** of this agreement, have read and understand the agreement in its entirety and have executed this agreement by their duly authorized officers on the date, month and year set out below.

Award ID: 8C081
Award Title: C-8C081: IN-CAR RADIOS FOR PPD OFFICERS
Award Period: 10/01/2022 – 09/30/2023

**Florida Department of Law Enforcement
Office of Criminal Justice Grants**

Signature: _____ 
Typed Name and Title: Cody Menacof, Bureau Chief
Date: 3/24/23

**Recipient
City of Pensacola**
Signature: _____ 
Typed Name and Title: D.C. Reeves, Mayor
Date: 3-22-23

*** If using a designee, sign in the "Chief Official Designee" section below. ***

**Chief Official Designee (optional)
City of Pensacola**

Signature: _____
Printed Name and Title: _____
Date: _____

THIS AWARD IS NOT VALID UNTIL SIGNED AND DATED BY ALL REQUIRED PARTIES

Appendix A - Scope of Work

Award Number: 8C081
Recipient: City of Pensacola
Award Title: C-8C081: IN-CAR RADIOS FOR PPD OFFICERS
Award Period: 10/01/2022 - 09/30/2023

Problem Identification

Currently the Pensacola Police Department (PPD) has a number of patrol vehicles that do not have in-car radios. This problem has significant potential to develop into serious crisis for officers in the field. Hand-held radios sometimes have batteries that die, are lost or damaged during a service call. These scenarios could possibly place PPD officers and the general public in danger if vital communication are interrupted to the point that assistance could not be summoned if needed.

Purchasing these in-car radios is a priority for the PPD, these radios are the primary means for officers to communicate with dispatch and other officers in the field. Without them, officers must sometimes resort to using phones that are not as reliable as an in-car radios. This purchase would provide all PPD officers with in-car radios minimizing the potential threat to officers and the public in hazardous scenarios often encountered.

This project aligns with federal and state priorities identified in Florida's JAG strategic plan. The purchase of these radios will vastly improve PPD's ability to deliver more effective services and provide for higher levels of safety for officers and the City of Pensacola alike.

Scope of Work

Grant funding will be used to purchase eleven (11) in-car radios for police officers. The radios will provide the necessary communications equipment for some PPD officers who are currently patrolling in police vehicles with only hand-held radios. The expected outcome will be an equipment upgrade that will enhance the officers ability to communicate effectively and professionally while on patrol. Additionally, this upgrade will also result in an added layer of safety for officers the general public.

Documentation and minimum performance required for drawdown of funds includes the completion of at least one activity described above as attested to on the financial expenditure report. The PPD will be responsible for ensuring the radios are installed. The maintenance and radio repairs/checks will be maintained by the department. and will be available to OCJG upon request.

The following documentation for the purchase of items and services may include quotes, competitive solicitation/bids, purchase orders, packing slips, delivery/receivable documents, invoices and proof of payment. These documents will be available to OCJG upon request.

Appendix B - Deliverables

Award Number: 8C081
Recipient: City of Pensacola
Award Title: C-8C081: IN-CAR RADIOS FOR PPD OFFICERS
Award Period: 10/01/2022 - 09/30/2023

Total payments for all deliverables will not exceed the maximum grant award amount.

Deliverable 1	Recipient will use federal grant funds to procure eleven in-car radios systems.
Minimum Performance Criteria:	Performance will be the procurement and receipt of goods/services purchased.
Financial Consequences:	This is a cost reimbursement deliverable. Only those items purchased and received will be eligible for payment.
Deliverable Price:	Total payments for this deliverable will be approximately \$50,322.00

Appendix C - Approved Budget

Award Number:	8C081		
Recipient:	City of Pensacola		
Award Title:	C-8C081: IN-CAR RADIOS FOR PPD OFFICERS		
Award Period:	10/01/2022-09/30/2023		
Award Amount:	\$50,322.00	\$0.00	\$50,322.00
	Grant Funded	Match	Total

Standard Budget Terms

All items, quantities, and/or prices below are estimates based on the information available at the time of application.

The item(s) listed below may include additional individually priced, operationally necessary accessories, components, and/or peripherals and may be categorized as a "kit", "bundle", "system" etc.

Award funds may be used to pay for any applicable shipping, freight, and/or installation costs.

Award funds will NOT be used to pay for extended warranties, service agreements, contracts, etc., covering any periods that extend beyond the award end date. Funds may be prorated for services within the award period.

Any costs that exceed the award allocation will be the responsibility of the Recipient.

D. Equipment

Item Name	Description	Grant Funded	Match	Total
In-car radios for PPD officers	The cost will be approximately \$4,574.72 each for 11 radios. This includes, for each radio, an enhanced 7/800 MHZ mobile, 3-year essential service, wifi provisioning, TDMA operation, remote mount, trunking baud single system, wifi antenna, wifi capability, auxiliary speaker 7.5 watt, APX 02 Ch (gray), APX control head software, standard palm microphone, multikey operation, ADP only (non P25 cap compliant), low profile 3DB antenna, device programming. The 3-year essential service is warranty coverage and is included in the purchase price of each radio.	\$50,322.00	\$0.00	\$50,322.00

D. Equipment Subtotal: \$50,322.00

Appendix D: Award Contacts

Award Number: 8C081
Recipient: City of Pensacola
Award Title: C-8C081: IN-CAR RADIOS FOR PPD OFFICERS
Award Period: 10/01/2022 - 09/30/2023

Recipient Grant Manager (GM)

Name: Jennifer Cole
Title: Budget & Planning Specialist
Address: 711 N. Hayne St.
Pensacola, FL 32501
Phone: 8504351856
Email: JCole@cityofpensacola.com

Recipient Chief Official (CO)

Name: D.C. Reeves
Title: Mayor
Address: 222 W. Main St.
Pensacola, FL 32502-5743
Phone: 850-435-1625
Email: DCReeves@cityofpensacola.com

Recipient Chief Financial Officer (CFO)

Name: Amy Lovoy
Title: Finance Director
Address:
Pensacola, FL 32502-5743
Phone: 580-435-1821
Email: Alovoy@cityofpensacola.com

Recipient Additional Point of Contact (POC)

Name: Cindy West
Title: Accreditation/Grant Compliance Specialist
Phone: 8504351932
Email: Cewest@cityofpensacola.com

Appendix E: Special Conditions

Award Number: 8C081
Recipient: City of Pensacola
Award Title: C-8C081: IN-CAR RADIOS FOR PPD OFFICERS
Award Period: 10/01/2022 - 09/30/2023

In addition to the attached standard conditions, the above-referenced grant project is subject to the special conditions set forth below.

- S0001 During application review, it was noted the recipient's SAM.gov registration will be expiring within the next 60 days. In order to prevent delays in payment, the recipient should renew their registration in SAM.gov prior to March 31, 2023.
- S0002 The recipient's procurement policy does not appear to comply with all federal procurement requirements outlined in the Office of Management and Budget (OMB) Uniform Requirements, 2 CFR 200.318-320. Please see Subaward Management Questionnaire (SMQ) section VIII. All award procurements must comply with the standards identified in OMB's Uniform Requirements and documentation must be maintained and provided to the Office of Criminal Justice Grants at monitoring.
- S0003 At the time of application submission, the Recipient provided Civil Rights training certificates for an individual other than the individual designated as the "Recipient Grant Manager". In order to avoid potential findings of noncompliance with Standard Award Condition, Section II #14 at award monitoring, the Recipient should ensure the designated Recipient Grant Manager completes both modules of the Civil Rights training and maintains copies of the training certificates within their award files. The training can be accessed at <http://www.fdle.state.fl.us/Grants/Resources/Training/Civil-Rights-Training.aspx>.
- W0004 WITHHOLDING OF FUNDS: This project requests funding for telecommunications and/or video surveillance equipment. Prior to the drawdown of funds for such equipment, the recipient must provide documentation that the manufacturer and vendor are not on the Excluded Parties List in SAM.gov to the Office of Criminal Justice Grants.
- S0005 A risk assessment completed at the time of application review determined this project is HIGH-RISK. Backup documentation supporting all expenditures must accompany each reimbursement request submitted for approval. Documentation may include, but is not limited to: procurement records (including quotes, competitive solicitations/bids, etc.), purchase orders, packing slips, delivery/receivable documents, invoices, proof of payment, timesheets, paystubs, activity logs, client activity logs, participant sign in sheets, billing documentation, travel vouchers etc.
- W0006 WITHHOLDING OF FUNDS: The project period for this award starts 10/01/2022. Prior to the drawdown of funds, the Recipient must submit all required quarterly performance reports due since the start date of the award period.

Appendix F – FY2021 Award Standard Conditions

The Florida Department of Law Enforcement (FDLE), Office of Criminal Justice Grants (OCJG) serves as the State Administering Agency (SAA) for various federal award programs awarded through the U.S. Department of Justice (DOJ), Office of Justice Programs (OJP). FDLE has been assigned as the certified Fiscal Agent for the 2021 Project Safe Neighborhoods awards by the U.S. Attorney. OCJG awards funds to eligible applicants, and requires compliance with the agreement and Standard Conditions upon signed acceptance of the award.

The Department will only reimburse recipients for authorized activities specified in the agreement. Failure to comply with provisions of this agreement, or failure to perform award activities as specified, will result in required corrective action including but not limited to financial consequences, project costs being disallowed, withholding of federal funds and/or termination of the project.

For NCHIP and NARIP Awards

Comprehensive Evaluation - In order to ensure that the National Criminal History Improvement Program (NCHIP) and the NICS Act Record Improvement Program (NARIP) are realizing the objectives in the most productive manner, the recipient agrees to participate in a comprehensive evaluation effort. It is anticipated that the evaluation will take place during the course of the program and will likely involve each participating agency. It is expected that the evaluation will have a minimal impact on an agency's program personnel and resources.

GENERAL REQUIREMENTS

All recipients must comply with the financial and administrative requirements set forth in the following:

Current edition of the U.S. Department of Justice (DOJ) Grants Financial Guide
https://ojp.gov/financialguide/doj/pdfs/DOJ_FinancialGuide.pdf

Office of Management and Budget (OMB) Uniform Grant Guidance (2 CFR Part 200)
Subpart A, Definitions
Subparts B-D, Administrative Requirements
Subpart E, Cost Principles
Subpart F, Audit Requirements and all applicable Appendices

Code of Federal Regulations: www.gpo.gov/fdsys/
2 C.F.R. §175.15(b), Award Term for Trafficking in Persons
28 C.F.R. §38, Equal Treatment for Faith-Based Organizations
28 C.F.R. § 66, U.S. Department of Justice Common Rule for State and Local Governments
28 C.F.R. § 83, Government-Wide Requirements for Drug-Free Workplace
28 C.F.R. §§ 18, 22, 23, 30, 35, 42, 61, and 63

U.S. Code:
Title 34, U.S. Code, Crime Control and Law Enforcement
Title 41, U.S. Code § 4712, Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information
Title 34, U.S. Code, § 10101 et seq., "Omnibus Crime Control and Safe Streets Act of 1968"

State of Florida General Records Schedule GS1-SL for State and Local Government Agencies:
<https://fldoswebumbracoprod.blob.core.windows.net/media/703328/g1-sl-2020.pdf> and
<http://dos.myflorida.com/media/698314/g2-sl-2017-final.pdf>

State of Florida Statutes
Section 112.061, F.S., Per diem/travel expenses of public officers, employees, authorized persons
Chapter 119, F.S., Public Records
Section 215.34(2), F.S., State funds; non-collectible items; procedure
Section 215.97, F.S. Florida Single Audit Act
Section 215.971, F.S., Agreements funded with federal or state assistance
Section 215.985, F.S., Transparency in government spending
Section 216.181(6), F.S., Approved budgets for operations and fixed capital outlay

For NCHIP and NARIP:

FY2021 National Criminal History Improvement Program (NCHIP) guidance
(<https://www.bjs.gov/index.cfm?ty=tp&tid=47>)
(https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/nchip21_sol.pdf)

DEFINITIONS

Award agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304, is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use; and is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. *See also §§200.12 Capital assets, 200.20 Computing devices, 200.48 General purpose equipment, 200.58 Information technology systems, 200.89 Special purpose equipment, and 200.94 Supplies.*

Fiscal Agent refers to the agency responsible for the administration of the PSN award programs. FDLE has been assigned as the certified Fiscal Agent for PSN awards.

Improper payment means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. Improper payment also includes any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation in 48 CFR Subpart 2.1 (Definitions). It is \$10,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.

Modified Total Direct Cost (MTDC) means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each award (regardless of the period of performance of the awards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each award in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

Non-Federal entity is a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Non-federal pass-through entity is a non-Federal entity that provides an award to a recipient to carry out part of a Federal program; the Florida Department of Law Enforcement (FDLE) is the non-federal pass-through entity for this agreement, also referred to as the State Administering Agency (SAA).

Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

Period of performance means the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award. The Federal awarding agency or pass-through entity must include start and

end dates of the period of performance in the Federal award (see §§200.211 Information contained in a Federal award paragraph (b)(5) and 200.332 Requirements for pass-through entities, paragraph (a)(1)(iv)).

Protected Personally Identifiable Information (PII) means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to social security numbers; passport numbers; credit card numbers; clearances; bank numbers; biometrics; date and place of birth; mother's maiden name; criminal, medical, and financial records; and educational transcripts. This does not include PII that is required by law to be disclosed. (See also § 200.79 Personally Identifiable Information (PII)).

Questioned cost means a cost that is questioned by the auditor because of an audit finding 1) that resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds; 2) where the costs, at the time of the audit, are not supported by adequate documentation; or 3) where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. § 1908. As of the publication of this part, the simplified acquisition threshold is \$250,000, but this threshold is periodically adjusted for inflation. (Also see definition of Micro-purchase, 2 C.F.R. § 200.67).

Subaward is an award provided by a pass-through entity to a recipient for the recipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual who is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Recipient means a non-Federal entity that receives an award from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program.

Supplies means all tangible personal property other than those described in §200.33 Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. See also §§200.20 Computing devices and 200.33 Equipment.

For PSN: Task Forces are established by each USAO to collaborate with a PSN team of federal, state, local, and tribal (where applicable) law enforcement and other community members to implement a strategic plan for investigating, prosecuting, and preventing violent crime.

SECTION I: TERMS AND CONDITIONS

1.0 Payment Contingent on Appropriation and Available Funds - The State of Florida's obligation to pay under this agreement is contingent upon an annual appropriation by the Florida Legislature. Furthermore, the obligation of the State of Florida to reimburse recipients for incurred costs is subject to available federal funds.

2.0 Commencement of Project - If a project is not operational within 60 days of the original start date of the award period or the date of award activation (whichever is later), the recipient must report by letter to the Department the steps taken to initiate the project, the reasons for delay, and the expected start date.

If a project is not operational within 90 days of the original start date of the award period or the date of award activation (whichever is later), the recipient must submit a second statement to the Department explaining the implementation delay.

Upon receipt of the ninety (90) day letter, the Department shall determine if the reason for delay is justified or shall, at its discretion, unilaterally terminate this agreement and re-obligate award funds to other Department approved projects. The Department, where warranted by extenuating circumstances, may extend the starting date of the project past the ninety (90) day period, but only by formal written adjustment to this agreement.

3.0 Supplanting - The recipient agrees that funds received under this award will not be used to supplant state or local funds, but will be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for award activities.

4.0 Non-Procurement, Debarment and Suspension - The recipient agrees to comply with Executive Order 12549, Debarment and Suspension and 2 C.F.R. § 180, "OMB Guidelines To Agencies On Governmentwide Debarment And Suspension (Non-procurement)". These procedures require the recipient to certify it shall not enter into any lower tiered covered transaction with a person who is debarred, suspended, declared ineligible or is voluntarily excluded from participating in this covered transaction, unless authorized by the Department. If the award is \$100,000 or more, the sub recipient and implementing agency certify that they and their principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal department or agency;
- 2) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (a)(ii) of the "Lobbying, Debarment and Drug Free Workplace" certification; and
- 4) Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.

5.0 Federal Restrictions on Lobbying - In general, as a matter of federal law, federal funds may not be used by any recipient or subrecipient at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. § 1913.

Another federal law generally prohibits federal funds from being used by any recipient or subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal award or cooperative agreement, subaward, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. § 1352.

7.0 State Restrictions on Lobbying - In addition to the provisions contained above, the expenditure of funds for the purpose of lobbying the legislature or a state agency is prohibited under this agreement.

8.0 Additional Restrictions on Lobbying - The recipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of the Office of Justice Programs.

9.0 "Pay-to-Stay" - Funds from this award may not be used to operate a "pay-to-stay" program in any local jail. Furthermore, no funds may be given to local jails that operate "pay-to-stay" programs. "Local jail", as referenced in this condition, means an adult facility or detention center owned and/or operated by city, county, or municipality. It does not include juvenile detention centers. "Pay-to-stay" programs as referenced in this condition, means a program by which extraordinary services, amenities and/or accommodations, not otherwise available to the general inmate population, may be provided, based upon an offender's apparent ability to pay, such that disparate conditions of confinement are created for the same or similar offenders within a jurisdiction.

10.0 The Coastal Barrier Resources Act - The recipient will comply and assure the compliance of all contractors with the provisions of the Coastal Barrier Resources Act (P.L. No. 97-348) dated October 18, 1982 (16 USC 3501 et seq.) which prohibits the expenditure of most new federal funds within the units of the Coastal Barrier Resources System.

11.0 Background Check - Whenever a background screening for employment or a background security check is required by law for employment, unless otherwise provided by law, the provisions of § 435, F.S. shall apply.

All employees in positions designated by law as positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment. For the purposes of the subsection, security background investigations shall include, but not be limited to, employment history checks, fingerprinting for all purposes and checks in this subsection, statewide criminal and juvenile records

checks through the Florida Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.

Such background investigations shall be conducted at the expense of the employing agency or employee.

- 12.0 Confidentiality of Data** - The recipient (or subrecipient at any tier) must comply with all confidentiality requirements of 34 U.S.C. § 10231 and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. The recipient further agrees, as a condition of award approval, to submit a Privacy Certificate in accordance with the requirements of 28 C.F.R. Part 22 and, in particular, 28 C.F.R. 22.23. Privacy Certification forms must be signed by the recipient chief official or an individual with formal, written signature authority for the chief official.
- 13.0 Conferences and Inspection of Work** - Conferences may be held at the request of any party to this agreement. At any time, a representative of the Department, of the U.S. Department of Justice, or the Auditor General of the State of Florida, have the right of visiting the project site to monitor, inspect and assess work performed under this agreement.
- 14.0 Insurance for Real Property and Equipment** - The recipient must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity.
- 15.0 Flood Disaster Protection Act** - The sub recipient will comply with Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, requiring that the purchase of flood insurance in communities where such insurance is available as a condition of the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified as an area having special flood hazards.
- 16.0 General Appropriations Restrictions** – The recipient must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes as set forth in the Consolidated Appropriations Act, 2018.
- 17.0 Immigration and Nationality Act** - No public funds will intentionally be awarded to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324(a), Section 274(A) of the Immigration and Nationality Act ("INA"). The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274(A) of the INA. Such violation by the recipient of the employment provisions contained in Section 274(A) of the INA shall be grounds for unilateral cancellation of this contract by the Department.
- 18.0 For NCHIP & NARIP: Enhancement of Security** - If funds are used for enhancing security, the recipient must:
- 1) Have an adequate process to assess the impact of any enhancement of a school security measure that is undertaken on the incidence of crime in the geographic area where the enhancement is undertaken.
 - 2) Conduct such an assessment with respect to each such enhancement; and submit to the Department the aforementioned assessment in its Final Program Report.
- 19.0 Personally Identifiable Information Breaches** – The recipient (or subrecipient at any tier) must have written procedures in place to respond in the event of actual or imminent "breach" (OMB M-17-12) if it: 1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "personally identifiable information (PII)" within the scope of an OJP award-funded program or activity, or 2) uses or operates a "federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to FDLE's Office of Criminal Justice Grants for subsequent reporting to the OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

SECTION II: CIVIL RIGHTS REQUIREMENTS

- 1.0 Participant Notification of Non-discrimination** FDLE does not discriminate on the basis of race, color, religion, national origin, sex, disability or age in the delivery of services, benefits or in employment.

- 2.0 Title VI of the Civil Rights Act of 1964** - The recipient or subrecipient at any tier, must comply with all applicable requirements of 28 CFR § 42, specifically including any applicable requirements in Subpart E that relate to an equal employment opportunity program.

Equal Employment Opportunity Certification (EEOC) – The recipient must submit an EEO Certification annually within 120 days of award.

Equal Employment Opportunity Program (EEOP) – The recipient and/or implementing agency must comply with all applicable requirements in 28 C.F.R. §42, Subpart E.

Recipients are advised to use the Office for Civil Rights EEO Reporting Tool to satisfy this condition (<https://ojp.gov/about/ocr/eeop.htm>).

- 3.0 Title IX of the Education Amendments of 1972** If the recipient operates an education program or activity, the recipient must comply with all applicable requirements of 28 C.F.R. § 54, "Nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance."
- 4.0 Partnerships with Faith-Based and other Neighborhood Organizations** The recipient or subrecipient at any tier, must comply with all applicable requirements of 28 C.F.R. § 38, "Partnerships with Faith-Based and other Neighborhood Organizations", specifically including the provision for written notice to current or prospective program beneficiaries.
- 5.0 Americans with Disabilities Act** - Recipients must comply with the requirements of the Americans with Disabilities Act (ADA), Public Law 101-336, which prohibits discrimination on the basis of disability including provision to provide reasonable accommodations.
- 6.0 Section 504 of the Rehabilitation Act of 1973 (28 C.F.R. § 42, Subpart G)** - Recipients must comply with all provisions prohibiting discrimination on the basis of disability in both employment and the delivery of services.
- 7.0 Age Discrimination Act of 1975** - Recipients must comply with all requirements in Subpart I of 28 C.F.R. §42 which prohibits discrimination based on age in federally assisted programs.
- 8.0 Limited English Proficiency (LEP)** - In accordance with Department of Justice Guidance pertaining to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, recipients of federal financial assistance must take reasonable steps to provide meaningful access to their programs and activities for persons with LEP. FDLE strongly advises recipients to have a written LEP Language Access Plan. For more information visit www.lep.gov.
- 9.0 Finding of Discrimination** - In the event a federal or state court or federal or state administrative agency makes, after a due process hearing, a finding of discrimination on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to FDLE and to the Office for Civil Rights, Office of Justice Programs.
- 10.0 Filing a Complaint** - If the recipient or any of its employees, contractors, vendors, or program beneficiaries has a discrimination complaint, they may file a complaint with the recipient, with FDLE, or with the Office for Civil Rights.

Discrimination complaints may be submitted to FDLE at Office of the Inspector General, Post Office Box 1489, Tallahassee, Florida 32302-1489, or online at info@fdle.state.fl.us. Any discrimination complaints filed with FDLE will be reviewed by FDLE's Inspector General and referred to the Office for Civil Rights, the Florida Commission on Human Relations, or the Equal Employment Opportunity Commission, based on the nature of the complaint.

Discrimination complaints may also be submitted to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, Northwest, Washington, D.C. 20531, or by phone at (202) 307-0690.

For additional information on procedures for filing discrimination complaints, please visit <https://www.fdle.state.fl.us/Grants/Contacts>.

- 11.0 Retaliation** - In accordance with federal civil rights laws, the recipient shall not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.

- 12.0 Non-discrimination Contract Requirements** - Recipients must include comprehensive Civil Rights nondiscrimination provisions in all contracts funded by the recipient.
- 13.0 Pass-through Requirements** - Recipients are responsible for the compliance of contractors and other entities to whom they pass-through funds including compliance with all Civil Rights requirements. These additional tier subrecipients must be made aware that they may file a discrimination complaint with the recipient, with FDLE, or with the USDOJ Office for Civil Rights and provided the contact information.
- 14.0 Civil Rights Training Requirements** – In accordance with Office of Justice Programs (OJP) requirements, the grant manager of the recipient entity responsible for managing awards from FDLE Office of Criminal Justice Grants, will be required to complete a two part Civil Rights Training and maintain copies of the training certificates within their award files to be provided upon request at monitoring.

SECTION III: FINANCIAL REQUIREMENTS AND RESPONSIBILITY

- 1.0 Fiscal Control and Fund Accounting Procedures** - All expenditures and cost accounting of funds shall conform to the DOJ Grants Financial Guide, the 28 C.F.R. § 66, and 2 C.F.R. § 200 as applicable, in their entirety.

Recipients are required to establish and maintain adequate accounting systems and financial records and to accurately account for funds awarded to them. Financial management systems must be able to record and report on the receipt, obligation, and expenditure of award funds. Systems must also be able to accommodate a fund and account structure to separately track receipts, expenditures, assets, and liabilities for awards, programs, and additional tiered subrecipients. The awarded funds may or may not be an interest-bearing account, but any earned interest must be accounted for as program income and used for program purposes before the federal award period end date. Any unexpended interest remaining at the end of the federal award period must be refunded to the Office of Criminal Justice Grants for transmittal to DOJ.

- 2.0 Match** - The value or amount of any "non-federal share," "match," or cost-sharing contribution incorporated into the approved budget is part of the "project cost" for purposes of the 2 C.F.R. § 200 Uniform Requirements, and is subject to audit. In general, the rules and restrictions that apply to award funds from federal sources also apply to funds in the approved budget that are provided as "match" or through "cost sharing."

SECTION IV: AWARD MANAGEMENT AND REPORTING REQUIREMENTS

- 1.0 Obligation of Funds** - Award funds shall not be obligated prior to the start date, or subsequent to the end date, of the award. Only project costs incurred on or after the effective date, and on or prior to the termination date of the recipient's project are eligible for reimbursement.
- 2.0 Use of Funds** – Federal funds may only be used for the purposes in the recipient's approved award agreement.
- 3.0 Advance Funding** - Advance funding may be provided to a recipient upon a written request to the Department.
- 4.0 Performance Reporting** - The recipient shall submit Monthly or Quarterly Project performance achievements and performance questionnaires to the Department, within fifteen (15) days after the end of the reporting period. Performance reporting must clearly articulate the activities that occurred within the reporting period, including descriptions of major accomplishments, milestones achieved, and/or barriers or delays encountered. Additional information may be required if necessary to comply with federal reporting requirements. Performance achievements and performance questionnaires that are not complete, accurate, and timely may result in sanctions, as specified in Section IV, Award Management and Reporting Requirements.
- 5.0 Financial Consequences for Failure to Perform** - In accordance with Section 215.971, Florida Statutes, payments for state and federal financial assistance must be directly related to the scope of work and meet the minimum level of performance for successful completion. If the recipient fails to meet the minimum level of service or performance identified in this agreement, the Department will apply financial consequences commensurate with the deficiency. Financial consequences may include but are not limited to withholding payments or reimbursement until the deficiency is resolved, tendering only partial payment/reimbursement, imposition of other financial consequences according to the Standard Conditions as applicable, and/or termination of contract and requisition of goods or services from an alternate source. Any payment made in reliance on recipient's evidence of performance, which evidence is subsequently determined to be erroneous, will be immediately due to the Department as a refund.

6.0 Award Amendments - Recipients must submit an award amendment through the electronic grant management system for major substantive changes such as changes in project activities or scope of the project, target populations, service providers, implementation schedules, and designs or research plans set forth in the approved agreement and for any budget changes that affect a cost category that was not included in the original budget. Amendments are also required when there will be a transfer of 10% or more of the total budget between budget categories, or there is an indirect cost rate category change.

Recipients may transfer up to 10% of the total budget between current, approved budget categories without prior approval as long as the funds are transferred to an existing line item.

Under no circumstances can transfers of funds increase the total budgeted award.

Retroactive (after-the-fact) approval of project adjustments or items not currently in the approved award will only be considered under extenuating circumstances. Recipients who incur costs prior to approval of requested adjustments do so at the risk of the items being ineligible for reimbursement under the award.

All requests for changes, including requests for project period extensions, must be submitted in the electronic grant management system no later than thirty (30) days prior to award expiration date.

7.0 Financial Expenditures and Reporting - The recipient shall close the expense reporting period either on a Monthly or Quarterly basis. For any reporting period the recipient is seeking reimbursement, a payment request must also be submitted in the grant management system. Closing of the reporting period and Payment Requests are due thirty (30) days after the end of the reporting period with the exception of the final reporting period.

All project expenditures for reimbursement of recipient costs shall be submitted on the Project Expenditure Report Forms prescribed and provided by the Office of Criminal Justice Grants (OCJG) through the electronic grant management system.

All Project Expenditure Reports shall be submitted in sufficient detail for proper pre-audit and post-audit.

All reports must relate financial data to performance accomplishments.

An expenditure report is not required when no reimbursement is being requested; however, recipients should close the associated reporting period in the electronic grant management system.

Before the "final" Payment Request will be processed, the recipient must submit to the Department all outstanding Performance Achievements and must have satisfied all withholding, special, and monitoring conditions. Failure to comply with the above provisions shall result in forfeiture of reimbursement.

8.0 Program Income (PGI) - All income generated as a direct result of award activities shall be deemed program income. Program income from asset seizures and forfeitures is considered earned when the property has been adjudicated to the benefit of the plaintiff (i.e., law enforcement entity).

The recipient shall submit a PGI Earnings and Expenditures form in the electronic grant management system as soon as PGI is earned or expended. Prior to expending funds, the recipient shall submit a PGI Spending Request form for OCJG approval. All PGI expenditures must directly relate to the project being funded and must be allowable under the federal award.

Any PGI remaining unspent after the end of the federal award period must be refunded to OCJG for transmittal to the Bureau of Justice Assistance.

9.0 Recipient Integrity and Performance Matters - Requirement to report information on certain civil, criminal, and administrative proceedings to OCJG, SAM and FAPIIS.

The recipient must comply with any and all applicable requirements regarding reporting of information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either this award or any other grant, cooperative agreement, or procurement contract from the federal government. Under certain circumstances, recipients of OJP awards are required to report information about such proceedings, through the federal System for Award Management ("SAM"), to the designated federal integrity and performance system ("FAPIIS").

SECTION V: MONITORING AND AUDITS

- 1.0 Access to Records** - The Florida Department of Law Enforcement, the Auditor General of the State of Florida, the U.S. Department of Justice, the U.S. Comptroller General or any of their duly authorized representatives, shall have access to books, documents, papers and records of the recipient and contractors for the purpose of audit and examination according to the Financial Guide and the 28 C.F.R. § 66. At any time, a representative of the Department, the U.S. Department of Justice, or the Auditor General of the State of Florida, have the right to visit the project site to monitor, inspect and assess work performed under this agreement.

The Department reserves the right to unilaterally terminate this agreement if the recipient or contractor refuses to allow public access to all documents, papers, letters, or other materials subject to provisions of s. 119, F.S., unless specifically exempted and/or made confidential by operation of s. 119, F.S., and made or received by the recipient or its contractor in conjunction with this agreement.

The recipient will give the awarding agency or the General Accounting Office, through any authorized representative, access to and the right to examine all paper or electronic records related to the financial assistance.

- 2.0 Monitoring** - The recipient agrees to comply with FDLE's award monitoring guidelines, protocols, and procedures; and to cooperate with FDLE on all award monitoring requests, including requests related to desk reviews, enhanced programmatic desk reviews, and/or site visits. The recipient agrees to provide FDLE all documentation necessary to complete monitoring of the award. Further, the recipient agrees to abide by reasonable deadlines set by FDLE for providing requested documents. Failure to cooperate with award monitoring activities may result in sanctions affecting the recipient's award, including, but not limited to: withholding and/or other restrictions on the recipient's access to funds, referral to the Office of the Inspector General for audit review, designation of the recipient as a FDLE High Risk grantee, or termination of award(s).
- 3.0 Property Management** - The recipient shall establish and administer a system to protect, preserve, use, maintain and dispose of any property furnished to it by the Department or purchased pursuant to this agreement according to federal property management standards set forth in the DOJ Grants Financial Guide, 28 C.F.R. § 66, 2 C.F.R. §200.313. This obligation continues as long as the recipient retains the property, notwithstanding expiration of this agreement.
- 4.0 Award Closeout** - Award Closeout will be initiated by the Department after the final payment request has been processed. The final payment request must be submitted within sixty (60) days of the end date of the award. All performance achievements and performance questionnaires must be completed before the award can be closed.
- 5.0 High Risk Recipients** - If a recipient is designated "high risk" by a federal award-making agency, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to FDLE's OCJG. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.
- 6.0 Imposition of Additional Requirements** - The recipient agrees to comply with any additional requirements that may be imposed by OCJG during the period of performance for this award if the recipient is designated as "high risk" for purposes of the DOJ high-risk list.
- 7.0 Retention of Records** - The recipient shall maintain all records and documents for a minimum of five (5) years from the date of the final financial statement and be available for audit and public disclosure upon request of duly authorized persons. The recipient shall comply with State of Florida General Records Schedule GS1-SL for State and Local Government Agencies:
<https://fldoswebumbracoprod.blob.core.windows.net/media/703328/g1-sl-2020.pdf>.
- 8.0 Disputes and Appeals** - The Department shall make its decision in writing when responding to any disputes, disagreements, or questions of fact arising under this agreement and shall distribute its response to all concerned parties. The recipient shall proceed diligently with the performance of this agreement according to the Department's decision. If the recipient appeals the Department's decision, the appeal also shall be made in writing within twenty-one (21) calendar days to the Department's clerk (agency clerk). The recipient's right to

appeal the Department's decision is contained in § 120, F.S., and in procedures set forth in Rule 28-106.104, Florida Administrative Code. Failure to appeal within this time frame constitutes a waiver of proceedings under Chapter 120, F.S.

- 9.0 Failure to Address Audit Issues** - The recipient understands and agrees that FDLE's OCJG may withhold award funds, or may impose award conditions or other related requirements, if (as determined by OCJG) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the 2 C.F.R. § 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews.
- 10.0 Single Annual Audit** - Recipients that expend \$750,000 or more in a year in total federal award funding shall have a single audit or program-specific audit conducted for that year. The audit shall be performed in accordance with the OMB 2 C.F.R. § 200 Subpart F – Audit Requirements and other applicable federal law. The contract for this agreement shall be identified in the Schedule of Federal Financial Assistance in the subject audit. The contract shall be identified as federal funds passed through the Florida Department of Law Enforcement and include the contract number, CFDA number, award amount, contract period, funds received and disbursed. When applicable, the recipient shall submit an annual financial audit that meets the requirements of 2 C.F.R. § 200 Subpart F, "Audit Requirements" s. 215.97, F.S., "Florida Single Audit Act" and Rules of the Auditor General, Chapter 10.550, and Chapter 10.650, "Local Governmental Entity Audits" and "Florida Single Audit Act Audits Nonprofit and For-Profit Organizations."

A complete audit report that covers any portion of the effective dates of this agreement must be performed and submitted to the Federal Audit Clearinghouse within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Submissions must include required elements described in Appendix X to 2 C.F.R. § 200 on the specified Data Collection Form (Form SF-SAC).

Records shall be made available upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by the Department.

Recipients that expend less than \$750,000 in federal awards during a fiscal year are exempt from the Single Audit Act audit requirements for that fiscal year. In this case, written notification, in the form of the "Certification of Audit Exemption" form, shall be provided to the Department by the Chief Financial Officer, or designee, that the recipient is exempt. This notice shall be provided to the Department no later than March 1 following the end of the fiscal year.

SECTION VI: AWARD PROCUREMENT AND COST PRINCIPLES

- 1.0 Procurement Procedures** - Recipients must have written procedures for procurement transactions. Procedures must conform to applicable Federal law and the standards in 2 C.F.R. §§ 200.318-326.

This condition applies to agreements that OCJG considers to be a procurement "contract", and not a second-tier award.

The details of the advance approval requirement to use a noncompetitive approach in a procurement contract under this award are posed on the OJP website at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm>.

Additional information on Federal purchasing guidelines can be found in the Guide to Procurements Under DOJ Grants and Cooperative agreements at <https://ojp.gov/funding/Implement/Resources/GuideToProcurementProcedures.pdf>.

- 2.0 Cost Analysis** - A cost analysis must be performed by the recipient if the cost or price is at or above the \$35,000 acquisition threshold and the contract was awarded non-competitively in accordance with s. 216.3475, F.S. The recipient must maintain records to support the cost analysis, which includes a detailed budget, documented review of individual cost elements for allowability, reasonableness, and necessity. See also: [Reference Guide for State Expenditures](#).
- 3.0 Allowable Costs** - Allowance for costs incurred under the award shall be determined according to the general principles and standards for selected cost items set forth in the DOJ Grants Financial Guide, 28 C.F.R. § 66, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local

Governments”, and 2 CFR Subpart E, “Cost Principles”.

- 4.0 **Unallowable Costs** - Payments made for costs determined to be unallowable by either the Federal awarding agency, or the Department, either as direct or indirect costs, must be refunded (including interest) to FDLE and the Federal Government in accordance with instructions that determined the costs are unallowable unless state or Federal statute or regulation directs otherwise. See also 2 C.F.R. §§ 200.300-309.
- 5.0 **Indirect Cost Rate** - A recipient that is eligible to use the "de minimis" indirect cost rate described in 2 C.F.R. § 200.414(f), and elects to do so, must advise OCJG in writing of both its eligibility and its election, and must comply with all associated requirements in the 2 C.F.R. § 200 and Appendix VII.
- 6.0 **Sole Source** - If the project requires a non-competitive purchase from a sole source, the recipient must complete the Sole Source Justification for Services and Equipment Form and submit to OCJG upon application for pre-approval. If the recipient is a state agency and the cost meets or exceeds \$250,000, the recipient must also receive approval from the Florida Department of Management Services (DMS) (s. 287.057(5), F.S.). Additional details on the sole source requirement can be found at 2 C.F.R. § 200 and the DOJ Grants Financial Guide.
- 7.0 **Personal Services** - Recipients may use award funds for eligible personal services including salaries, wages, and fringe benefits, including overtime in accordance with the DOJ Grants Financial Guide Section 3.9 - Compensation for Personal Services, consistent with the principles set out in 2 C.F.R. § 200, Subpart E and those permitted in the federal program’s authorizing legislation. Recipient employees should be compensated with overtime payments for work performed in excess of the established work week and in accordance with the recipient’s written compensation and pay plan.

Documentation - Charges for salaries, wages, and fringe benefits must be supported by a system of internal controls providing reasonable assurance that charges are accurate, allowable, and properly allocated. Documentation supporting charges must be incorporated into the official records of the organization.

Charges made to the Personnel Budget Category must reasonably reflect the total time and activity for which the employee is compensated by the organization and cover both federally funded and all other activities. The records may include the use of subsidiary records as defined in the organization’s written policies. Where award recipients work on multiple award programs or cost activities, documentation must support a reasonable allocation or distribution of costs among specific activities or cost objectives.

- 8.0 **Contractual Services** - The recipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts as described in 2 C.F.R. § 200.318, General procurement.

Requirements for Contractors of Recipients - The recipient assures the compliance of all contractors with the applicable provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended 34 U.S.C. § 10101 et seq.; the provisions of the current edition of the DOJ Grants Financial Guide (https://ojp.gov/financialguide/doj/pdfs/DOJ_FinancialGuide.pdf); and all other applicable federal and state laws, orders, circulars, or regulations. The recipient must pass-through all requirements and conditions applicable to the federal award to any subcontract. The term “contractor” is used rather than the term “vendor” and means an entity that receives a contract as defined in 2 C.F.R. § 200.22, the nature of the contractual relationship determines the type of agreement.

Approval of Consultant Contracts Compensation for individual consultant services must be reasonable and consistent with that paid for similar services in the marketplace. The Federal awarding agency and pass-through entity must review and approve in writing all consultant contracts prior to employment of a consultant when the individual compensation rate exceeds \$650 (excluding travel and subsistence costs) per eight-hour day, or \$81.25 per hour. A detailed justification must be submitted to and approved by FDLE, who will coordinate written approval of the Federal awarding agency, prior to recipient obligation or expenditures of such funds. Approval shall be based upon the contract’s compliance with requirements found in the Financial Guide Section 3.6 Consultant Rates, 28 C.F.R. § 66, and applicable state statutes. The Department’s approval of the recipient agreement does not constitute approval of individual consultant contracts or rates. If consultants are hired through a competitive bidding process (not sole source), the \$650 threshold does not apply.

FFATA Reporting Requirements - Recipients that enter into awards of \$30,000 or more should review the Federal Funding Accountability and Transparency Act of 2006 (FFATA), website for additional reporting requirements at <https://ojp.gov/funding/Explore/FFATA.htm>.

- 9.0 Travel and Training** - The cost of all travel shall be reimbursed according to the recipient's written travel policy. If the recipient does not have a written travel policy, cost of all travel will be reimbursed according to State of Florida Travel Guidelines § 112.061, F.S. Any foreign travel must obtain prior written approval from the Federal awarding agency and pass-through entity.
- 10.0 Expenses Related to Conferences, Meetings, Trainings, and Other Events** - Award funds requested for meetings, retreats, seminars, symposia, events, and group training activities and related expenses must receive written pre-approval from the Federal awarding agency and pass-through entity and comply with all provisions in 2 C.F.R. § 200.432 and DOJ Grants Financial Guide Section 3.10; Conference Approval, Planning, and Reporting. Award applications requesting approval for meeting, training, conference, or other event costs must include a completed Conference & Events Submission Form for approval prior to obligating award funds for these purposes.
- 11.0 Training and Training Materials** – Any training or training materials that has been developed or delivered with award funding under this award must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at www.ojp.gov/funding/ojptrainingguidingprinciples.htm.
- 12.0 Publications, Media and Patents Ownership of Data and Creative Material** - Ownership of material, discoveries, inventions, and results developed, produced, or discovered subordinate to this agreement is governed by the terms of the DOJ Grants Financial Guide, 28 C.F.R. §§ 66, and 200.315.

Publication or Printing of Materials - Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular direct cost objective, it should be allocated as indirect costs. Publication includes writing, editing, and preparing the illustrated material (including videos and electronic mediums).

Recipients must request pre-approval in writing for page charges for professional journal publications. All publication materials must comply with provisions in 2 C.F.R. § 200.461 and DOJ Grants Financial Guide, Section 3.9; Allowable Costs – Publication.

Recipients must submit for review and approval one (1) copy of any written materials to be published, including web-based materials and website content, to be paid under this award at least thirty (30) days prior to the targeted dissemination date.

All electronic and print materials paid under this award must contain the following statements identifying the federal award:

"This project was supported by Award No. [Federal Award Number] awarded by the [Bureau of Justice Assistance/Bureau of Justice Statistics], Office of Justice programs. The opinions, findings, and conclusions or recommendations expressed in this publication/program/exhibition are those of the authors and do not necessarily reflect the views of the Department of Justice or grant-making component."

Any website funded in whole or in part under this award must include the same statement on the home page, on all major entry pages (i.e., pages (exclusive of documents) whose primary purpose is to navigate the user to interior content), and on any pages from which a visitor may access or use a web-based service, including any pages that provide results or outputs from the service.

Patents - Recipients are subject to applicable regulations governing patents and inventions, including government wide regulations issued by the Department of Commerce (37 C.F.R. § 401 and 2 C.F.R. § 200.315(c)).

Recipients must promptly and fully report to FDLE and the Federal awarding agency if any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored under this award.

- 13.0 For NCHIP & NICS: Purchase of Automated Fingerprint Identification System (AFIS)** - AFIS equipment purchased under this award must conform to the American National Standards Institute (ANSI) Standard, "Data Format for the Interchange of Fingerprint, Facial & Other Biometric Information" (ANSI/NIST-ITL 1-2007 PART 1) and any other applicable standards set forth by the Federal Bureau of Investigation (FBI).
- 14.0 Information Technology Projects**

Criminal Intelligence Systems - The recipient agrees that any information technology system funded or supported by the Office of Justice Programs funds will comply with 28 C.F.R. § 23, Criminal Intelligence Systems Operating Policies, if the Office of Justice Programs determines this regulation to be applicable. Should the Office of Justice Programs determine 28 C.F.R. § 23 to be applicable, the Office of Justice Programs may, at its discretion, perform audits of the system, as per 28 C.F.R. § 23.20(g). Should any violation of 28 C.F.R. § 23 occur, the recipient may be fined as per 42 U.S.C. § 3789g(c)-(d). The recipient may not satisfy such a fine with federal funds.

The recipient understands and agrees that no awarded funds may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography. In doing so the recipient agrees that these restrictions will not limit the use of awarded funds necessary for any federal, state, tribal, or local law enforcement agency or any other entity carrying out criminal investigations, prosecutions, or adjudication activities.

State IT Point of Contact - The recipient must ensure that the State IT Point of Contact receives written notification regarding any information technology project funded by this award during the obligation and expenditures period. This is to facilitate communication among local and state governmental entities regarding various information technology projects being conducted with these award funds. In addition, the recipient must maintain an administrative file documenting the meeting of this requirement. For a list of State IT Points of Contact, go to <https://it.ojp.gov/technology-contacts>.

The State IT Point of Contact will ensure the recipient's project follows a statewide comprehensive strategy for information sharing systems that improve the functioning of the criminal justice system, with an emphasis on integration of all criminal justice components, law enforcement, courts, prosecution, corrections, and probation and parole.

Interstate Connectivity - To avoid duplicating existing networks or IT systems in any initiatives funded by the Bureau of Justice Assistance for law enforcement information sharing systems which involve interstate connectivity between jurisdictions, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless the recipient can demonstrate to the satisfaction of the Bureau of Justice Assistance that this requirement would not be cost effective or would impair the functionality of an existing or proposed IT system.

- 15.0 Interoperable Communications Guidance** - Recipients using funds to support emergency communications activities must comply with the current SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications. Emergency communications activities include the purchase of Interoperable Communications Equipment and technologies such as voice-over-internet protocol bridging or gateway devices, or equipment to support the build out of wireless broadband networks in the 700 MHz public safety band under the Federal Communications Commission (FCC) Waiver Order. SAFECOM guidance can be found at <https://www.dhs.gov/publication/funding-documents>.

Recipients interested in developing a public safety broadband network in the 700 MHz band in their jurisdictions must adhere to the technical standards set forth in the FCC Waiver Order, or any succeeding FCC orders, rules, or regulations pertaining to broadband operations in the 700 MHz public safety band. The recipient shall also ensure projects support the Statewide Communication Interoperability Plan (SCIP) and are fully coordinated with the full-time Statewide Interoperability Coordinator (SWIC). If any future regulatory requirement (from the FCC or other governmental entity) results in a material technical or financial change in the project, the recipient should submit associated documentation, and other material, as applicable, for review by the SWIC to ensure coordination. Recipients must provide a listing of all communications equipment purchased with award funding (plus the quantity purchased of each item) to FDLE once items are procured during any periodic programmatic progress reports.

- 16.0 Global Standards Package** - In order to promote information sharing and enable interoperability among disparate systems across the justice and public safety community, OJP requires the recipient to comply with DOJ's Global Justice Information Sharing Initiative (DOJ's Global) guidelines and recommendations for this particular award. Recipient shall conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at <https://it.ojp.gov/gsp>. Recipient shall document planned approaches to information sharing and describe compliance to the GSP and appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.

17.0 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment – In accordance with the requirements as set out in 2 C.F.R. § 200.216, recipients are prohibited from obligating or expending award funds to:

- 1) Procure or obtain;
- 2) Extend or renew a contract to procure or obtain;
- 3) Enter into a contract to procure or obtain equipment, services, or systems that use telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, produced by Huawei Technologies Company or ZTE Corporation (or a subsidiary or affiliate of such entities).

18.0 Unreasonable Restrictions on Competition - This condition applies with respect to any procurement of property or services funded (in whole or in part) by this award, by the recipient (or subrecipient at any tier), and regardless of the dollar amount of the purchase or acquisition, the method of procurement, or the nature of any legal instrument used. The provisions of this condition must be among those included in any subaward (at any tier).

- 1) Consistent with the (DOJ) Part 200 Uniform Requirements -- including as set out at 2 C.F.R. 200.300 and 200.319(a) – Recipient (or subrecipient at any tier) may (in any procurement transaction) discriminate against any person or entity on the basis of such person or entity's status as an "associate of the federal government" (or on the basis of such person or entity's status as a parent, affiliate, or subsidiary of such an associate), except as expressly set out in 2 C.F.R. 200.319(a) or as specifically authorized by USDOJ.
- 2) Monitoring of compliance with the requirements of this condition will be conducted by FDLE.
- 3) The term "associate of the federal government" means any person or entity engaged or employed (in the past or at present) by or on behalf of the federal government -- as an employee, contractor or subcontractor (at any tier), award recipient or -subrecipient (at any tier), agent, or otherwise -- in undertaking any work, project, or activity for or on behalf of (or in providing goods or services to or on behalf of) the federal government, and includes any applicant for such employment or engagement, and any person or entity committed by legal instrument to undertake any such work, project, or activity (or to provide such goods or services) in future.
- 4) Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

19.0 Non-Disclosure Agreements - No recipient or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

20.0 Confidential Funds and Confidential Funds Certificate - A signed certification that the Project Director or Implementing Agency Chief Official has read, understands, and agrees to abide by all conditions for confidential funds outlined in Section 3.12 of the DOJ Grants Financial Guide is required for all projects that involve confidential funds. The signed certification must be submitted at the time of award application. Confidential Funds certifications must be signed by the recipient Chief Official or an individual with formal, written signature authority for the Chief Official.

Prior to the reimbursement of expenditures for confidential funds, the recipient must compile and maintain a CI Funds Tracking Sheet to record all disbursements under the award. The completed form must be submitted with the payment request for OCJG review.

21.0 For JAG: Task Force Training Requirement - The recipient agrees that within 120 days of award, each current member of a law enforcement task force funded with these funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, will complete required online (internet-based) task force training. The training can be accessed <https://www.centf.org/CTFLI/>

All current and new task force members are required to complete this training once during the life of the award, or once every four years if multiple awards include this requirement. This training addresses task force effectiveness as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability.

When FDLE awards funds to support a task force, the recipient must compile and maintain a task force personnel roster along with course completion certificates.

- 22.0 For NCHIP and NARIP: Protective Order Systems** - Any system developed with funds awarded under this cooperative agreement will be designed to permit interface with the National Protective Order file maintained by the FBI.
- 23.0 For PREA: PREA Audits** - Recipients using funds, in whole or in part, to conduct PREA audits must utilize a DOJ certified PREA auditor who must abide by all applicable requirements in the DOJ PREA Auditor Handbook.

SECTION VII: ADDITIONAL REQUIREMENTS

- 1.0 Environmental Protection Agency's (EPA) list of Violating Facilities** - The recipient assures that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the Program Purpose are not listed on the EPA's list of Violating Facilities and that it will notify the Department of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
- 2.0 National Environmental Policy Act (NEPA)** - The recipient agrees to assist FDLE in complying with the NEPA, the National Historic Preservation Act, and other related federal environmental impact analyses requirements in the use of award funds by the recipient. This applies to the following new activities whether or not they are being specifically funded with these award funds. That is, it applies as long as the activity is being conducted by the recipient or any third party and the activity needs to be undertaken in order to use these award funds. Accordingly, the recipient agrees to first determine if any of the following activities will be funded by the award, prior to obligating funds for any of these purposes.

If it is determined that any of the following activities will be funded by the award, the recipient agrees to contact FDLE OCJG.

- 1) New construction;
- 2) Any renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain; a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;
- 3) A renovation, lease, or any other proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;
- 4) Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or educational environments; and
- 5) Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

The recipient understands and agrees that complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by the Bureau of Justice Assistance. The recipient further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed by the Department of Justice at <https://www.bja.gov/Funding/nepa.html>, for programs relating to methamphetamine laboratory operations.

- 3.0 National Historic Preservation Act** – The Act will assist the Department (if necessary) in assuring compliance with section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470), Ex. Order 11593 (identification and protection of historic properties), the Archeological and Historical Preservation Act of 1974 (16 U.S.C. § 469 a-1 et seq.), and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321).
- 4.0 Human Research Subjects** – The recipient agrees to comply with the requirements of 28 C.F.R. part 46 and all Office of Justice Programs policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.
- 5.0 Disclosures**

Conflict of Interest - The recipient and implementing agency will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. Recipients must disclose in writing any potential conflict of interest to FDLE (the non-federal pass-through entity).

Violations of Criminal Law - The recipient must disclose all violations of state or federal criminal law involving fraud, bribery or gratuity violations potentially affecting the award.

- 6.0 Uniform Relocation Assistance and Real Property Acquisitions Act** - The recipient will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. § 4601 et seq.), which govern the treatment of persons displaced as a result of federal and federally-assisted programs.
- 7.0 Limitations on Government Employees Financed by Federal Assistance** - The recipient will comply with requirements of 5 U.S.C. §§ 1501-08 and §§ 7321-26, which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.
- 8.0 Funds to Association of Community Organizations for Reform Now (ACORN) Unallowable** - Recipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of any contract or award to either the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries, without the express prior written approval of OJP.
- 9.0 Text Messaging While Driving** - Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), and §316.305, F.S., the recipient is encouraged to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.
- 10.0 For JAG: DNA Testing of Evidentiary Materials and Upload of DNA Profiles to a Database** - If program funds will be used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System (CODIS), by a government DNA lab with access to CODIS. No profiles generated with JAG funding may be entered into any other non-governmental DNA database without prior express written approval from BJA. For more information, refer to the NIJ FY 2012 DNA Backlog Reduction Program, available at: <https://www.ncjrs.gov/pdffiles1/nij/si001062.pdf>.

In addition, funds may not be used for purchase of DNA equipment and supplies when the resulting DNA profiles from such technology are not accepted for entry into CODIS (the National DNA Database operated by the FBI).

- 11.0 Environmental Requirements and Energy** - For awards in excess of \$100,000, the recipient must comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C 85), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR 1). The recipient must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871), if any.
- 12.0 Other Federal Funds** - The recipient agrees that if it currently has an open award of federal funds or if it receives an award of federal funds other than this award, and those awards have been, are being, or are to be used, in whole or in part, for one or more of the identical cost items for which funds are being provided under this award, the recipient will promptly notify, in writing the grant manager for this award, and, if so requested by OCJG seek a budget modification or change of project scope amendment to eliminate any inappropriate duplication of funding.
- 13.0 Trafficking in Persons** - The recipient must comply with applicable requirements pertaining to prohibited conduct relating to the trafficking of persons, whether on the part of recipients, recipients or individuals defined as "employees" of the recipient. The details of the recipient and recipient obligations related to prohibited conduct related to trafficking in persons are incorporated by reference and posted at <https://oip.gov/funding/Explore/ProhibitedConduct-Trafficking.htm>.
- 14.0 Requirement of the Award; Remedies for Non-Compliance or for Materially False Statements:** Any materially false, fictitious, or fraudulent statement to the Department related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001, 1621, and/or 34 U.S.C. § 10272), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. §§ 3729-3730 and 3801-3812). Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law.

Should it be held, instead, that the provision is utterly invalid or unenforceable; such provision shall be deemed severable from this award.

15.0 Employment Eligibility Verification for Hiring Under This Award – The recipient must ensure that as part of the hiring process for any position that is or will be funded (in whole or in part) with award funds, the employment eligibility of the individual being hired is properly verified in accordance with the provisions of 8 U.S.C. 1324a(a)(1) and (2).

- 1) All persons who are or will be involved in activities under this award must be made aware of the requirement for verification of employment eligibility, and associated provisions of 8 U.S.C. 1324a(a)(1) and (2) that make it unlawful in the United States to hire (or recruit for employment) certain aliens.
- 2) The recipient must provide training (to the extent necessary) to those persons required by this condition to be notified of the requirement for employment eligibility verification and the associated provisions of 8 U.S.C. 1324a(a)(1) and (2).
- 3) As part of the recordkeeping requirements of this award, the recipient must maintain records of all employment eligibility verifications pertinent to compliance with this condition and in accordance with I-9 record retention requirements, as well as pertinent records of notifications and trainings.
- 4) Monitoring of compliance with the requirements of this condition will be conducted by FDLE.
- 5) Persons who are or will be involved in activities under this award includes any and all recipient officials or other staff who are or will be involved in the hiring process with respect to a award funded position under this award.
- 6) For the purposes of satisfying this condition, the recipient may choose to participate in, and use E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the recipient entity uses E-Verify to confirm employment eligibility for each position funded through this award.
- 7) Nothing in this condition shall be understood to authorize or require any recipient, or any person or other entity, to violate federal law, including any applicable civil rights or nondiscrimination law.
- 8) Nothing in this condition, including paragraph vi., shall be understood to relieve any recipient, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1) and (2).

16.0 Determination of Suitability to Interact with Minors – This condition applies if it is indicated in the application for award (at any tier) that a purpose of some or all of the activities to be carried out under the award is to benefit a set of individuals under 18 years of age.

The recipient (or subrecipient at any tier), must make determinations of suitability before certain individuals may interact with participating minors. The requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP website at <https://ojp.gov/funding/Explore/Interact-Minors.htm>.

17.0 Restrictions and Certifications Regarding Non-Disclosure Agreements and Related Matters - No recipient under this award, or entity that receives a procurement contract with funds under this award, may require an employee to sign an internal confidentiality agreement that prohibits the reporting of waste, fraud, or abuse to an investigative or law enforcement representative authorized to receive such information.

The foregoing is not intended, to contravene requirements applicable to classified information. In accepting this award, the recipient:

- 1) Has not required internal confidentiality agreements or statements from employees or contractors that currently prohibit reporting waste, fraud, or abuse;
- 2) Certifies that, if it learns that it is or has been requiring its employees or contractors to execute agreements that prohibit reporting of waste, fraud, or abuse, it will immediately stop any further obligations of award funds, will provide prompt written notification to OCJG, and will resume such obligations only if expressly authorized to do so by OCJG.
- 3) Will comply with requirements of 5 U.S.C. §§ 1501-08 and 7321-26, which limit certain political activities of state or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

18.0 Safe Policing and Law Enforcement – Recipients that are state, local, college or university law enforcement agencies must be in compliance with the safe policing certification requirement outlined in [Executive Order 13929](#). For detailed information on this certification requirement, see <https://cops.usdoj.gov/SafePolicingEO>.

19.0 For RSAT: State Alcohol and Drug Abuse Agency - The recipient will coordinate the design and implementation of treatment programs with the State alcohol and drug abuse agency or any appropriate local

alcohol and drug abuse agency, especially when there is an opportunity to coordinate with initiatives funded through the Justice Assistance Grant (JAG) program.

- 20.0 For RSAT: Drug Testing** - The recipient will implement or continue to require urinalysis or other proven reliable forms of testing of individuals in correctional residential substance abuse treatment programs. Such testing shall include individuals released from residential substance abuse treatment programs who remain in the custody of the State.
- 21.0 For RSAT: Opioid Abuse and Reduction** - The recipient understands and agrees that, to the extent that substance abuse treatment and related services are funded by this award, they will include needed treatment and services to address opioid abuse and reduction.
- 22.0 For RSAT: Data Collection** - The recipient agrees that award funds may be used to pay for data collection, analysis, and report preparation only if that activity is associated with federal reporting requirements. Other data collection, analysis, and evaluation activities are not allowable uses of award funds.
- 23.0 For PSN: Coordination with U.S. Attorney and PSN Task Forces** - The recipient agrees to coordinate the project with the U.S. Attorney and Project Safe Neighborhoods Task Force(s) for the respective U.S. Attorney Districts covered by the award. The recipient also is encouraged to coordinate with other community justice initiatives and other ongoing, local gun prosecution and law enforcement strategies.
- 24.0 For PSN: Media-related Outreach** - The recipient agrees to submit to OCJG for review and approval by DOJ, any proposal or plan for PSN media-related outreach projects.
- 25.0 For NCHIP & NARIP: Coordination and Compatibility with Systems** - In accordance with federal award conditions, recipient agrees all activities supported under this award must:
- 1) Be coordinated with Federal, State, and local activities relating to homeland security and presale firearm checks.
 - 2) Ensure criminal justice information systems designed, implemented, or upgraded with NCHIP or NARIP funds are compatible, where applicable, with the National Incident-Based Reporting System (NIBRS), the National Crime Information Center system (NCIC 2000), the National Criminal Instant Background Check System (NICS), the Integrated Automated Fingerprint Identification System (IAFIS), and applicable national, statewide or regional criminal justice information sharing standards and plans.
 - 3) Intend to establish or continue a program that enters into the National Crime Information Center (NCIC) records of: (a) Protection orders for the protection of persons from stalking or domestic violence; (b) Warrants for the arrest of persons violating protection orders intended to protect victims from stalking or domestic violence; and (c) Arrests or convictions of persons violating protection orders intended to protect victims from stalking or domestic violence.

**RESOLUTION
NO. 2023-031**

A RESOLUTION
TO BE ENTITLED:

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE
FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA

SECTION 1. The following appropriations from funds on hand in the fund accounts stated below, not heretofore appropriated, and transfer from funds on hand in the various accounts and funds stated below, heretofore appropriated, be, and the same are hereby made, directed and approved to-wit:

A. SPECIAL GRANTS FUND

As Reads	Federal Grants	6,913,160
Amended		
To Read:	Federal Grants	6,963,482
As Reads	Operating Expenses	1,433,127
Amended		
To Read:	Operating Expenses	1,483,449

SECTION 2. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

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 City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

THE CITY OF PENSACOLA

APRIL 2023 - SUPPLEMENTAL BUDGET RESOLUTION - FY23 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM- STATE - RES NO. 2023-031

<u>FUND</u>	<u>AMOUNT</u>	<u>DESCRIPTION</u>
SPECIAL GRANTS FUND		
Estimated Revenues		
Federal Grants	50,322	Increase appropriation for Federal Grants - JAG Grant: State
Total Revenues	<u>50,322</u>	
Appropriations		
Operating Expenses	50,322	Increase appropriation for Operating Expenses
Total Appropriations	<u>50,322</u>	



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 2023-031

City Council

5/11/2023

LEGISLATIVE ACTION ITEM

SPONSOR: D.C. Reeves, Mayor

SUBJECT:

SUPPLEMENTAL BUDGET RESOLUTION NO. 2023-031 - FY23 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM: STATE

RECOMMENDATION:

That City Council adopt Supplemental Budget Resolution No. 2023-031.

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN EFFECTIVE DATE

HEARING REQUIRED: No Hearing Required

SUMMARY:

The Pensacola Police Department (PPD) submitted a grant application to the U.S. Department of Justice, Bureau of Justice Assistance, under the Edward Byrne Memorial Justice Assistance Grant (JAG) Formula (State) to support efforts with purchasing eleven (11) in-car radios.

The Pensacola Police Department (PPD) has several patrol vehicles that do not have in-car radios. This problem has significant potential to develop in serious crisis for officers in the field. These scenarios could possibly place PPD officers and the general public in danger if vital communication is interrupted to the point that assistance could not be summoned.

Grant funding will be used to purchase eleven (11) in-car radios for PPD officers. The radios will provide the necessary communications equipment for PPD officers who are currently patrolling in police vehicles with only hand-held radios. The expected outcome will be an equipment upgrade that will enhance the officer's ability to communicate effectively and professionally while patrolling. This upgrade will also result in an added layer of safety for officers and the public.

Documentation and minimum performance required for draw down of funds includes the completion of at least one activity described above as attested to on the financial expenditure report. The PPD will be responsible for ensuring the radios are installed. The maintenance and radio repairs/checks will be maintained by the department and will be available to OCJG upon request.

The JAG Program blends the previous Byrne Formula and Local Law Enforcement Block Grant (LLEBG) Programs (under Title XI-Department of Justice Reauthorization) to provide agencies with the flexibility to prioritize and place justice funds where they are most needed. The JAG Program provides states, tribes, and local governments funding to support a broad range of activities to prevent and control crime based upon local needs and conditions. Matching funds are not required under the JAG Program.

PRIOR ACTION:

None

FUNDING:

Budget: \$50,322.00

Actual: \$ 4,574.72 (cost per in-car radio)
X 11\$50,321.92**FINANCIAL IMPACT:**

The estimate grant award for the FY23 Edward Byrne Memorial Justice Assistance (JAG) Program: State is \$50,322.00, based on the 2023 Florida Local JAG Allocations. Projects to be funded from this grant aware do not require a local match. Approval of the supplemental budget resolution will appropriate funding for this grant.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

4/17/2023

STAFF CONTACT:Kerrith Fiddler, City Administrator
Eric Randall, Chief of Police**ATTACHMENTS:**

- 1) Supplemental Budget Resolution No. 2023-031
- 2) Supplemental Budget Explanation No. 2023-031

PRESENTATION: No

**RESOLUTION
NO. 2023-031**

A RESOLUTION
TO BE ENTITLED:

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE
FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA

SECTION 1. The following appropriations from funds on hand in the fund accounts stated below, not heretofore appropriated, and transfer from funds on hand in the various accounts and funds stated below, heretofore appropriated, be, and the same are hereby made, directed and approved to-wit:

A. SPECIAL GRANTS FUND

As Reads	Federal Grants	6,913,160
Amended		
To Read:	Federal Grants	6,963,482
As Reads	Operating Expenses	1,433,127
Amended		
To Read:	Operating Expenses	1,483,449

SECTION 2. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

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 City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

THE CITY OF PENSACOLA

MAY 2023 - SUPPLEMENTAL BUDGET RESOLUTION - FY23 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM- STATE - RES NO. 2023-031

<u>FUND</u>	<u>AMOUNT</u>	<u>DESCRIPTION</u>
SPECIAL GRANTS FUND		
Estimated Revenues		
Federal Grants	50,322	Increase appropriation for Federal Grants - JAG Grant: State
Total Revenues	<u>50,322</u>	
Appropriations		
Operating Expenses	50,322	Increase appropriation for Operating Expenses
Total Appropriations	<u>50,322</u>	



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 11-23

City Council

5/11/2023

LEGISLATIVE ACTION ITEM

SPONSOR: D.C. Reeves, Mayor

SUBJECT:

PROPOSED ORDINANCE NO. 11-23 - AMENDING SECTION 9-10-1 OF THE CITY CODE - FIREFIGHTER SUPPLEMENTAL BENEFITS

RECOMMENDATION:

That City Council approve Proposed Ordinance No. 11-23 on first reading.

AN ORDINANCE AMENDING SECTION 9-10-1 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; PROVIDING FIREFIGHTER PENSION BENEFITS SUPPLEMENTAL TO BENEFITS PROVIDED BY STATE STATUTE; TO COMPLY WITH CHAPTER 2019-21, LAWS OF FLORIDA, AS AMENDED; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

This ordinance is to recognize and codify action taken by the State of Florida on July 1, 2019, that includes an addition of disability benefits to firefighters participating in an employer-sponsored retirement plan. Section 24(2) of Laws of Florida, Ch. 21483, now includes a provision for line of duty disability related to a diagnosis of cancer.

PRIOR ACTION:

N/A

FUNDING:

N/A

FINANCIAL IMPACT:

None known at this time. Finance department received a notification from Department of Management Services on April 17, 2023, stating the need for this ordinance with additional costs to

be determined later.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

4/25/2023

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Lovoy, Finance Director/Plan Administrator

ATTACHMENTS:

- 1) Letter - DMS re Page 5 Cancer Presumption
- 2) Proposed Ordinance No. 11-23

PRESENTATION: No



Bureau of Local Retirement Systems
Municipal Police Officers' & Firefighters' Trust Funds' Office
P.O. Box 3010
Tallahassee, FL 32315-3010
Tel: 850-922-0667 | Toll-Free: 877-738-6737

Ron DeSantis, Governor
Pedro Allende, Secretary

Apr. 17, 2023

Ms. Michelle Madril
City of Pensacola
Post Office Box 12910
Pensacola, Florida 32521

Dear Ms. Madril:

We have received your response to our previous correspondence regarding the 2022 Annual Report for the Pensacola Firefighters' Pension Fund.

Based on our review of that reply, listed below are items that need corrections, clarification and/or additional information.

- Page 5 - Cancer Presumption - We are in receipt of your explanation for not having a modification in ordinance, however, due to the potential cost to the plan, an impact statement and ordinance should be submitted.

Please be advised that ss. 175.121(2) and 185.10(2), require that in order for a municipality or special fire control district and its pension fund to participate in the distribution of premium tax moneys under Chapters 175 and 185, F. S., all the provisions of these chapters shall be complied with annually, including state acceptance pursuant to Part VII of Chapter 112, F. S. If you receive a notice from the Local Retirement Section (LRS) that the plan is "not state accepted," or there is some outstanding issue that the LRS office is waiting on, please provide a prompt response so as not to jeopardize release of your state premium tax moneys.

If you have any questions or need further information, please call our office at 850-922-0667.

Sincerely,

Julie Browning, Accountant IV
Municipal Police Officers' and
Firefighters' Retirement Trust Funds

JB:kf

Michelle Madril
Apr. 17, 2023
Page Two

Copy: Samuel A. Horton, Chairman
Joe Griffin, Plan Actuary
Kristen McAllister, CPA
Gary B. Leuchtman, Plan Attorney
Amy Lovoy, Plan Administrator
Richard Barker, Jr., Finance Director

PROPOSED
ORDINANCE NO. 11-23

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE AMENDING SECTION 9-10-1 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; PROVIDING FIREFIGHTER PENSION BENEFITS SUPPLEMENTAL TO BENEFITS PROVIDED BY STATE STATUTE; TO COMPLY WITH CHAPTER 2019-21, LAWS OF FLORIDA, AS AMENDED; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Section 9-10-1 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows:

Sec. 9-10-1. Firefighter Supplemental Benefits.

Pursuant to the authority provided by Section 29(A) of Laws of Fla. 1941, Ch. 21483, as amended, the following supplemental benefits for firefighters are hereby provided by ordinance:

- (1) Notwithstanding the provisions of Section 5(n)(2)(d) of Laws of Florida 1941, Ch. 21483, as amended, the surviving spousal benefit of a firefighter retiring on or after June 1, 2021, shall be 75 percent of the retiree's benefit upon the retiree's death.
- (2) The provisions of Section 13(a) of Laws of Florida 1941, Ch. 21483, as amended, shall be supplemented by the elimination of the cessation of survivor benefits upon the remarriage of a widow or widower, and Section 13(a) shall be interpreted and applied in the following manner:

In the event of the death of a pensioner while he or she is actually drawing a pension under the provisions of this act, or in the event of the death of any person entitled to the benefits of this act, who shall have been employed as a firefighter, the widow or widower of such person, shall be paid a monthly pension equal to one-twelfth (1/12th) of 75 percent of the annual pension which the deceased pensioner or person so entitled was receiving or to which he or she would have been entitled in the event of retirement as of the date of his or her death, having regard to his or her period of service and rate of compensation, irrespective of his or her age, which pension shall be for the use of the said widow or widower.

- (3) The provisions of Section 15 of Laws of Florida 1941, Ch. 21483, as amended, shall be supplemented to eliminate any penalty upon remarriage of a surviving widow or widower and Section 15 shall be interpreted and applied in the following manner:

If a widow or widower receiving a pension under any of the provisions of this act dies, his or her pension shall cease; however, if such death occurs before such widow or widower, as the case may be, and the retiree, collectively, having received retirement benefits for a period of less than 10 years, the same benefit will be paid to the beneficiary or the beneficiaries designated by the retiree for the balance of such 10-year period. Such beneficiary designation must be in writing and received an approved by the board of trustees before the retiree's death. If a widow or widower enjoying a pension under any of the provisions of this act shall die, her or his pension shall cease.

- (4) The provisions of Section 30(d) of Laws of Florida, Ch. 21483, as amended, shall be supplemented to define pensionable compensation to include wages paid together with a maximum of 300 hours of annual overtime and basic life support pay, and Section 30(d) shall be interpreted and applied in the following manner:

"Compensation," "salary," and "earnings" mean the wages paid to a firefighter, together with a maximum of 300 hours annual overtime pay and basic life support (BLS) shall be included in pension calculations. Compensation for any plan year shall not exceed the annual compensation limit under Section 401(a)(17) of the Code, as in effect on the first day of the plan year. This limit shall be adjusted by the Secretary of the Treasury to reflect increases in the cost of living, as provided in Section 401(a)(17)(B) of the Code; however, that the dollar increase in effect on January 1 of any calendar year is effective for plan year beginning in such calendar year. If a plan determines compensation over a plan year that contains less than 12 calendar months (a "short plan year"), then the compensation limit for such short plan year is equal to the compensation limit for the calendar year in which the short plan year begins multiplied by the ratio obtained by dividing the number of full months in the short plan year.

- (5) The provisions of Section 24(2) of Laws of Florida, Ch. 21483, as amended, shall be supplemented to include a provision for line of duty disability related to a diagnosis of cancer:

Any condition or impairment of health of a firefighter caused by lung diseases, hypertension, heart disease, or hardening of the arteries resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty unless the contrary be shown by competent evidence; provided, however, that such firefighter shall have

successfully passed a physical examination before entering into such service, which examination failed to reveal any evidence of such condition. Effective July 1, 2019, a firefighter member shall be considered totally and permanently disabled in the line of duty, if he or she meets the retirement plans' definition of totally and permanently disabled, due to the diagnosis of cancer or circumstances that arise out of the treatment of cancer (as defined in section 112.1816(1), Florida Statutes).

SECTION 2. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. This ordinance shall take effect on the fifth business day after adoption, unless otherwise provided, pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk



Memorandum

File #: 09-23

City Council

5/11/2023

LEGISLATIVE ACTION ITEM

SPONSOR: D.C. Reeves, Mayor

SUBJECT:

AN ORDINANCE AMENDING SECTIONS 7-4-1, 7-4-2, 7-4-3, 7-4-4, 7-4-6, AND 7-4-11 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; REMOVING AUTHORITY TO OPERATE BOTTLE CLUBS; ADDING DEFINITION OF RESTAURANT; LIMITING RESTRICTION ON NUMBER AND LOCATION OF ESTABLISHMENTS WHERE ALCOHOLIC BEVERAGES CAN BE SOLD; EXPANDING THE EXEMPTION FOR RESTAURANT TO SELL ALCOHOLIC BEVERAGES..

RECOMMENDATION:

That City Council adopt Proposed Ordinance No. 09-23 on second reading.

AN ORDINANCE AMENDING SECTIONS 7-4-1, 7-4-2, 7-4-3, 7-4-4, 7-4-6, AND 7-4-11 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; REMOVING AUTHORITY TO OPERATE BOTTLE CLUBS; ADDING DEFINITION OF RESTAURANT; LIMITING RESTRICTION ON NUMBER AND LOCATION OF ESTABLISHMENTS WHERE ALCOHOLIC BEVERAGES CAN BE SOLD; EXPANDING THE EXEMPTION FOR RESTAURANT TO SELL ALCOHOLIC BEVERAGES; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

Chapter 7 of the City Code of Ordinances currently provides certain exemptions for restaurants that meet the criteria for a state-issued 4-COP SFS (Special Food Service) license, which requires a restaurant to have a minimum of 2500 sf of service area and the capacity to serve at least 150 people at one time. These restaurants are allowed to serve beer, wine, and liquor. In a dense urban environment, such as the City of Pensacola, it is not uncommon for restaurants to find themselves unable to meet this size threshold, even when utilizing City right of way to provide additional seating.

Chapter 7 provides an additional exemption for restaurants that do not qualify for the SFS license, and serve beer and wine only, with no minimum seating capacity or service area requirements. The Mayor's Office and City staff are proposing an amendment to the City Code that would expand this exemption to allow for restaurants that are not of sufficient size to meet the SFS requirement, but are able to provide a minimum seating capacity of 25 people, to also serve beer, wine and liquor. This

proposed Ordinance would foster the vibrant and diverse transformation that the City, especially downtown, has been experiencing over the past several years as well as generate more economic and entrepreneurial opportunities for our City.

Another component of the proposed ordinance will eliminate the ability to operate a bottle club within the City of Pensacola. The removal of this business type is recommended, as the use has historically been the source of enforcement and public nuisance-related issues not just in Pensacola, but in other jurisdictions as well. Multiple other agencies have removed, or heavily restricted bottle clubs already, so this request aligns with actions taken by others.

Currently, there are no bottle clubs operating within the City per staff records, so there will be no nonconforming locations created by the passage of this ordinance.

PRIOR ACTION:

April 27, 2023 - City Council voted to approve Proposed Ordinance No. 09-23 on first reading.

FUNDING:

N/A

FINANCIAL IMPACT:

None

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

4/14/2023

STAFF CONTACT:

Kerrith Fiddler, City Administrator
David Forte, Deputy City Administrator
Sherry Morris, AICP, Development Services Department Director

ATTACHMENTS:

- 1) Proposed Ordinance No. 09-23

PRESENTATION: No

PROPOSED
ORDINANCE NO. _____

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE AMENDING SECTIONS 7-4-1, 7-4-2, 7-4-3, 7-4-4, 7-4-6, AND 7-4-11 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; REMOVING AUTHORITY TO OPERATE BOTTLE CLUBS; ADDING DEFINITION OF RESTAURANT; LIMITING RESTRICTION ON NUMBER AND LOCATION OF ESTABLISHMENTS WHERE ALCOHOLIC BEVERAGES CAN BE SOLD; EXPANDING THE EXEMPTION FOR RESTAURANT TO SELL ALCOHOLIC BEVERAGES; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Chapter 7-4 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows:

Sec. 7-4-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~*Bottle club* shall have the meaning set forth in section F.S. § 561.01, Fla. Stat.~~

Consideration means:

- (1) The payment of or obligation to pay any cover charge, entrance fee, dues, or commission for the right or privilege to enter or remain upon the premises;
- (2) The payment of or obligation to pay for ice, nonalcoholic mixes or other nonalcoholic liquids used in connection with alcoholic beverage drinks;
- (3) The payment of or obligation to pay for use of glassware or other containers for the consumption of alcoholic beverage drinks;
- (4) The payment of or obligation to pay for food;
- (5) The payment of or obligation to pay for entertainment of any kind, whether live, recorded, taped, or on film; or

(6) The payment of or obligation to pay for any combination of the foregoing.

Dense business area means all of that portion of the corporate limits of the city as defined in chapter 12-13.

Private club means any place or establishment licensed or required to be licensed pursuant to F.S. § 565.02(4).

Restaurant means a public food service establishment preparing and serving food during all operating hours and serving alcoholic beverages that is governed by either:

- (1) A State series special food service (SFS) alcoholic beverage license pursuant to section 561.20(2)(a), Fla. Stat.; or
- (2) another State consumption on premises license and which holds a State restaurant seating license and provides seating for at least 25 persons at one time.

School means an institution primarily for academic instruction, public, parochial or private (whether for-profit or nonprofit) and having a curriculum the same as ordinarily given in a public school, but not including colleges, universities or other institutions of post-secondary education.

Sec. 7-4-2. Hours of operation.

- (a) Alcoholic beverages may be sold only on Monday through Sunday, between the hours of 7:00 a.m. and 3:00 a.m. of the following day.
- (b) No saloon, barroom, cocktail lounge, club or other place where alcoholic beverages are ordinarily sold, shall remain open during such prohibited hours of sale; provided, however, the provisions of this section shall not be construed as prohibiting grocery stores, restaurants or eating places, which ordinarily sell such beverages, from remaining open during the prohibited hours, so long as such beverages are not sold or permitted to be consumed upon the premises of such places during such hours.
- ~~(c) Bottle clubs may be permitted to operate on Monday through Sunday only between the hours of 10:00 p.m. and 3:00 a.m. of the following day. Subsections (a) and (b) of this section shall not be applicable to bottle clubs.~~

Sec. 7-4-3. Certificates of Compliance.

- (a) It shall be unlawful to sell, or offer to keep for sale, alcoholic beverages containing more than one percent of alcohol by weight in any place or establishment, including a private club ~~or bottle club~~, for which a certificate of compliance with the provisions of this chapter has not been issued. ~~It shall~~

~~also be unlawful for a bottle club to operate at any location for which a certificate of compliance has not been issued.~~ It shall also be unlawful for a private club to serve or receive or keep for consumption on the premises, whether by members, nonresident guests or other persons, alcoholic beverages containing more than one percent of alcohol by weight at any location for which a certificate of compliance has not been issued. Provided, however, no certificate of compliance shall be required for any place or establishment lawfully operating on June 26, 1986. Any place or establishment lawfully operating on June 26, 1986, which would not be permitted under the terms of this chapter by reason of restrictions stated herein, shall be declared a nonconforming use and may be continued subject to the following provisions:

- (1) *Extension of nonconforming use.* No such nonconforming use may be extended to occupy any greater area of land or extended to occupy any land outside any buildings on the same parcel.
- (2) *Abandonment of nonconforming use.* If such nonconforming use is abandoned for a period of more than 180 days, any future use of such land and structure shall be in conformity with the provisions of this title.
- (3) *Change in nonconforming use.* There may be a change in tenant, ownership or management of a nonconforming use provided there is no change in the nature or character of such nonconforming use.

Provided further, however, no certificate of compliance shall be required for any place or establishment to sell or offer or keep for sale in sealed containers for consumption off-of-the-premises beer, as defined by section F.S. § 563.01, Fla. Stat., or wine, as defined by section F.S. § 564.01(1), Fla. Stat.

- (b) Each petition for a certificate of compliance shall be considered by the mayor and, if the mayor finds that the petition is in compliance with the provisions of this chapter, then the mayor shall issue a certificate of compliance with the provisions of this chapter, subject to appeal to the city council.
- (c) Notice of each decision of the mayor to grant or deny a certificate of compliance with this chapter shall be filed immediately in the office of the city clerk where it shall be available for public inspection. The city clerk shall send notice of any decision to deny a certificate of compliance to the petitioner, which notice shall inform the petitioner of the right of any person aggrieved by the decision of the mayor to appeal to the city council within ten calendar days after the date of such notice.
- (d) Any person aggrieved by a decision of the mayor pursuant to this chapter may appeal to the city council by filing in the office of the city clerk a written

notice of appeal within ten calendar days after the date of the mayor's granting of a certificate of compliance or within ten calendar days after the date of the city clerk's notice to the petitioner of the mayor's decision to deny a certificate of compliance. The notice of appeal shall set forth a short and plain statement alleging the reasons why the decision of the mayor was not in compliance with the provisions of this chapter.

- (e) The city council shall consider any appeal pursuant to this chapter at a city council meeting within a reasonable time following the date of filing of a notice of appeal. At the meeting, the appellant, the petitioner (if not the appellant) and the mayor may present evidence concerning whether the decision of the mayor was in compliance with the provisions of this chapter. The burden of proof shall be upon the appellant. The city council shall consider the evidence presented concerning the criteria set forth in this chapter and render its decision which shall be final.
- (f) The mayor shall issue to the petitioner a certificate of compliance with the provisions of this chapter if an appeal has been timely filed, and the city council has approved the granting of a certificate of compliance.

Sec. 7-4-4. Establishments prohibited in proximity of residential district.

- (a) A certificate of compliance shall not be issued for any place or establishment, including a private club ~~or a bottle club~~, within 500 feet of any vacant or residentially developed parcel of property zoned R-1AAAAA, R-1AAAA, R-1AAA, R-1AA, R-1A, R-ZL, R-2A, or PR-1AAA. This restriction shall not apply in the Historic District, the Waterfront Redevelopment District, the South Palafox Business District or the dense business area.
- (b) The city shall determine said distance by measuring a radius from the property line of the place or establishment. If any portion of a parcel of property is within said distance, whether or not the property is located within the corporate limits of the city, then the entire parcel shall be deemed to be within said distance.
- (c) The provisions of subsection (a) of this section shall not be applicable to any large multi-use retail store with a floor area of 200,000 square feet or greater which has obtained a license pursuant to section F.S. § 565.02(1)(a), Fla. Stat., or to any motel, hotel or restaurant which has obtained a special alcoholic beverage license pursuant to section F.S. § 561.20(2)(a), Fla. Stat., or a restaurant licensed by the division of hotels and restaurants of the state department of business regulation with a seating license and which provides seating for at least 25 persons at one time.

Sec. 7-4-5. Restriction of distance from schools and churches.

- (a) A certificate of compliance shall not be issued for any place or establishment within the city limits, but outside the dense business area, which lies within 500 feet of any church or school, nor for any place or establishment within the dense business area which lies within 300 feet of any church or school, unless, in the case of a church, the governing body of such church consents in writing to the issuance of a certificate of compliance.
- (b) The city shall determine distances by measuring a radius from the property line of the place or establishment. If any portion of a parcel of land in use as church or school facilities lies within said radius, whether or not the property is located within the corporate limits of the city, then the church or school shall be deemed to be within said distance.

Sec. 7-4-6. Restriction of number of certain alcoholic beverage establishments.

- (a) There shall be no more than one place or establishment where beer, as defined by section F.S. § 563.01, Fla. Stat., or wine, as defined by F.S. § 564.01(1), Fla. Stat., or liquor, as defined by section F.S. § 565.01, Fla. Stat., are sold, offered or kept for sale, or received, kept or brought for consumption on or off the premises, opening or having entrance upon any one side or sidewalk of any block within the city, except as provided in subsection (b) of this section. Provided that, if any such place or establishment occupies a corner location in any particular block of the city, then such place or establishment shall not be considered to be within the provisions of subsection (a) of this section.
- (b) The provisions of subsection (a) of this section shall not be applicable to any motel, hotel or restaurant which has obtained a special alcoholic beverage license pursuant to section F.S. § 561.20(2)(a), Fla. Stat., or a restaurant licensed by the division of hotels and restaurants of the state department of business regulation with a seating license and which provides seating for at least 25 persons at one time.

Sec. 7-4-7. Additional criteria for certificate of compliance.

- (a) A certificate of compliance shall not be issued for any place or establishment in any area in which the comprehensive plan or zoning ordinances of the city do not permit the sale of alcoholic beverages or where the place or establishment is not in compliance with the building, plumbing, electrical and gas codes of the city.
- (b) Additionally, prior to granting a certificate of compliance, the mayor shall first determine that the place or establishment complies with the other requirements of this chapter and that the granting of a certificate shall not interfere with safe traffic circulation.

Sec. 7-4-8. Conditional certificate of compliance for places or establishments not constructed or completed.

Conditional certificates of compliance may be issued for places or establishments which have not been constructed for which certificates of occupancy have not been issued by the inspection services department of the city. No conditional certificate shall be issued unless the construction plans show that the place or establishment when occupied will be in compliance with the requirements of this chapter. Prior to issuing a certificate of occupancy for a place or establishment for which a conditional certificate has been issued, the mayor shall determine whether the place or establishment complies with the zoning and building codes of the city and whether the main public entrance of the place or establishment has changed from that set forth in the construction plans so as to render the place or establishment in violation of the restrictions set forth in this chapter. If the place or establishment does not comply or if the main public entrance thereto has changed in the manner described above, the conditional permit shall be revoked by the mayor (notice of which shall be furnished to the petitioner) subject to the right of the petitioner to recommence the petition process. If the place or establishment does comply and the main public entrance thereto has not changed in the manner described above, the mayor shall issue a certificate of compliance in accordance with section 7-4-3(b), the issuance of which shall be subject to review by the manner prescribed in section 7-4-3.

Sec. 7-4-9. Sunday deliveries.

It shall be unlawful for any wholesaler or distributor of alcoholic beverages to make any deliveries of alcoholic beverages to any retail establishment or other place retailing such beverages, by motor truck or other vehicle before 1:00 p.m. on Sundays, within the corporate limits of the city.

Sec. 7-4-10. Certain exemptions for distributors.

It is the intent of this chapter that the provisions of sections 7-4-4 and 7-4-5 do not apply to distributors of alcoholic beverages, as the same are defined by the Beverage Law of the State of Florida.

Sec. 7-4-11. Additional exemption for certain licensed restaurants.

Notwithstanding any provisions of this chapter to the contrary, a restaurant licensed by the division of hotels and restaurants of the state department of business regulation with a seating license and which provides seating for at least 25 persons at one time may sell beer, and wine, and liquor for consumption on the premises only during the hours of sale permitted by section 7-4-2. ~~Additionally, any restaurant meeting the requirements stated above, and obtaining a license pursuant to F.S. § 561.20(2)(a)4, shall be permitted to sell beer, wine, and liquor for consumption on the premises only during the hours of sale permitted by section 7-4-2.~~

Sec. 7-4-12. Additional exemption for certain licensed restaurants.

Vendors licensed pursuant to section F.S. § 563.02(1), Fla. Stat., and nonprofit civic organizations permitted pursuant to section F.S. § 561.422, Fla. Stat., shall be exempt from the provisions of this chapter to the extent required by said law.

Sec. 7-4-13. Consumption in public places.

- (a) Except as provided below, it shall be unlawful for any person to consume, possess, or control any type of alcoholic beverages or any other intoxicating liquors other than a beverage in an unopen container at or upon any park, playground or other recreational facility owned by the city, or in or upon any street right-of-way within the city, including, but not limited to, sidewalks, alleyways, and paved or unpaved portions of the right-of-way.
- (b) This prohibition shall not apply to those activities, either public or private, for which prior approval by the mayor has been granted or obtained pursuant to the provisions of the special events permitting, sections 11-4-171 through 11-4-180.
- (c) Public or private activities where alcoholic beverages or other intoxicating liquors may be consumed will be allowed under a special event permit in the following parks and recreational facilities:
 - (1) Bayview Park (excluding Bayview Resource Center) and Bayview Senior Citizens Center.
 - (2) Plaza de Luna.
 - (3) Seville Square.
 - (4) William Bartram Memorial Park.
 - (5) East Pensacola Heights Clubhouse.
 - (6) Sanders Beach Corinne Jones Resource Center (limited to the inside and the veranda).

Sale of alcoholic beverages by any activity sponsor, vendor, or other person at such a public or private activity shall be prohibited except for those events specifically permitting such sales under the activity's special event permit.

- (d) Alcoholic beverages sales and consumption will be allowed on the Osceola Municipal Golf Course, in the Saenger Theatre, on the premises of the Roger Scott Tennis Center exclusive of the parking lot area outside of the perimeter fencing, and the Bayview Senior Citizens Center (limited to the inside and outdoor patio areas on the south side of the building), all subject to the terms

and conditions of their respective vendor management agreements and city ordinance.

- (e) At the time of application for a special event permit, the applicant as provided in section 11-4-177 shall furnish to the mayor for the activity a copy of its proof of liquor liability insurance and other required insurance coverages naming the city as an additional insured to protect the city from any potential liabilities or losses related to the proposed activity.
- (f) The applicant also shall arrange with the city to provide security services for the activity at the time of application for a special event permit. The cost of such security services shall be paid for by the applicant. The city shall detail the number of officers as deemed appropriate to maintain public safety at the function but in no case less than the following for any proposed activity:
 - (1) Outdoor events of 150 people or less shall require a minimum of one police officer. Outdoor events of more than 150 people shall require a minimum of two officers.
 - (2) Indoor events of any size shall require a minimum of two officers with one stationed inside the facility and one in the parking lot.
 - (g) This prohibition against open containers shall not apply to events taking place within the Specialty Center District as defined in section 11-4-171 where the event organizer has obtained a special events permit that invokes the Specialty Center District.

Sec. 7-4-14. Enforcement.

- (a) In addition to the penalties for violations of this Code provided for in section 1-1-8, this chapter also may be enforced by the city in an action to enjoin any violation of this chapter or to close any place or establishment where such violation occurs.
- (b) For violations of section 7-4-13, in lieu of making an arrest or issuing a notice to appear pursuant to section 1-1-8, a law enforcement officer may issue a civil citation as described below:
 - (1) A law enforcement officer may issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a violation of section 7-4-13.
 - (2) A citation issued by a law enforcement officer shall be in a form prescribed by the mayor and shall contain:

- a. The date and time of issuance.
- b. The name and address of the person to whom the citation is issued.
- c. The date and time the violation of section 7-4-13 was committed.
- d. The facts constituting reasonable cause.
- e. The name of the law enforcement officer.
- f. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
- g. The applicable civil penalty if the person elects to contest the citation.
- h. The applicable civil penalty if the person elects not to contest the citation.
- i. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, such person shall be deemed to have waived the right to contest the citation and that, in such case, judgment may be entered for an amount up to the maximum civil penalty.

(3) For violations of section 7-4-13, the following civil penalty citation schedules will apply if the person cited elects not to contest a citation and the civil penalties which will apply if such person elects to contest a citation:

- a. For those persons not contesting a citation:
 - 1. First citation: \$50.00.
 - 2. Second citation: \$100.00.
 - 3. Third citation: \$200.00.
 - 4. Fourth and all additional citations: \$400.00.
- b. For those persons contesting a citation, the county court may impose a fine within the court's discretion up to a maximum of \$500.00.

- (4) After issuing a citation to an alleged violator, a law enforcement officer shall deposit the original citation and one copy of the citation with the county court.

Sec. 7-4-15. Sales and consumption restricted to licensed buildings.

- (a) It shall be unlawful for any owner of a licensed establishment, or for any agent, servant or employee of any such owner to permit the consumption of any alcoholic beverages in or upon any parking or other area outside of the building or room mentioned in his or her license certificate as the address thereof, when any part of such parking or other area is adjacent to the building or premises in which the building licensed under such section is operated, and when such parking or other area is owned, rented, leased, regulated, controlled or provided, directly or indirectly, by such owner or by any agent, servant or employee of such owner.
- (b) It shall be unlawful for any person to consume any alcoholic beverage in or upon any parking or other area outside of and adjacent to licensed premises when such parking or other area is owned, rented, leased, regulated, controlled or provided, directly or indirectly, by such establishment.
- (c) If any licensed owner mentioned herein be a corporation, then the officers of such corporation shall be regarded as the owners thereof, for the purposes of enforcement of this section.
- (d) Any person violating any of the provisions of this section shall, upon conviction, be punished as provided in section 1-1-8.
- (e) The mayor is hereby authorized to grant exemptions from the operation of this section. Any person seeking an exemption from the operation of this section must make a request in writing to the mayor's office, and this application must describe in detail the reasons and circumstances pertaining to the intended consumption of alcoholic beverages in an outside area. Exemptions may be granted by the mayor only in situations where it would appear that the exemption, if granted, would not create a public nuisance or a public disturbance. In determining whether to grant a requested exemption, the mayor shall take into account the following factors:
 - (1) The degree to which the consumption of alcoholic beverages in an outside area would be exposed to public view.
 - (2) The level of noise likely to be created by the granting of an exemption.

- (3) The extent to which litter control is exercised by the person or entity providing for the availability of alcoholic beverages.
- (4) The degree to which law enforcement services have been or may be required to be provided by the city.

No exemption granted by the mayor shall be effective for a period of more than one year from the date of issue. Such exemption may be renewed by the mayor on an annual basis upon written request, and the mayor may grant annual renewal by application of the four factors set forth above.

- (f) Any person aggrieved by the denial of an exemption by the mayor shall have a right to appeal the mayor's decision to the city council. Such an appeal must be filed in writing in the office of the city clerk within ten calendar days after the date of the mayor's decision to deny an exemption. The notice of appeal shall set forth a short and plain statement of the reasons why the decision of the mayor was not in compliance with the provisions of this section.
- (g) The city council shall consider any appeal pursuant to this section within a reasonable time following the date of filing of a notice of appeal. At the meeting, the appellant and the mayor may present evidence concerning whether the decision of the mayor was in compliance with the provisions of this section. The burden of proof shall be upon the appellant. The city council shall consider the evidence presented concerning the criteria set forth in this section and render its decision which shall be final.
- (h) The mayor is authorized to revoke any exemption which may have been granted pursuant to this section in the event that it is determined by the mayor that the conduct of patrons of a licensed establishment which has been granted an exemption constitutes a public nuisance or a public disturbance. In determining whether a public nuisance or disturbance exists, the mayor may consider and investigate the level of noise created by outdoor consumption of alcoholic beverages, the degree of litter produced, and the degree to which law enforcement services have been necessitated. In the event that the mayor determines that an exemption previously granted should be revoked, the mayor shall provide written notice to the owner of the licensed establishment no less than five days in advance of the effective date of the revocation, informing the owner of the licensed establishment of the intention to revoke the exemption and the reasons therefor.
- (i) Any person aggrieved by the revocation of an exemption by the mayor shall have a right to appeal the mayor's decision to the city council. Such an appeal must be filed in writing in the office of the city clerk within ten calendar days after the date of the mayor's decision to deny an exemption. The notice of appeal shall set forth a short and plain statement of the reasons why the

decision of the mayor was not in compliance with the provisions of this section, or why the exemption should not be revoked.

- (j) The city council shall consider any appeal of a revocation of exemption pursuant to this section within a reasonable time following the date of filing of a notice of appeal. At the meeting, the appellant and the mayor may present evidence concerning whether the decision of the mayor was in compliance with the provisions of this section. The burden of proof shall be upon the appellant. The city council shall consider the evidence presented concerning the criteria set forth in this section and render its decision which shall be final.

SECTION 2. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. This ordinance shall take effect on the fifth business day after adoption, unless otherwise provided, pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

PROPOSED
ORDINANCE NO. 09-23

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE AMENDING SECTIONS 7-4-1, 7-4-2, 7-4-3, 7-4-4, 7-4-6, AND 7-4-11 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; REMOVING AUTHORITY TO OPERATE BOTTLE CLUBS; ADDING DEFINITION OF RESTAURANT; LIMITING RESTRICTION ON NUMBER AND LOCATION OF ESTABLISHMENTS WHERE ALCOHOLIC BEVERAGES CAN BE SOLD; EXPANDING THE EXEMPTION FOR RESTAURANT TO SELL ALCOHOLIC BEVERAGES; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Chapter 7-4 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows:

Sec. 7-4-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~*Bottle club* shall have the meaning set forth in section F.S. § 561.01, Fla. Stat.~~

Consideration means:

- (1) The payment of or obligation to pay any cover charge, entrance fee, dues, or commission for the right or privilege to enter or remain upon the premises;
- (2) The payment of or obligation to pay for ice, nonalcoholic mixes or other nonalcoholic liquids used in connection with alcoholic beverage drinks;
- (3) The payment of or obligation to pay for use of glassware or other containers for the consumption of alcoholic beverage drinks;
- (4) The payment of or obligation to pay for food;

- (5) The payment of or obligation to pay for entertainment of any kind, whether live, recorded, taped, or on film; or
- (6) The payment of or obligation to pay for any combination of the foregoing.

Dense business area means all of that portion of the corporate limits of the city as defined in chapter 12-13.

Private club means any place or establishment licensed or required to be licensed pursuant to F.S. § 565.02(4).

Restaurant means a public food service establishment preparing and serving food during all operating hours and serving alcoholic beverages that is governed by either:

- (1) A State series special food service (SFS) alcoholic beverage license pursuant to section 561.20(2)(a), Fla. Stat.; or
- (2) another State consumption on premises license and which holds a State restaurant seating license and provides seating for at least 25 persons at one time and derives at least 30 percent of its gross revenues from the sale of food and nonalcoholic beverages. The restaurant shall be continuously ready to prepare, serve and sell food and nonalcoholic beverages during all business operational hours. Compliance with this section shall be reported on an annual basis at the time of application for the Business Tax Receipt by the submission of a sworn affidavit verifying compliance.

School means an institution primarily for academic instruction, public, parochial or private (whether for-profit or nonprofit) and having a curriculum the same as ordinarily given in a public school, but not including colleges, universities or other institutions of post-secondary education.

Sec. 7-4-2. Hours of operation.

- (a) Alcoholic beverages may be sold only on Monday through Sunday, between the hours of 7:00 a.m. and 3:00 a.m. of the following day.
- (b) No saloon, barroom, cocktail lounge, club or other place where alcoholic beverages are ordinarily sold, shall remain open during such prohibited hours of sale; provided, however, the provisions of this section shall not be construed as prohibiting grocery stores, restaurants or eating places, which ordinarily sell such beverages, from remaining open during the prohibited hours, so long as such beverages are not sold or permitted to be consumed upon the premises of such places during such hours.
- ~~(c) Bottle clubs may be permitted to operate on Monday through Sunday only between the hours of 10:00 p.m. and 3:00 a.m. of the following day. Subsections (a) and (b) of this section shall not be applicable to bottle clubs.~~

Sec. 7-4-3. Certificates of Compliance.

- (a) It shall be unlawful to sell, or offer to keep for sale, alcoholic beverages containing more than one percent of alcohol by weight in any place or establishment, including a private club or ~~bottle club~~, for which a certificate of compliance with the provisions of this chapter has not been issued. ~~It shall also be unlawful for a bottle club to operate at any location for which a certificate of compliance has not been issued.~~ It shall also be unlawful for a private club to serve or receive or keep for consumption on the premises, whether by members, nonresident guests or other persons, alcoholic beverages containing more than one percent of alcohol by weight at any location for which a certificate of compliance has not been issued. Provided, however, no certificate of compliance shall be required for any place or establishment lawfully operating on June 26, 1986. Any place or establishment lawfully operating on June 26, 1986, which would not be permitted under the terms of this chapter by reason of restrictions stated herein, shall be declared a nonconforming use and may be continued subject to the following provisions:
- (1) *Extension of nonconforming use.* No such nonconforming use may be extended to occupy any greater area of land or extended to occupy any land outside any buildings on the same parcel.
 - (2) *Abandonment of nonconforming use.* If such nonconforming use is abandoned for a period of more than 180 days, any future use of such land and structure shall be in conformity with the provisions of this title.
 - (3) *Change in nonconforming use.* There may be a change in tenant, ownership or management of a nonconforming use provided there is no change in the nature or character of such nonconforming use.

Provided further, however, no certificate of compliance shall be required for any place or establishment to sell or offer or keep for sale in sealed containers for consumption off of-the-premises beer, as defined by section F.S. § 563.01, Fla. Stat., or wine, as defined by section F.S. § 564.01(1), Fla. Stat.

- (b) Each petition for a certificate of compliance shall be considered by the mayor and, if the mayor finds that the petition is in compliance with the provisions of this chapter, then the mayor shall issue a certificate of compliance with the provisions of this chapter, subject to appeal to the city council.
- (c) Notice of each decision of the mayor to grant or deny a certificate of compliance with this chapter shall be filed immediately in the office of the city clerk where it shall be available for public inspection. The city clerk shall send notice of any decision to deny a certificate of compliance to the petitioner,

which notice shall inform the petitioner of the right of any person aggrieved by the decision of the mayor to appeal to the city council within ten calendar days after the date of such notice.

- (d) Any person aggrieved by a decision of the mayor pursuant to this chapter may appeal to the city council by filing in the office of the city clerk a written notice of appeal within ten calendar days after the date of the mayor's granting of a certificate of compliance or within ten calendar days after the date of the city clerk's notice to the petitioner of the mayor's decision to deny a certificate of compliance. The notice of appeal shall set forth a short and plain statement alleging the reasons why the decision of the mayor was not in compliance with the provisions of this chapter.
- (e) The city council shall consider any appeal pursuant to this chapter at a city council meeting within a reasonable time following the date of filing of a notice of appeal. At the meeting, the appellant, the petitioner (if not the appellant) and the mayor may present evidence concerning whether the decision of the mayor was in compliance with the provisions of this chapter. The burden of proof shall be upon the appellant. The city council shall consider the evidence presented concerning the criteria set forth in this chapter and render its decision which shall be final.
- (f) The mayor shall issue to the petitioner a certificate of compliance with the provisions of this chapter if an appeal has been timely filed, and the city council has approved the granting of a certificate of compliance.

Sec. 7-4-4. Establishments prohibited in proximity of residential district.

- (a) A certificate of compliance shall not be issued for any place or establishment, including a private club ~~or a bottle club~~, within 500 feet of any vacant or residentially developed parcel of property zoned R-1AAAA, R-1AAAA, R-1AAA, R-1AA, R-1A, R-ZL, R-2A, or PR-1AAA. This restriction shall not apply in the Historic District, the Waterfront Redevelopment District, the South Palafax Business District or the dense business area.
- (b) The city shall determine said distance by measuring a radius from the property line of the place or establishment. If any portion of a parcel of property is within said distance, whether or not the property is located within the corporate limits of the city, then the entire parcel shall be deemed to be within said distance.
- (c) The provisions of subsection (a) of this section shall not be applicable to any large multi-use retail store with a floor area of 200,000 square feet or greater which has obtained a license pursuant to section F.S. § 565.02(1)(a), Fla. Stat., or to any motel, hotel or restaurant which has obtained a special alcoholic beverage license pursuant to section F.S. § 561.20(2)(a), Fla. Stat.,

or a restaurant licensed by the division of hotels and restaurants of the state department of business regulation with a seating license and which provides seating for at least 25 persons at one time and derives at least 30 percent of its gross revenues from the sale of food and nonalcoholic beverages. The restaurant shall be continuously ready to prepare, serve and sell food and nonalcoholic beverages during all business operational hours. Compliance with this section shall be reported on an annual basis at the time of application for the Business Tax Receipt by the submission of a sworn affidavit verifying compliance.

Sec. 7-4-5. Restriction of distance from schools and churches.

- (a) A certificate of compliance shall not be issued for any place or establishment within the city limits, but outside the dense business area, which lies within 500 feet of any church or school, nor for any place or establishment within the dense business area which lies within 300 feet of any church or school, unless, in the case of a church, the governing body of such church consents in writing to the issuance of a certificate of compliance.
- (b) The city shall determine distances by measuring a radius from the property line of the place or establishment. If any portion of a parcel of land in use as church or school facilities lies within said radius, whether or not the property is located within the corporate limits of the city, then the church or school shall be deemed to be within said distance.

Sec. 7-4-6. Restriction of number of certain alcoholic beverage establishments.

- (a) There shall be no more than one place or establishment where beer, as defined by section F.S. § 563.01, Fla. Stat., or wine, as defined by F.S. § 564.01(1), Fla. Stat., or liquor, as defined by section F.S. § 565.01, Fla. Stat., are sold, offered or kept for sale, or received, kept or brought for consumption on or off the premises, opening or having entrance upon any one side or sidewalk of any block within the city, except as provided in subsection (b) of this section. Provided that, if any such place or establishment occupies a corner location in any particular block of the city, then such place or establishment shall not be considered to be within the provisions of subsection (a) of this section.
- (b) The provisions of subsection (a) of this section shall not be applicable to any motel, hotel or restaurant which has obtained a special alcoholic beverage license pursuant to section F.S. § 561.20(2)(a), Fla. Stat., or a restaurant licensed by the division of hotels and restaurants of the state department of business regulation with a seating license and which provides seating for at least 25 persons at one time and derives at least 30 percent of its gross revenues from the sale of food and nonalcoholic beverages. The restaurant

shall be continuously ready to prepare, serve and sell food and nonalcoholic beverages during all business operational hours. Compliance with this section shall be reported on an annual basis at the time of application for the Business Tax Receipt by the submission of a sworn affidavit verifying compliance.

Sec. 7-4-7. Additional criteria for certificate of compliance.

- (a) A certificate of compliance shall not be issued for any place or establishment in any area in which the comprehensive plan or zoning ordinances of the city do not permit the sale of alcoholic beverages or where the place or establishment is not in compliance with the building, plumbing, electrical and gas codes of the city.
- (b) Additionally, prior to granting a certificate of compliance, the mayor shall first determine that the place or establishment complies with the other requirements of this chapter and that the granting of a certificate shall not interfere with safe traffic circulation.

Sec. 7-4-8. Conditional certificate of compliance for places or establishments not constructed or completed.

Conditional certificates of compliance may be issued for places or establishments which have not been constructed for which certificates of occupancy have not been issued by the inspection services department of the city. No conditional certificate shall be issued unless the construction plans show that the place or establishment when occupied will be in compliance with the requirements of this chapter. Prior to issuing a certificate of occupancy for a place or establishment for which a conditional certificate has been issued, the mayor shall determine whether the place or establishment complies with the zoning and building codes of the city and whether the main public entrance of the place or establishment has changed from that set forth in the construction plans so as to render the place or establishment in violation of the restrictions set forth in this chapter. If the place or establishment does not comply or if the main public entrance thereto has changed in the manner described above, the conditional permit shall be revoked by the mayor (notice of which shall be furnished to the petitioner) subject to the right of the petitioner to recommence the petition process. If the place or establishment does comply and the main public entrance thereto has not changed in the manner described above, the mayor shall issue a certificate of compliance in accordance with section 7-4-3(b), the issuance of which shall be subject to review by the manner prescribed in section 7-4-3.

Sec. 7-4-9. Sunday deliveries.

It shall be unlawful for any wholesaler or distributor of alcoholic beverages to make any deliveries of alcoholic beverages to any retail establishment or other place retailing such beverages, by motor truck or other vehicle before 1:00 p.m. on Sundays, within the corporate limits of the city.

Sec. 7-4-10. Certain exemptions for distributors.

It is the intent of this chapter that the provisions of sections 7-4-4 and 7-4-5 do not apply to distributors of alcoholic beverages, as the same are defined by the Beverage Law of the State of Florida.

Sec. 7-4-11. Additional exemption for certain licensed restaurants.

Notwithstanding any provisions of this chapter to the contrary, a restaurant licensed by the division of hotels and restaurants of the state department of business regulation with a seating license and which provides seating for at least 25 persons at one time and derives at least 30 percent of its gross revenues from the sale of food and nonalcoholic beverages. The restaurant shall be continuously ready to prepare, serve and sell food and nonalcoholic beverages during all business operational hours. Compliance with this section shall be reported on an annual basis at the time of application for the Business Tax Receipt by the submission of a sworn affidavit verifying compliance, may sell beer, and wine, and liquor for consumption on the premises only during the hours of sale permitted by section 7-4-2. Additionally, ~~any restaurant meeting the requirements stated above, and obtaining a license pursuant to F.S. § 561.20(2)(a)4, shall be permitted to sell beer, wine, and liquor for consumption on the premises only during the hours of sale permitted by section 7-4-2.~~

Sec. 7-4-12. Additional exemption for certain licensed restaurants.

Vendors licensed pursuant to section F.S. § 563.02(1), Fla. Stat., and nonprofit civic organizations permitted pursuant to section F.S. § 561.422, Fla. Stat., shall be exempt from the provisions of this chapter to the extent required by said law.

Sec. 7-4-13. Consumption in public places.

- (a) Except as provided below, it shall be unlawful for any person to consume, possess, or control any type of alcoholic beverages or any other intoxicating liquors other than a beverage in an unopen container at or upon any park, playground or other recreational facility owned by the city, or in or upon any street right-of-way within the city, including, but not limited to, sidewalks, alleyways, and paved or unpaved portions of the right-of-way.
- (b) This prohibition shall not apply to those activities, either public or private, for which prior approval by the mayor has been granted or obtained pursuant to the provisions of the special events permitting, sections 11-4-171 through 11-4-180.
- (c) Public or private activities where alcoholic beverages or other intoxicating liquors may be consumed will be allowed under a special event permit in the following parks and recreational facilities:

- (1) Bayview Park (excluding Bayview Resource Center) and Bayview Senior Citizens Center.
- (2) Plaza de Luna.
- (3) Seville Square.
- (4) William Bartram Memorial Park.
- (5) East Pensacola Heights Clubhouse.
- (6) Sanders Beach Corinne Jones Resource Center (limited to the inside and the veranda).

Sale of alcoholic beverages by any activity sponsor, vendor, or other person at such a public or private activity shall be prohibited except for those events specifically permitting such sales under the activity's special event permit.

- (d) Alcoholic beverages sales and consumption will be allowed on the Osceola Municipal Golf Course, in the Saenger Theatre, on the premises of the Roger Scott Tennis Center exclusive of the parking lot area outside of the perimeter fencing, and the Bayview Senior Citizens Center (limited to the inside and outdoor patio areas on the south side of the building), all subject to the terms and conditions of their respective vendor management agreements and city ordinance.
- (e) At the time of application for a special event permit, the applicant as provided in section 11-4-177 shall furnish to the mayor for the activity a copy of its proof of liquor liability insurance and other required insurance coverages naming the city as an additional insured to protect the city from any potential liabilities or losses related to the proposed activity.
- (f) The applicant also shall arrange with the city to provide security services for the activity at the time of application for a special event permit. The cost of such security services shall be paid for by the applicant. The city shall detail the number of officers as deemed appropriate to maintain public safety at the function but in no case less than the following for any proposed activity:
 - (1) Outdoor events of 150 people or less shall require a minimum of one police officer. Outdoor events of more than 150 people shall require a minimum of two officers.
 - (2) Indoor events of any size shall require a minimum of two officers with one stationed inside the facility and one in the parking lot.

- (g) This prohibition against open containers shall not apply to events taking place within the Specialty Center District as defined in section 11-4-171 where the event organizer has obtained a special events permit that invokes the Specialty Center District.

Sec. 7-4-14. Enforcement.

- (a) In addition to the penalties for violations of this Code provided for in section 1-1-8, this chapter also may be enforced by the city in an action to enjoin any violation of this chapter or to close any place or establishment where such violation occurs. This includes the city's ability to request verification of compliance to any and all portions of the code, at the city's discretion.
- (b) For violations of section 7-4-13, in lieu of making an arrest or issuing a notice to appear pursuant to section 1-1-8, a law enforcement officer may issue a civil citation as described below:
 - (1) A law enforcement officer may issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a violation of section 7-4-13.
 - (2) A citation issued by a law enforcement officer shall be in a form prescribed by the mayor and shall contain:
 - a. The date and time of issuance.
 - b. The name and address of the person to whom the citation is issued.
 - c. The date and time the violation of section 7-4-13 was committed.
 - d. The facts constituting reasonable cause.
 - e. The name of the law enforcement officer.
 - f. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
 - g. The applicable civil penalty if the person elects to contest the citation.
 - h. The applicable civil penalty if the person elects not to contest the citation.

- i. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, such person shall be deemed to have waived the right to contest the citation and that, in such case, judgment may be entered for an amount up to the maximum civil penalty.
- (3) For violations of section 7-4-13, the following civil penalty citation schedules will apply if the person cited elects not to contest a citation and the civil penalties which will apply if such person elects to contest a citation:
 - a. For those persons not contesting a citation:
 - 1. First citation: \$50.00.
 - 2. Second citation: \$100.00.
 - 3. Third citation: \$200.00.
 - 4. Fourth and all additional citations: \$400.00.
 - b. For those persons contesting a citation, the county court may impose a fine within the court's discretion up to a maximum of \$500.00.
- (4) After issuing a citation to an alleged violator, a law enforcement officer shall deposit the original citation and one copy of the citation with the county court.

Sec. 7-4-15. Sales and consumption restricted to licensed buildings.

- (a) It shall be unlawful for any owner of a licensed establishment, or for any agent, servant or employee of any such owner to permit the consumption of any alcoholic beverages in or upon any parking or other area outside of the building or room mentioned in his or her license certificate as the address thereof, when any part of such parking or other area is adjacent to the building or premises in which the building licensed under such section is operated, and when such parking or other area is owned, rented, leased, regulated, controlled or provided, directly or indirectly, by such owner or by any agent, servant or employee of such owner.
- (b) It shall be unlawful for any person to consume any alcoholic beverage in or upon any parking or other area outside of and adjacent to licensed premises when such parking or other area is owned, rented, leased, regulated, controlled or provided, directly or indirectly, by such establishment.

- (c) If any licensed owner mentioned herein be a corporation, then the officers of such corporation shall be regarded as the owners thereof, for the purposes of enforcement of this section.
- (d) Any person violating any of the provisions of this section shall, upon conviction, be punished as provided in section 1-1-8.
- (e) The mayor is hereby authorized to grant exemptions from the operation of this section. Any person seeking an exemption from the operation of this section must make a request in writing to the mayor's office, and this application must describe in detail the reasons and circumstances pertaining to the intended consumption of alcoholic beverages in an outside area. Exemptions may be granted by the mayor only in situations where it would appear that the exemption, if granted, would not create a public nuisance or a public disturbance. In determining whether to grant a requested exemption, the mayor shall take into account the following factors:
 - (1) The degree to which the consumption of alcoholic beverages in an outside area would be exposed to public view.
 - (2) The level of noise likely to be created by the granting of an exemption.
 - (3) The extent to which litter control is exercised by the person or entity providing for the availability of alcoholic beverages.
 - (4) The degree to which law enforcement services have been or may be required to be provided by the city.

No exemption granted by the mayor shall be effective for a period of more than one year from the date of issue. Such exemption may be renewed by the mayor on an annual basis upon written request, and the mayor may grant annual renewal by application of the four factors set forth above.

- (f) Any person aggrieved by the denial of an exemption by the mayor shall have a right to appeal the mayor's decision to the city council. Such an appeal must be filed in writing in the office of the city clerk within ten calendar days after the date of the mayor's decision to deny an exemption. The notice of appeal shall set forth a short and plain statement of the reasons why the decision of the mayor was not in compliance with the provisions of this section.
- (g) The city council shall consider any appeal pursuant to this section within a reasonable time following the date of filing of a notice of appeal. At the meeting, the appellant and the mayor may present evidence concerning

whether the decision of the mayor was in compliance with the provisions of this section. The burden of proof shall be upon the appellant. The city council shall consider the evidence presented concerning the criteria set forth in this section and render its decision which shall be final.

- (h) The mayor is authorized to revoke any exemption which may have been granted pursuant to this section in the event that it is determined by the mayor that the conduct of patrons of a licensed establishment which has been granted an exemption constitutes a public nuisance or a public disturbance. In determining whether a public nuisance or disturbance exists, the mayor may consider and investigate the level of noise created by outdoor consumption of alcoholic beverages, the degree of litter produced, and the degree to which law enforcement services have been necessitated. In the event that the mayor determines that an exemption previously granted should be revoked, the mayor shall provide written notice to the owner of the licensed establishment no less than five days in advance of the effective date of the revocation, informing the owner of the licensed establishment of the intention to revoke the exemption and the reasons therefor.
- (i) Any person aggrieved by the revocation of an exemption by the mayor shall have a right to appeal the mayor's decision to the city council. Such an appeal must be filed in writing in the office of the city clerk within ten calendar days after the date of the mayor's decision to deny an exemption. The notice of appeal shall set forth a short and plain statement of the reasons why the decision of the mayor was not in compliance with the provisions of this section, or why the exemption should not be revoked.
- (j) The city council shall consider any appeal of a revocation of exemption pursuant to this section within a reasonable time following the date of filing of a notice of appeal. At the meeting, the appellant and the mayor may present evidence concerning whether the decision of the mayor was in compliance with the provisions of this section. The burden of proof shall be upon the appellant. The city council shall consider the evidence presented concerning the criteria set forth in this section and render its decision which shall be final.

SECTION 2. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. This ordinance shall take effect on the fifth business day after adoption, unless otherwise provided, pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk