

**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