



City of Pensacola

City Council

Agenda

City of Pensacola
222 W. Main Street
Pensacola, FL 32502

June 13, 2024, 5:30 PM

Hagler-Mason Conference Room, 2nd Floor

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

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

Council Member Charles Bare

AWARDS

FIRST LEROY BOYD FORUM

APPROVAL OF MINUTES

1. 24-396 APPROVAL OF MINUTES: REGULAR MEETING DATED MAY 23, 2024
Recommendation: That City Council approve regular meeting minutes dated May 23, 2024.
Sponsors: Council President Casey Jones
Attachments: *Draft: Regular Meeting Dated 5/23/2024*

APPROVAL OF AGENDA

CONSENT AGENDA

2. 24-503 MAYORAL APPOINTMENT - DOWNTOWN IMPROVEMENT BOARD
Recommendation: That City Council affirm the Mayor's reappointment of Chris McKean to the Downtown Improvement Board (DIB) for a term of three (3) years expiring June 30, 2027.
Sponsors: Mayor D.C. Reeves
Attachments: *Member List*
Application of Interest - Chris McKean

3. 24-533 APPOINTMENTS - ENVIRONMENTAL ADVISORY BOARD

Recommendation: That City Council appoint Mark Gottschalk, an individual who is an employed or retired environmental professional, or member of local environmental organizations or businesses with an interest in City environmental issues; and appoint Jordan Poole, an individual who is a resident or property owner of the City to a term of two (2) years, expiring March 1, 2026.

Sponsors: Council President Casey Jones

Attachments: *Member List*
Nomination Form - Mark Gottschalk
Application of Interest - Mark Gottschalk
Nomination Form - Jordan Poole
Application of Interest - Jordan Poole
Ballot

4. 24-509 CITY OF PENSACOLA HOUSING DEPARTMENT PUBLIC HOUSING AGENCY 2024-2025 ANNUAL PLAN

Recommendation: That City Council approve the Public Housing Agency 2024-2025 Annual Plan for the Housing Choice Voucher program for submission to the U.S. Department of Housing and Urban Development. Further, that City Council authorize the Mayor to take the actions necessary to execute the Plan documents and administer the program, consistent with the terms of the program and the Mayor's Executive Powers as granted in the City Charter.

Sponsors: Mayor D.C. Reeves

Attachments: *FY2024-25 Public Housing Annual Plan*

5. 24-506 LOCAL GOVERNMENT AREA OF OPPORTUNITY FOR 9% HOUSING TAX CREDIT APPLICATION

Recommendation: That City Council authorize funding in the amount of \$460,000 to support a Local Government Area of Opportunity application for Kupfrian Manor for Florida Housing Finance Corporation's RFA 2024-201 Housing Credit Financing for Affordable Housing Developments located in Medium and Small Counties. Further, that City Council authorize the Mayor to sign the Local Government Verification of Contribution Form as required by Florida Housing Finance Corporation.

Sponsors: Mayor D.C. Reeves

Attachments: *Local Government Verification of Contribution-Loan Form*
Proposed Site Map-Kupfrian Manor
LGAO application Kupfrian Manor

6. 24-418 AIRPORT - U.S. GENERAL SERVICES ADMINISTRATION (GSA) LEASE AGREEMENT

Recommendation: That City Council authorize the Mayor to execute the lease agreement with U.S. General Services Administration (GSA) to provide for office and training space for the Transportation Security Administration at the Pensacola International Airport. Further, that City Council authorize the Mayor to execute any amendments to the lease agreement governing the annual terminal building rental rate adjustment. Finally, that City Council authorize the Mayor to take the actions necessary to execute and administer this lease agreement, consistent with the terms of the agreement and the Mayor's Executive Powers as granted in the City Charter.

Sponsors: Mayor D.C. Reeves

Attachments: *Lease Agreement with US General Services Administration 2024
REVISED - Lease Agreement with US General Services
Administration 2024*

7. 24-492 FLORIDA LOCAL GOVERNMENT CYBERSECURITY PROGRAM GRANT AGREEMENT NO. DMS-24/25-071

Recommendation: That City Council approve acceptance of Florida Local Government Cybersecurity Grant Contract No. DMS-24/25-071 to provide for the continued funding of Endpoint-Based Asset Discovery and Security Operations Platform, and that City Council authorize the Mayor to take the actions necessary relating to the acceptance and execution of this grant, consistent with the terms of the agreement and the Mayor's Executive Powers as granted in the City Charter.

Sponsors: Mayor D.C. Reeves

Attachments: *24-25 Round 1 Award Letter
2024-05-13 Cybersecurity Grant Award Memo
Grant Agreement DMS 24/25-071
Grant Agreement DMS 22/23-436 - Approved on 5/25/23*

8. 24-508 COMMUNITY DEVELOPMENT BLOCK GRANT-CV AGREEMENT FOR SERVICES WITH OPENING DOORS NORTHWEST FLORIDA, INC.

Recommendation: That City Council approve the Community Development Block Grant-CV Agreement for Services with Opening Doors Northwest Florida, Inc. to provide direct financial assistance for Emergency Housing Voucher program clients. Further, that City Council authorize the Mayor to take the action necessary to execute and administer the Agreement, consistent with the terms of the Agreement and the Mayor's Executive Powers as granted in the City Charter.

Sponsors: Mayor D.C. Reeves

Attachments: CDBG-CV Agreement for Services

9. 24-538 STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT - STATEWIDE MUTUAL AID AGREEMENT

Recommendation: That City Council approve the State of Florida Division of Emergency Management Statewide Mutual Aid Agreement. Further, the City Council authorize the Mayor to take the actions necessary to execute and administer this Memorandum of Agreement, consistent with the terms of the agreement and the Mayor's Executive Powers as granted in the City Charter.

Sponsors: Mayor D.C. Reeves

Attachments: Statewide Mutual Aid Agreement 2023

10. 24-507 REVISED - DISCRETIONARY FUNDING ALLOCATION - CITY COUNCIL MEMBER TENIADE BROUGHTON - DISTRICT 5

Recommendation: That City Council approve funding of \$500 to the Muscogee Nation of Northwest Florida, \$250 to Safe Women and Girls, \$200 to the East Hill Neighborhood Association, \$500 to the University of West Florida (UWF) Historic Trust, \$500 to the Gulf Coast Minority Chamber of Commerce from the City Council Discretionary Funds for District 5.

Sponsors: Council Member Teniadè Broughton

Attachments: None

11. 24-500 ADD-ON: AIRPORT - AWARD OF BID NO. 24-028 - PENSACOLA INTERNATIONAL AIRPORT TIPPIN AVENUE PARKING LOT

Recommendation: That City Council award Bid # 24-028, Pensacola International Airport Tippin Avenue Parking Lot to C.W. Roberts Contracting, Inc. of Pensacola, FL, the lowest and most responsible bidder with a base bid of \$2,845,539.10 plus a 10% contingency of \$284,553.91 for a total of \$3,130,093.01. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer this contract and complete the work, consistent with the bid, contracting documents, and the Mayor's Executive Powers as granted in the City Charter.

Sponsors: Mayor D.C. Reeves

Attachments: ITB No. 24-028 Tabulation of Bids
ITB No. 24-028 Final Vendor Reference List

12. 24-578 ADD-ON -- SECOND ADDENDUM TO OPTION AGREEMENT WITH INSPIRED COMMUNITIES OF FLORIDA, LLC FOR LOTS 4 AND 5 AT THE COMMUNITY MARITIME PARK

Recommendation: That City Council approve and authorize the Mayor to execute the

Second Addendum to the Option Agreement with Inspired Communities of Florida, LLC for the development of Lots 4 and 5 of Vince J. Whibbs Sr. Community Maritime Park, extending the agreement through July 31, 2024. Also, that City Council authorize the Mayor to take actions necessary to execute and administer this agreement, consistent with the terms of the agreement and the Mayor's Executive Powers as granted in the City Charter.

Sponsors: Mayor D.C. Reeves

Attachments: *Second Addendum to Inspired Option Agreement for Lots 4 and 5*

REGULAR AGENDA

- 13. 24-554** PUBLIC HEARING -- DISPOSTION OF REAL PROPERTY - 1491 N. E. ST., 2300 W. JACKSON ST., 113 N. SPRING ST.

Recommendation: That City Council conduct a Public Hearing regarding the disposition of real property located at 1491 N. E. Street, 2300 W. Jackson Street, and 113 N. Spring Street, in accordance with Chapter 163, Part III, Florida Statutes.

Sponsors: Council President Casey Jones

Attachments: *Land Donation Agreement with NWFL CLT - June 2024*

- 14. 24-511** DISPOSITION OF REAL PROPERTY - THREE RESIDENTIAL INFILL LOTS (COMMUNITY LAND TRUST)

Recommendation: That City Council authorize the Mayor to dispose of each of three previously-surplused residential infill parcels located at 1491 North E Street (formerly addressed as 901 West Blount Street), 2300 West Jackson Street, and 113 North Spring Street via a land donation agreement in direct negotiation with Northwest Florida Community Land Trust LLC, as selected using the criteria of the required public notice, pursuant to Florida Statute 163.380. Also, that City Council authorize the Mayor to take all action necessary to execute and administer the transactions consistent with the Mayor's Executive Powers as granted by the City Charter.

Sponsors: Mayor D.C. Reeves

Attachments: *Land Donation Agreement with NWFL CLT - June 2024*

- 15. 24-553** APPROVAL OF LAND DONATION AGREEMENT WITH COMMUNITY LAND TRUST FOR AFFORDABLE HOUSING INFILL

Recommendation: That City Council approve the land donation agreement with the Northwest Florida Community Land Trust for the redevelopment of 2300 W Jackson Street, A (Parcel ID# 000S009060020172) and 113 N. Spring

Street (Parcel ID#000S009003001462) and the rehabilitation of 1491 N E Street (Parcel ID# 000S009050016054) for long-term affordable housing.

Sponsors: Council Member Jennifer Brahier

Attachments: *Land Donation Agreement*
Ground Lease Form
Special Warranty Deed (Form)
IROI Final Submittal 5.24.24
(6-5) 113 N Spring St-PROGRESS SET
N Spring St - Concrewall SCIP Structural Plans
(5-17) 1491 E St Rehab Aff Housing-PRELIM

- 16. 24-499** PRELIMINARY RATE RESOLUTION TO IMPOSE AN ANNUAL STORMWATER ASSESSMENT ON REAL PROPERTY IN THE CITY OF PENSACOLA

Recommendation: That City Council adopt Resolution No. 2024-45.

A RESOLUTION OF THE CITY OF PENSACOLA, FLORIDA, RELATING TO THE PROVISION OF STORMWATER MANAGEMENT SERVICES; ESTIMATING THE COST OF STORMWATER MANAGEMENT SERVICES PROVIDED BY THE CITY'S STORMWATER UTILITY; DESCRIBING THE METHOD OF CHARGING THE STORMWATER SERVICE COST OF STORMWATER MANAGEMENT SERVICES AGAINST ASSESSED PROPERTY; DIRECTING THE STORMWATER UTILITY DIRECTOR TO PREPARE OR DIRECT THE PREPARATION OF A STORMWATER ASSESSMENT ROLL; AUTHORIZING A PUBLIC HEARING FOR THE PROPOSED STORMWATER SERVICE ASSESSMENTS AND DIRECTING THE PROVISION OF NOTICE THEREOF; PROVIDING FOR COLLECTION; AND PROVIDING AN EFFECTIVE DATE.

Sponsors: Mayor D.C. Reeves

Attachments: *Resolution No. 2024-45*

- 17. 24-512** DECLARATION OF SURPLUS AND DISPOSITION OF REAL PROPERTY - 101 WEST MAIN STREET (SHORT TERM LEASE)

Recommendation: That City Council declare as surplus the real property located at 101 West Main Street (Parcel ID No. 000S009100080026) and authorize the CRA to dispose of the parcel via direct negotiation with Hixardt Technologies, Inc. for a short term lease in the interim of previously-approved redevelopment of the site. Also, that City Council authorize the Mayor to take all action necessary to administer the transaction consistent with the Mayor's Executive Powers as granted by the City

Charter.

Sponsors: Mayor D.C. Reeves

Attachments: None

18. 24-530 APPROVAL OF SHORT TERM LEASE AGREEMENT WITH HIXARDT TECHNOLOGIES, INC. FOR 101 W. MAIN STREET

Recommendation: That City Council ratify the CRA Board's recommendation to approve a lease agreement with Hixardt Technologies, Inc. for the property located at 101 West Main Street for a period of twelve (12) months, terminating on June 15, 2025, reverting to month-to-month lease thereafter, until terminated.

Sponsors: Council Member Jennifer Brahier

Attachments: Lease - 101 W. Main Street - final 5.31.2024

19. 24-513 ACQUISITION OF REAL PROPERTY - 2301 WEST CERVANTES STREET

Recommendation: That City Council approve the purchase of real property located at 2301 West Cervantes Street (Parcel No. 000S009060030173) from Rosario Danzie dba Amerasian LLC for \$18,000 plus an estimated \$7,500 in closing costs and lien abatement, for a total amount not to exceed \$25,500. Also, that City Council authorize the Mayor to take the necessary actions to execute and administer the acquisition, consistent with the Mayor's Executive Powers as granted in the City Charter.

Sponsors: Mayor D.C. Reeves

Attachments: Property Appraiser Info - 2301 W Cervantes

20. 24-514 RESOLUTION NO. 2024-46 - ACQUISITION OF REAL PROPERTY AT 2301 WEST CERVANTES STREET WITH COMMUNITY REDEVELOPMENT AGENCY (CRA) FUNDS

Recommendation: That City Council adopt Resolution No. 2024-46:

A RESOLUTION OF THE CITY OF PENSACOLA, FLORIDA RELATING TO COMMUNITY REDEVELOPMENT WITHIN THE WESTSIDE COMMUNITY REDEVELOPMENT AREA; PROVIDING FINDINGS; APPROVING AND AUTHORIZING THE EXPENDITURE OF CRA FUNDS TO ACQUIRE CERTAIN REAL PROPERTY THEREIN LOCATED AT 2301 WEST CERVANTES STREET IN FURTHERANCE OF THE PURPOSES ESTABLISHED IN CHAPTER 163, PART III, FLORIDA STATUTES AND THE WESTSIDE REDEVELOPMENT PLAN; AND PROVIDING AN EFFECTIVE DATE.

Sponsors: Mayor D.C. Reeves

Attachments: *Resolution No. 2024-46*
Property Appraiser Info - 2301 W Cervantes

- 21. 24-455** PENSACOLA INTERNATIONAL AIRPORT - STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION PUBLIC TRANSPORTATION
GRANT AGREEMENT NO. 446645-1-94-01 TAXIWAY A7 & TAXIWAY A/B
INTERSECTION RECONFIGURATION

Recommendation: That City Council accept the Florida Department of Transportation, Public Transportation Grant Agreement No. 446645-1-94-01 for the Taxiway A7 & Taxiway A/B Intersection Reconfiguration in the amount of \$450,000 with a \$545,160 local match and \$8,961,840 federal ask for a total grant value of \$9,957,000. 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.

Sponsors: Mayor D.C. Reeves

Attachments: *State of Florida Department of Transportation Public
Transportation Grant Agreement No. 446645-1-94-01*
Resolution No. 2024-41

- 22. 24-456** RESOLUTION NO. 2024-41 - STATE OF FLORIDA DEPARTMENT OF
TRANSPORTATION PUBLIC TRANSPORTATION AGREEMENT NO.
446645-1-94-01 - TAXIWAY A7 & TAXIWAY A/B INTERSECTION
RECONFIGURATION

Recommendation: That City Council adopt Resolution No. 2024-41.

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF PENSACOLA TO EXECUTE THE PUBLIC TRANSPORTATION GRANT AGREEMENT NO. 446645-1-94-01 WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR TAXIWAY A7 & A/B INTERSECTION RECONFIGURATION – CONSTRUCTION/ CONSTRUCTION ADMINISTRATION AT THE PENSACOLA INTERNATIONAL AIRPORT; PROVIDING AN EFFECTIVE DATE.

Sponsors: Mayor D.C. Reeves

Attachments: *Resolution No. 2024-41*
*State of Florida Department of Transportation Public
Transportation Grant Agreement No. 446645-1-94-01*

COUNCIL EXECUTIVE'S REPORT

MAYOR'S COMMUNICATION

COUNCIL COMMUNICATIONS & CIVIC ANNOUNCEMENTS**SECOND LEROY BOYD FORUM****ADJOURNMENT**

Any opening invocation that is offered before the official start of the Council meeting shall be the voluntary offering of a private person, to and for the benefit of the Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the City Council or the city staff, and the City is not allowed by law to endorse the religious or non-religious beliefs or views of such speaker. Persons in attendance at the City Council meeting are invited to stand during the invocation and to stand and recite the Pledge of Allegiance. However, such invitation shall not be construed as a demand, order, or any other type of command. No person in attendance at the meeting shall be required to participate in any opening invocation that is offered or to participate in the Pledge of Allegiance. You may remain seated within the City Council Chambers or exit the City Council Chambers and return upon completion of the opening invocation and/or Pledge of Allegiance if you do not wish to participate in or witness the opening invocation and/or the recitation of the Pledge of Allegiance.

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 #: 24-396

City Council

6/13/2024

MINUTES

SUBJECT:

APPROVAL OF MINUTES: REGULAR MEETING DATED MAY 23, 2024

ATTACHMENTS:

1. Draft: Regular Meeting Dated 5/23/2024



City of Pensacola

CITY COUNCIL

MINUTES

City of Pensacola
222 W. Main Street
Pensacola, FL
32502

May 23, 2024

5:30 PM

Hagler-Mason Conference Room,
2nd Floor

ROLL CALL

Council President Jones called the regular meeting to order at 5:30 P.M.

Council Members Present: Casey Jones, Jared Moore, Charles Bare, Jennifer Brahier, Teniade Broughton, Allison Patton, Delarian Wiggins

Council Members Absent: None

Also Present: Mayor D.C. Reeves

INVOCATION

Moment of Silence

PLEDGE OF ALLEGIANCE

Council Member Delarian Wiggins

AWARDS

None

FIRST LEROY BOYD FORUM

Gloria Horning and Chris Curb (individually) addressed Council regarding flooding/stormwater issues and referenced the presentation provided at the 5/20/2024 agenda conference by Public Works & Engineering staff.

Sherri Myers: Addressed Council regarding a sidewalk school safety improvement project on College Parkway and referred to copies she provided of a picture of the entrance at Sam's club indicating the sidewalk is still broken up as it was prior to the project, indicating its condition is an ADA violation. She appealed to the Mayor to go take a look and get it fixed. Additionally, she referenced a notice regarding

upcoming public input and workshop meetings being held by the Community Redevelopment Agency (CRA) and indicated there was not a statement providing for ADA accommodations.

APPROVAL OF MINUTES

1. 24-395 APPROVAL OF MINUTES: REGULAR MEETING DATED MAY 9, 2024

Recommendation: That City Council approve the regular meeting minutes dated May 9, 2024

A motion to approve was made by Council Member Bare and seconded by Council Member Brahier.

The motion passed by the following vote:

Yes: 7 Casey Jones, Jared Moore, Charles Bare, Jennifer Brahier, Teniade Broughton, Allison Patton, Delarian Wiggins

No: 0 None

APPROVAL OF AGENDA

A motion to approve was made by Council Vice President Moore and seconded by Council Member Wiggins.

The motion passed by the following vote:

Yes: 7 Casey Jones, Jared Moore, Charles Bare, Jennifer Brahier, Teniade Broughton, Allison Patton, Delarian Wiggins

No: 0 None

CONSENT AGENDA

2. 24-392 APPOINTMENT - ARCHITECT ADVISORS-COMMUNITY REDEVELOPMENT AREA URBAN DESIGN OVERLAY STANDARDS ABBREVIATED REVIEW PROCESS

Recommendation: That City Council reappoint John C. von Senden as an alternate architect, who is licensed by the State of Florida and licensed to conduct business within the City of Pensacola, to serve as advisor to the Community Redevelopment Area Urban Design Overlay Standards Abbreviated Review Process for a term of two years, expiring May 31, 2026.

3. 24-400 AIRPORT - AWARD OF CONTRACT TO BAUMTECH LLC FOR RFP #24-013 FOR ATM CONCESSION OPERATION AT PENSACOLA INTERNATIONAL AIRPORT

Recommendation: That City Council approve the ranking of the selection committee and award a five-year contract to Baumtech LLC for Request for Proposals (RFP) No. 24-013 for Automatic Teller Machine (ATM) placement and operation at Pensacola International Airport. Further, that City Council authorize the Mayor to take those actions necessary to execute and administer a contract, consistent with the Mayor's Executive Powers as granted in the City Charter.

4. 24-410 AWARD OF MRO HANGAR 2 LOADING DOCK RECONSTRUCTION AT PENSACOLA INTERNATIONAL AIRPORT

Recommendation: That City Council award Bid # 24-025, MRO Hangar 2 Loading Dock Repairs to Chavers Construction, Inc. of Cantonment, FL, the lowest and most responsible bidder with a base bid of \$157,420.00 plus a 10% contingency of \$15,742.00 for a total of \$173,162.00. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer this contract and complete the work, consistent with the bid, contracting documents, and the Mayor's Executive Powers as granted in the City Charter.

5. 24-491 AWARD OF CONTRACT TO TYLER TECHNOLOGIES FOR THE UPGRADE OF THE CITY'S ENTERPRISE RESOURCE PLANNING (ERP) SYSTEM

Recommendation: That City Council award a contract for Software as a Service Agreement to Tyler Technologies of Yarmouth, Maine, for \$691,582 plus a contingency of \$58,418 for a total of \$750,000. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer this contract and complete the work, consistent with the contracting documents and the Mayor's Executive Powers as granted in the City Charter.

6. 24-450 DISCRETIONARY FUNDING ALLOCATION - CITY COUNCIL PRESIDENT CASEY JONES - DISTRICT 3

Recommendation: That City Council approve funding of \$500 to Be Ready Alliance Coordinating for Emergencies from the City Council Discretionary Funds for District 3.

7. 24-459 REVISED - DISCRETIONARY FUNDING ALLOCATION - CITY COUNCIL MEMBER JENNIFER BRAHIER - DISTRICT 1

Recommendation: That City Council approve funding of \$500 to the Hotel for Dogs and Cats of Northwest Florida, Inc., \$500 to Pearl's Feline Advocates United, Inc. and \$500 to Be Ready Alliance Coordinating for Emergencies from the City Council Discretionary Funds for District 1.

8. 24-502 ADD-ON -- DISCRETIONARY FUNDING ALLOCATION - CITY COUNCIL VICE-PRESIDENT JARED MOORE - DISTRICT 4

Recommendation: That City Council approve funding of \$1,000 to Gulf Coast Kids House, \$1,000 to the Children's Home Society of Florida, \$1,000 to the Be Ready Alliance Coordinating for Emergencies and \$1,000 to the Pensacola Perdido Bay Estuary Program from the City Council Discretionary Funds for District 4.

A motion to approve consent agenda items 2, 3, 4, 5, 6, 7, and 8 was made by Council Member Patton and seconded by Council Member Wiggins.

The motion passed by the following vote:

Yes: 7 Casey Jones, Jared Moore, Charles Bare, Jennifer Brahier, Teniade Broughton, Allison Patton, Delarian Wiggins

No: 0 None

REGULAR AGENDA

9. 24-449 DECLARATION OF SURPLUS AND DISPOSITION OF REAL PROPERTY - 925 EAST JACKSON STREET

Recommendation: That City Council declare as surplus the real property located at 925 East Jackson Street (Parcel ID No. 00-0S-00-9025-005-082) and authorize the Mayor to dispose of the parcel via direct negotiation with a community land trust non-profit organization, to be selected via established criteria listed in the required public notice, pursuant to F.S. 163.380. Also, that City Council authorize the Mayor to take all action necessary to execute and administer the transaction consistent with the Mayor's Executive Powers as granted by the City Charter.

A motion to approve was made by Council Member Brahier and Council Member Patton.

Council Executive Kraher referred to copies at Council's places of a revised memorandum (adding verbiage to the summary, in the first bullet for project preferences, adding the words "with a remaining" - - on file with agenda package).

Mayor Reeves (sponsor) made comments and then called on Deputy City Administrator Forte who read details into the record (on file with agenda package).

Public input was heard from the following individuals:

Jewel Cannada-Wynn
Sherri Myers
Sam Young

Some Council Members asked questions of Mr. Young which he responded accordingly.

Public input continued:

Charlie Dyell

Mayor Reeves made follow-up remarks. Council Member Brahier requested Deputy City Administrator Forte reiterate details regarding area median income (AMI) which he responded accordingly.

Public input continued:

Sam Epstein

Mayor Reeves requested City Attorney Cobb explain types of controls that can be included in the land trust process to ensure affordability which he responded accordingly.

Public input continued:

Dashaun McKenzie

Discussion ensued among Council with input from Mayor Reeves and Deputy City Administrator Forte.

Upon conclusion of discussion, the vote was called.

The motion passed by the following vote:

Yes: 6 Casey Jones, Jared Moore, Jennifer Brahier, Teniade Broughton,
 Allison Patton, Delarian Wiggins
No: 1 Charles Bare

10. 24-402 PENSACOLA INTERNATIONAL AIRPORT - STATE OF FLORIDA

DEPARTMENT OF TRANSPORTATION PUBLIC TRANSPORTATION GRANT
AGREEMENT NO. 446650-1-94-01 - REMOTE PARKING LOT -
CONSTRUCTION AT THE PENSACOLA INTERNATIONAL AIRPORT

Recommendation: That City Council accept the Florida Department of Transportation, Public Transportation Grant Agreement No. 446650-1-94-01 for the Remote Parking Lot Construction in the amount of \$2,200,000 with a \$2,200,000 local match for a total grant value of \$4,400,000. 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.

A motion to approve was made by Council Member Bare and seconded by Council Member Wiggins.

Mayor Reeves (sponsor) explained the urgency of this project. Airport Director Coughlin responded accordingly to questions from Council Member Bare and Council President Jones.

Upon conclusion of discussion, the vote was called.

The motion passed by the following vote:

Yes: 7 Casey Jones, Jared Moore, Charles Bare, Jennifer Brahier, Teniade Broughton, Allison Patton, Delarian Wiggins
No: 0 None

11. 24-403 RESOLUTION NO. 2024-40 - STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION PUBLIC TRANSPORTATION AGREEMENT NO. 446650-1-94-01 - REMOTE PARKING LOT - CONSTRUCTION AT THE PENSACOLA INTERNATIONAL AIRPORT

Recommendation: That City Council adopt Resolution No. 2024-40.

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF PENSACOLA TO EXECUTE THE PUBLIC TRANSPORTATION GRANT AGREEMENT NO. 446650-1-94-01 WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR REMOTE PARKING LOT – CONSTRUCTION AT THE PENSACOLA INTERNATIONAL AIRPORT; PROVIDING AN EFFECTIVE DATE.

A motion to adopt was made by Council Member Bare and seconded by Council Member Brahier.

The motion passed by the following vote:

Yes: 7 Casey Jones, Jared Moore, Charles Bare, Jennifer Brahier, Teniade Broughton, Allison Patton, Delarian Wiggins

No: 0 None

12. 24-416 ACCEPTANCE OF AMENDMENT ONE TO GRANT AWARD G0109 - FLORIDA JOB GROWTH INFRASTRUCTURE, PROVIDING FOR ADDITIONAL FUNDING TO GRANT AWARD.

Recommendation: That City Council approve the acceptance of Amendment One to grant agreement No: G0109 to retrofit Warehouse #10 at the Port of Pensacola in support of American Magic. This amendment is in the amount of \$1,623,426 for a total grant value of \$5,586,546. 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. Finally, that City Council adopt a supplemental budget resolution appropriating the grant funds.

A motion to approve was made by Council Member Bare and seconded by Council Member Patton.

Mayor Reeves (sponsor) commended City staff for their work on this grant and acknowledged Governor DeSantis for the award of funding.

There being no discussion, the vote was called.

The motion passed by the following vote:

Yes: 7 Casey Jones, Jared Moore, Charles Bare, Jennifer Brahier, Teniade Broughton, Allison Patton, Delarian Wiggins

No: 0 None

13. 24-417 SUPPLEMENTAL BUDGET RESOLUTION NO: 2024-38: AMENDMENT TO GRANT AWARD G0109 - FLORIDA JOB GROWTH INFRASTRUCTURE

Recommendation: That City Council adopt Supplemental Budget Resolution No. 2024-38.

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2024; PROVIDING FOR AN EFFECTIVE DATE.

A motion to adopt was made by Council Member Bare and seconded by Council Member Wiggins.

The motion passed by the following vote:

Yes: 7 Casey Jones, Jared Moore, Charles Bare, Jennifer Brahier, Teniade Broughton, Allison Patton, Delarian Wiggins

No: 0 None

14. 24-464 AMENDMENT #1 TO INTERLOCAL AGREEMENT BETWEEN THE CITY OF PENSACOLA AND WEST FLORIDA HISTORIC PRESERVATION, INC., (WFHPI) FOR ZARAGOZA STREET IMPROVEMENTS PROJECT

Recommendation: That City Council approve and authorize the Mayor to execute Amendment #1 to the Interlocal Agreement between the City of Pensacola, Florida and West Florida Historic Preservation, Inc., a Florida non-profit corporation and direct support organization of the University of West Florida ("WFHPI") related to providing pedestrian and aesthetic improvements to Zaragoza Street between Tarragona and Adams Streets. Further that City Council authorize the Mayor to take the actions necessary to execute and administer this Interlocal Agreement consistent with the terms of the agreement and the Mayor's Executive Powers as granted in the City Charter. Finally, that City Council adopt a Supplemental Budget Resolution appropriating the additional funds.

A motion to approve was made by Council Member Wiggins and seconded by Council Member Brahier.

Mayor Reeves (sponsor) explained the added improvements will be funded by UWF and responded accordingly to questions from Council President Jones.

There being no further discussion, the vote was called.

The motion passed by the following vote:

Yes: 7 Casey Jones, Jared Moore, Charles Bare, Jennifer Brahier, Teniade Broughton, Allison Patton, Delarian Wiggins

No: 0 None

15. 24-468 SUPPLEMENTAL BUDGET RESOLUTION NO. 2024-42 - AMENDMENT #1 TO INTERLOCAL AGREEMENT BETWEEN THE CITY OF PENSACOLA AND WEST FLORIDA HISTORIC PRESERVATION, INC., (WFHPI) FOR ZARAGOZA STREET IMPROVEMENTS PROJECT

Recommendation: That City Council adopt Supplemental Budget Resolution No. 2024-42.

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2024; PROVIDING FOR AN EFFECTIVE DATE.

A motion to adopt was made by Council Member Bare and seconded by Council Member Wiggins.

The motion passed by the following vote:

Yes: 7 Casey Jones, Jared Moore, Charles Bare, Jennifer Brahier, Teniade Broughton, Allison Patton, Delarian Wiggins
No: 0 None

COUNCIL EXECUTIVE'S REPORT

Council Executive Kraher addressed Council regarding the ongoing strategic planning process.

MAYOR'S COMMUNICATION

Mayor Reeves acknowledged the following rankings recently given to Pensacola: *4th Safest City; 30th Best Place to Retire; and 31st Best Place to Live*. He also highlighted the recent historical marker at the Community Maritime Park recognizing the *Jaycees*. Further, he referenced the recent *CivicCon* event where Jon DeCarmine addressed the success of low barrier homeless shelters, and thanked Council Member Patton for her involvement. Finally, he advised that renovations to Council Chambers should be completed in time for the July 18th meeting.

COUNCIL COMMUNICATIONS & CIVIC ANNOUNCEMENTS

Council Member Wiggins also commented on the historical plaque honoring the *Jaycees*. Additionally, he expressed frustration with the new voting system (CivicClerk), but acknowledged that he knows City IT staff are doing the best they can to work through the issues. Mayor Reeves made follow-up remarks indicating he would get an update from the vendor on the status and timeline for improvements.

Council Member Bare made follow-up remarks regarding CivicClerk. He also shared recent travels he and his wife made through Pensacola International Airport. Additionally, he addressed his interview with WEAR TV 3 as a supporter of Advanced Life Support certification and equipment for the City through the Fire Department, which was discussed during the 5/20 agenda conference.

Council Member Patton also made follow-up remarks regarding the *Jaycees* historical marker and highlighted a Netflix documentary entitled *Long Time Coming* which tells their story. She also commended the police department's efforts in enforcement of loud (illegal) noise from vehicles downtown and noted it has made a positive impact.

Council Member Moore also indicated he is frustrated with CivicClerk. He also highlighted the upcoming *Bands on the Bayou* tomorrow evening.

Council Member Broughton highlighted the *Florida Emancipation Day* celebration

at the Ella Jordan African-American Museum of History and other events leading up to Juneteenth.

Council Member Bare thanked Deputy City Administrator Forte and Public Works & Engineering Director Tootle for their response and information provided regarding traffic safety issues within neighborhoods.

President Jones shared that he recently had the opportunity to experience Port operations which he went out with the harbor pilot out about 1.5 mile offshore and then back to the Port in a sea vessel in rough weather.

SECOND LEROY BOYD FORUM

None

ADJOURNMENT

WHEREUPON the meeting was adjourned at 6:58 P.M.

Adopted: _____

Approved: _____
Casey Jones, President of City Council

Attest:

Ericka L. Burnett, City Clerk



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-503

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

MAYORAL APPOINTMENT - DOWNTOWN IMPROVEMENT BOARD

RECOMMENDATION:

That City Council affirm the Mayor's reappointment of Chris McKean to the Downtown Improvement Board (DIB) for a term of three (3) years expiring June 30, 2027.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The Downtown Improvement Board (DIB) is a quasi-governmental, not-for-profit agency created in 1972 for the purpose of physically, economically, and socially revitalizing downtown Pensacola. The DIB coordinates the marketing and promotion of the 44-block central business core of downtown Pensacola.

The DIB was created by a Special Act of the Florida Legislature Section 72.662 and is to be composed of five (5) members appointed by the Mayor and confirmed by the City Council.

Members must be owners of realty within the downtown area, subject to ad valorem taxation, or a lessee thereof required by lease to pay taxes. No voting member may be a City or County Officer or employee.

Article II, Section I (1) - Board Composition, Term and Appointments, states in part, "...The Board shall be composed of five (5) members appointed by the Mayor of Pensacola with the concurrence of the Pensacola City Council for three (3) year staggered terms."

PRIOR ACTION:

February 9, 2023 - City Council affirmed Mayor Reeves' appointment of Chris McKean to fill an unexpired term.

FUNDING:

N/A

FINANCIAL IMPACT:

N/A

LEGAL REVIEW ONLY BY CITY ATTORNEY: No

STAFF CONTACT:

Ericka L. Burnett, City Clerk

ATTACHMENTS:

1. Member List
2. Application of Interest - Chris McKean

PRESENTATION: No

Downtown Improvement Board

Name	Profession	Appointed By	No. of Terms	Year	Exp Date	First Appointed	Term Length	Comments
Brahier, Jennifer	Council Member-Ex Officio	Mayor	1	2024	11/26/2024	12/15/2022	2	
Holler, Nathan	Business Owner	Mayor	0	2024	6/30/2025	6/16/2022	3	
McKean, Christopher L.	Business Owner	Mayor	0	2024	6/30/2024	2/9/2023	3	
Merrill, William L.	Business Owner	Mayor	0	2024	6/30/2026	7/20/2023	3	
N'dione, Jean Pierre	Business Owner	Mayor	1	2024	6/30/2025	6/13/2019	3	
Simpson, Rafael	Business Owner/Resident	Mayor	0	2024	6/30/2026	6/15/2023	3	

Term Length: THREE YEAR TERMS

COMPOSED OF FIVE (5) MEMBERS APPOINTED BY THE MAYOR AND CONFIRMED BY THE CITY COUNCIL. MEMBERS MUST BE OWNERS OF REALTY WITHIN THE DOWNTOWN AREA, SUBJECT TO AD VALOREM TAXATION, A LESSEE THEREOF REQUIRED BY LEASE TO PAY TAXES THEREON. NO VOTING MEMBER SHALL BE SERVING AS A CITY OR COUNTY OFFICER OR EMPLOYEE.

THIS EMAIL IS FROM AN EXTERNAL EMAIL ACCOUNT

From: noreply@civicplus.com
To: [Ericka Burnett](#); [Robyn Tice](#);
Subject: [EXTERNAL] Online Form Submittal: Application for Boards, Authorities, and Commissions - Mayoral Appointment
Sent: 5/2/2024 9:05:35 AM

Application for Boards, Authorities, and Commissions - Mayoral Appointment

This application will be utilized in considering you for appointment by the Mayor to various boards and advisory committees. Pursuant to Florida Statutes, Chapter 119, all information provided on or with this form becomes a public record and is subject to disclosure, unless otherwise exempted by law.

Completed applications will be kept on file for a period of one (1) year from the date received in the Office of the City Clerk.

If you have any questions, contact the City Clerk's Office.

(Section Break)

Personal Information

Name	Chris McKean
Home Address	1304 N Barcelona St Pensacola FI 32501
Business Address	319 N Tarragona St Pensacola FI 32501
To which address do you prefer we send correspondence regarding this application?	Home
Preferred Contact Phone Number(s)	(312) 833-2618
Email Address	christopher.L.mckean@gmail.com
Upload Resume (optional)	Field not completed.

(Section Break)

Details

Are you a City resident?	Yes
If yes, which district?	4
If yes, how long have you been a City resident?	2018
Do you own property within the City limits?	Yes
Are you a registered voter in the city?	Yes
Board(s) of interest:	Downtown Improvement Board, Chair
Please list the reasons for your interest in this position:	This is my second year in on the board and my first year as chair. We have several initiatives coming to market in the near term and I would like to see them thru.
Do you currently serve on a board?	Yes
If yes, which board(s)?	Downtown Improvement Board
Do you currently hold a public office?	No
If so, what office?	<i>Field not completed.</i>
Would you be willing to resign your current office for the appointment you now seek?	N/A

(Section Break)

Diversity

In order to encourage diversity in selections of members of government committees, the following information is required by Florida Statute 760.80 for some committees.

Gender	Male
Race	Caucasian
Physically Disabled	No
(Section Break)	
Acknowledgement of Terms	I accept these terms.

Email not displaying correctly? [View it in your browser.](#)



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-533

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Council President Casey Jones

SUBJECT:

APPOINTMENTS - ENVIRONMENTAL ADVISORY BOARD

RECOMMENDATION:

That City Council appoint Mark Gottschalk, an individual who is an employed or retired environmental professional, or member of local environmental organizations or businesses with an interest in City environmental issues; and appoint Jordan Poole, an individual who is a resident or property owner of the City to a term of two (2) years, expiring March 1, 2026.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The Environmental Advisory Board is tasked with reviewing and providing recommendations to the City Council and Mayor on environmental policy issues as follows:

- (1) Proposed ordinances and codes of an environmental nature.
- (2) Proposed changes to existing environmental ordinances and codes.
- (3) Other environmental matters affecting the city referred to the Board by the City Council and Mayor.
- (4) Other environmental matters affecting the City that are initiated by the Board and approved by the City Council and/or Mayor.

The following have been nominated:

Nominee: **Nominated by:**

Employed or retired environmental professionals, or member of local environmental organization or business with an interest in City environmental issues.

Mark Gottschalk Patton

At-Large

Jordan Poole Patton

PRIOR ACTION:

City Council makes appointments to this board every two years.

FUNDING:

N/A

FINANCIAL IMPACT:

N/A

LEGAL REVIEW ONLY BY CITY ATTORNEY: No

STAFF CONTACT:

Ericka L. Burnett, City Clerk

ATTACHMENTS:

1. Member List
2. Nomination Form - Mark Gottschalk
3. Application of Interest - Mark Gottschalk
4. Nomination Form - Jordan Poole
5. Application of Interest - Jordan Poole
6. Ballot

PRESENTATION: No

Environmental Advisory Board

Name	Profession	Appointed By	No. of Terms	Year	Exp Date	First Appointed	Term Length	Comments
Butts, William "Blase"	Employed Env Professional	Council	3	2024	3/1/2026	4/12/2018	2	
Dineen, Katie	Employed Env Professional	Council	1	2024	3/1/2026	3/24/2022	2	
Fox, Katie	Environmental Profession	Council	2	2024	3/1/2026	2/28/2019	2	
Hagen, Kelly	At-large/City Resident	Council	1	2024	3/1/2026	1/21/2021	2	
Mahone, Rachel	At-Large/City Resident	Council	0	2024	3/1/2026	2/22/2024	2	
Massey, P. Jay	Employed Env Professional	Council	1	2024	3/1/2026	1/21/2021	2	
Richards, Neil	At-large	Council	5	2024	3/1/2026	2/28/2014	2	
VACANT, VACANT	Environmental Group	Council	0	2024	3/1/2026	1/22/2021	2	
VACANT, VACANT	At-Large	Council	0	2024	3/1/2026	7/18/2013	2	

Term Length: TWO YEAR TERMS

The Environmental Advisory Board may review and make recommendations to the City Council and Mayor on environmental policy issues as follows:

- (1) Proposed ordinances and codes of an environmental nature.
- (2) Proposed changes to existing environmental ordinances and codes.
- (3) Other environmental matters affecting the city referred to the Board by the City Council and Mayor.
- (4) Other environmental matters affecting the City that are initiated by the Board and approved by the City Council and/or Mayor.

The Board shall be composed of nine (9) members appointed by the City Council: Five (5) members who are employed or retired environmental professionals, or members of local environmental organizations or businesses with an interest in City environmental issues. To the extent practicable, members will be residents or property owners of the City. Four (4) at-large members who are residents or property owners of the City.

CITY OF PENSACOLA, FLORIDA

NOMINATION FORM

I, Allison Patton, do nominate Mark W. Gottschalk
(Nominee)

320 W Gregory St.

(Home Address)

(Phone)

320 W Gregory St.

(Business Address)

850-786-7837

(Phone)

gottschalk1992@gmail.com

(Email Address)

City Resident: YES NO

Property Owner within the City: YES NO

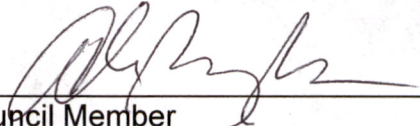
for appointment by the City Council for the position of:

MEMBER

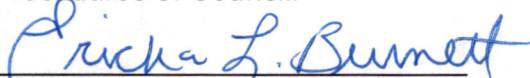
**EMPLOYED OR RETIRED ENVIRONMENTAL PROFESSIONALS,
OR MEMBERS OF LOCAL ENVIRONMENTAL ORGANIZATIONS
OR BUSINESSES WITH AN INTEREST IN CITY ENVIRONMENTAL ISSUES
(Two-year term expiring 3/1/2026)**

Provide a brief description of nominee's qualifications:

Mark is an engaged citizen who will
add an important perspective to the EAB
Board. His experience and "get it done"
mentality will be helpful as we work to address
environmental concerns.


City Council Member

I hereby certify that the above
nomination was submitted to my
office within the time limitations
prescribed by the Rules and
Procedures of Council.



Ericka L. Burnett, City Clerk

Ericka Burnett

From: noreply@civicplus.com
Sent: Monday, April 29, 2024 11:25 PM
To: Ericka Burnett; Robyn Tice
Subject: [EXTERNAL] Online Form Submittal: Application for Boards, Authorities, and Commissions - City Council Appointment

THIS EMAIL IS FROM AN EXTERNAL EMAIL ACCOUNT

Application for Boards, Authorities, and Commissions - City Council Appointment

This application will be utilized in considering you for appointment to a City Council board, authority, or commission. Pursuant to Florida Statutes, Chapter 119, all information provided on or with this form becomes a public record and is subject to disclosure, unless otherwise exempted by law.

Completed applications will be kept on file for a period of one (1) year from the date received in the Office of the City Clerk.

It is necessary to contact a member of Council to obtain a nomination in order to be placed on the ballot for consideration. Please go to cityofpensacola.com/council for Council Member contact information. If you have any questions, contact the City Clerk's Office.

(Section Break)

Personal Information

Name	Mark W Gottschalk
------	-------------------

Home Address	320 West Gregory Street
--------------	-------------------------

Business Address	320 West Gregory Street
------------------	-------------------------

To which address do you prefer we send correspondence regarding this application?	Home
---	------

Preferred Contact Phone Number(s)	8507867837
-----------------------------------	------------

Email Address	gottschalk1992@gmail.com
---------------	--

Upload Resume (optional)	Field not completed.
--------------------------	----------------------

(Section Break)

Details

Are you a City resident?	Yes
If yes, which district?	6
If yes, how long have you been a City resident?	Pensacola
Do you own property within the City limits?	Yes
Are you a registered voter in the city?	Yes
Board(s) of interest:	Environmental Advisory Board
Please list the reasons for your interest in this position:	I want to help our decision makers to analyze the impacts of their decisions on the environment which is the foundation for our city's prosperity. I have experience as an Organic Farmer, Educator, Manager, Advocate, and Designer. For the past few years I have worked as an Instructional Designer for Navy Federal Credit Union. In this role, I analyze business needs and either address these needs through training, or suggest process/management improvements. In my free time, I also serve on the Bike Pensacola Advocacy Committee where we work to create a city that performs better environmentally by making it more walkable-bikeable. I want to use my skill set to help the Advisory Board analyze environmental problems our city faces and advocate for plausible actionable solutions to those problems.
Do you currently serve on a board?	No
If yes, which board(s)?	<i>Field not completed.</i>
Do you currently hold a public office?	No
If so, what office?	<i>Field not completed.</i>
Would you be willing to resign your current office for the appointment you now seek?	N/A

(Section Break)

Diversity

In order to encourage diversity in selections of members of government

committees, the following information is required by Florida Statute 760.80 for some committees.

Gender	Male
--------	------

Race	Caucasian
------	-----------

Physically Disabled	No
---------------------	----

(Section Break)

Acknowledgement of Terms	I accept these terms.
--------------------------	-----------------------

Email not displaying correctly? [View it in your browser.](#)

CITY OF PENSACOLA, FLORIDA

NOMINATION FORM

I, Allison Patton, do nominate Jordan Poole
(Nominee)

1005 E Strong St. Pensacola 251-605-0930
(Home Address) (Phone)

1120 N. 12th Ave Pensacola _____
(Business Address) (Phone)

jordan.poole@geosyntec.com
(Email Address)

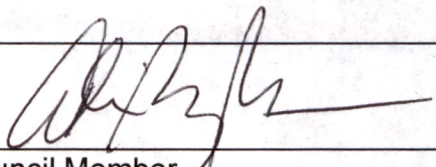
City Resident: YES NO
Property Owner within the City: YES NO

for appointment by the City Council for the position of:

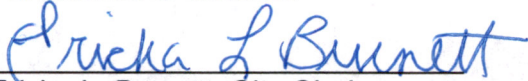
**AT-LARGE MEMBER
WHO IS A CITY RESIDENT OR PROPERTY OWNER OF THE CITY
(Two-year term expiring 3/1/2026)**

Provide a brief description of nominee's qualifications:

Jordan works in environmental consulting.
Her experience and enthusiasm for
environmental concerns will be a great
addition to the EAB.


City Council Member

I hereby certify that the above
nomination was submitted to my
office within the time limitations
prescribed by the Rules and
Procedures of Council.


Ericka L. Burnett, City Clerk

From: noreply@civicplus.com
To: [Ericka Burnett](#); [Robyn Tice](#);
Subject: [EXTERNAL] Online Form Submittal: Application for Boards, Authorities, and Commissions - City Council Appointment
Sent: 3/7/2024 4:40:40 PM

THIS EMAIL IS FROM AN EXTERNAL EMAIL ACCOUNT

Application for Boards, Authorities, and Commissions - City Council Appointment

This application will be utilized in considering you for appointment to a City Council board, authority, or commission. Pursuant to Florida Statutes, Chapter 119, all information provided on or with this form becomes a public record and is subject to disclosure, unless otherwise exempted by law.

Completed applications will be kept on file for a period of one (1) year from the date received in the Office of the City Clerk.

It is necessary to contact a member of Council to obtain a nomination in order to be placed on the ballot for consideration. Please go to cityofpensacola.com/council for Council Member contact information. If you have any questions, contact the City Clerk's Office.

(Section Break)

Personal Information

Name	Jordan Poole
Home Address	1005 E Strong St Pensacola, FL 32501
Business Address	1120 N 12th Ave Pensacola, FL 32501
To which address do you prefer we send correspondence regarding this application?	Home
Preferred Contact Phone Number(s)	251-605-0930
Email Address	jordan.poole@geosyntec.com
Upload Resume (optional)	Field not completed.

(Section Break)

Details

Are you a City resident? Yes

If yes, which district? 6

If yes, how long have you been a City resident? 10 months

Do you own property within the City limits? Yes

Are you a registered voter in the city? Yes

Board(s) of interest: Environmental Advisory Board

Please list the reasons for your interest in this position: I work in environmental consulting and have an interest in environmental issues. I moved here about a year ago and have been looking for a way to be more involved in the community - I think this would be a great opportunity!

Do you currently serve on a board? No

If yes, which board(s)? *Field not completed.*

Do you currently hold a public office? No

If so, what office? *Field not completed.*

Would you be willing to resign your current office for the appointment you now seek? N/A

(Section Break)

Diversity

In order to encourage diversity in selections of members of government

committees, the following information is required by Florida Statute 760.80 for some committees.

Gender	Female
Race	Caucasian
Physically Disabled	No
(Section Break)	
Acknowledgement of Terms	I accept these terms.

Email not displaying correctly? [View it in your browser.](#)

Ballot – **Environmental Advisory Board**
June 10, 2024
Two-year term expiring March 1, 2026

Employed or retired environmental professionals, or members of local environmental organizations or businesses with an interest in City environmental issues

_____ Mark Gottschalk

Vote for One

At Large

_____ Jordan Poole

Vote for One

Signed: _____
Council Member



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-509

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

CITY OF PENSACOLA HOUSING DEPARTMENT PUBLIC HOUSING AGENCY 2024-2025 ANNUAL PLAN

RECOMMENDATION:

That City Council approve the Public Housing Agency 2024-2025 Annual Plan for the Housing Choice Voucher program for submission to the U.S. Department of Housing and Urban Development. Further, that City Council authorize the Mayor to take the actions necessary to execute the Plan documents and administer the program, consistent with the terms of the program and the Mayor's Executive Powers as granted in the City Charter.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The City of Pensacola Housing Department, as a Public Housing Agency (PHA), is required by HUD to submit an Annual Plan stating the PHA's mission, goals, and objectives for serving the needs of low-income community members. The PHA Plan process is outlined in section 5A of the United States Housing Act of 1937, as amended. As a public housing authority with only tenant based vouchers, the Housing Department is able to submit a streamlined plan to HUD annually. Input for the Plan was solicited from the Resident Advisory Board, which consists of all current voucher holders, as well as general public input. Comments received were considered in plan preparation.

The Plan must be approved by the governing board of the PHA, with Certifications of Compliance to be signed by the authorized official. The approved Plan and Certifications must be submitted to HUD by July 18, 2024.

PRIOR ACTION:

June 15, 2023 - City Council approved the 2023-2024 PHA Annual Plan

FUNDING:

Not applicable.

FINANCIAL IMPACT:

Submission of the Annual Plan is required for continued receipt of Housing Choice Voucher program funding.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

5/21/2024

STAFF CONTACT:

David Forte, Deputy City Administrator
Meredith Reeves, Housing Administrator

ATTACHMENTS:

1. FY2024-25 Public Housing Annual Plan

PRESENTATION: No

Streamlined Annual PHA Plan (HCV Only PHAs)	U.S. Department of Housing and Urban Development Office of Public and Indian Housing	OMB No. 2577-0226 Expires 03/31/2024
--	---	---

Purpose. The 5-Year and Annual PHA Plans provide a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA’s operations, programs, and services, including changes to these policies, and informs HUD, families served by the PHA, and members of the public of the PHA’s mission, goals and objectives for serving the needs of low- income, very low- income, and extremely low- income families.

Applicability. The Form HUD-50075-HCV is to be completed annually by **HCV-Only PHAs**. PHAs that meet the definition of a Standard PHA, Troubled PHA, High Performer PHA, Small PHA, or Qualified PHA do not need to submit this form. Where applicable, separate Annual PHA Plan forms are available for each of these types of PHAs.

Definitions.

- (1) **High-Performer PHA** – A PHA that owns or manages more than 550 combined public housing units and housing choice vouchers, and was designated as a high performer on both the most recent Public Housing Assessment System (PHAS) and Section Eight Management Assessment Program (SEMAP) assessments if administering both programs, or PHAS if only administering public housing.
- (2) **Small PHA** - A PHA that is not designated as PHAS or SEMAP troubled, that owns or manages less than 250 public housing units and any number of vouchers where the total combined units exceed 550.
- (3) **Housing Choice Voucher (HCV) Only PHA** - A PHA that administers more than 550 HCVs, was not designated as troubled in its most recent SEMAP assessment and does not own or manage public housing.
- (4) **Standard PHA** - A PHA that owns or manages 250 or more public housing units and any number of vouchers where the total combined units exceed 550, and that was designated as a standard performer in the most recent PHAS and SEMAP assessments.
- (5) **Troubled PHA** - A PHA that achieves an overall PHAS or SEMAP score of less than 60 percent.
- (6) **Qualified PHA** - A PHA with 550 or fewer public housing dwelling units and/or housing choice vouchers combined and is not PHAS or SEMAP troubled.

A.	PHA Information.																														
A.1	PHA Name: City of Pensacola Housing DepartmentPHA Code: FL092 PHA Plan for Fiscal Year Beginning: (MM/YYYY): 10/2024 PHA Inventory (Based on Annual Contributions Contract (ACC) units at time of FY beginning, above) Number of Housing Choice Vouchers (HCVs): 2,251 HCVs, 50 NED, 203 VASH PHA Plan Submission Type: ☒ Annual Submission ☐ Revised Annual Submission Availability of Information. In addition to the items listed in this form, PHAs must have the elements listed below readily available to the public. A PHA must identify the specific location(s) where the proposed PHA Plan, PHA Plan Elements, and all information relevant to the public hearing and proposed PHA Plan are available for inspection by the public. Additionally, the PHA must provide information on how the public may reasonably obtain additional information of the PHA policies contained in the standard Annual Plan but excluded from their streamlined submissions. At a minimum, PHAs must post PHA Plans, including updates, at the main office or central office of the PHA. PHAs are strongly encouraged to post complete PHA Plans on their official website. A copy of the PHA 2024-25 Annual Plan was made available for public review at the Pensacola Housing Department at 420 W Chase Street and online at cityofpensacola.com/198/Plans; or will be provided electronically upon request. Comments were accepted through June 7, 2024 via submission to the Pensacola Housing Department, P.O. Box 12910, Pensacola, FL 32521; or by hand-delivery to the Housing Department at 420 W Chase Street; by fax to Meredith Reeves at 850-595-0113; or by email to mreeves@cityofpensacola.com. A Public Hearing was held on Wednesday June 28, 2024 at 9 AM in the Vince Whibbs Room, Pensacola City Hall at 222 W Main Street Pensacola, FL 32502. ☐ PHA Consortia: (Check box if submitting a joint Plan and complete table below) <table><tr><th>Participating PHAs</th><th>PHA Code</th><th>Program(s) in the Consortia</th><th>Program(s) not in the Consortia</th><th>No. of Units in Each Program</th></tr><tr><td>Lead HA:</td><td></td><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr></table>	Participating PHAs	PHA Code	Program(s) in the Consortia	Program(s) not in the Consortia	No. of Units in Each Program	Lead HA:																								
Participating PHAs	PHA Code	Program(s) in the Consortia	Program(s) not in the Consortia	No. of Units in Each Program																											
Lead HA:																															

B.	Plan Elements.
B.1	Revision of Existing PHA Plan Elements. a) Have the following PHA Plan elements been revised by the PHA since its last Annual Plan submission? Y N ☐ ☒ Statement of Housing Needs and Strategy for Addressing Housing Needs. ☐ ☒ Deconcentration and Other Policies that Govern Eligibility, Selection, and Admissions. ☐ ☒ Financial Resources. ☐ ☒ Rent Determination. ☐ ☒ Operation and Management. ☐ ☒ Informal Review and Hearing Procedures ☐ ☒ Homeownership Programs. ☐ ☒ Self Sufficiency Programs and Treatment of Income Changes Resulting from Welfare Program Requirements. ☐ ☒ Substantial Deviation. ☐ ☒ Significant Amendment/Modification. (b) If the PHA answered yes for any element, describe the revisions for each element(s):
B.2	New Activities. – Not Applicable
B.3	Progress Report. Provide a description of the PHA’s progress in meeting its Mission and Goals described in its 5-Year PHA Plan. See attachment B.3.
B.4	Capital Improvements. – Not Applicable
B.5	Most Recent Fiscal Year Audit. (a) Were there any findings in the most recent FY Audit? Y N N/A ☐ ☒ ☐ (b) If yes, please describe:
C.	Other Document and/or Certification Requirements.
C.1	Resident Advisory Board (RAB) Comments (a) Did the RAB(s) have comments to the PHA Plan? Y N ☒ ☐ (b) If yes, comments must be submitted by the PHA as an attachment to the PHA Plan. PHAs must also include a narrative describing their analysis of the RAB recommendations and the decisions made on these recommendations. See attachment C.1.
C.2	Certification by State or Local Officials. Form HUD 50077-SL, <i>Certification by State or Local Officials of PHA Plans Consistency with the Consolidated Plan</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan. See attachment C.2.
C.3	Civil Rights Certification/ Certification Listing Policies and Programs that the PHA has Revised since Submission of its Last Annual Plan. <i>Form HUD-50077-ST-HCV-HP, PHA Certifications of Compliance with PHA Plan, Civil Rights, and Related Laws and Regulations Including PHA Plan Elements that Have Changed</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan. See attachment C.3.
C.4	Challenged Elements. If any element of the PHA Plan is challenged, a PHA must include such information as an attachment with a description of any challenges to Plan elements, the source of the challenge, and the PHA’s response to the public. (a) Did the public challenge any elements of the Plan? Y N ☐ ☒ If yes, include Challenged Elements.

D.	Affirmatively Furthering Fair Housing (AFFH).						
D.1	Affirmatively Furthering Fair Housing (AFFH). Provide a statement of the PHA's strategies and actions to achieve fair housing goals outlined in an accepted Assessment of Fair Housing (AFH) consistent with 24 CFR § 5.154(d)(5). Use the chart provided below. (PHAs should add as many goals as necessary to overcome fair housing issues and contributing factors.) Until such time as the PHA is required to submit an AFH, the PHA is not obligated to complete this chart. The PHA will fulfill, nevertheless, the requirements at 24 CFR § 903.7(o) enacted prior to August 17, 2015. See Instructions for further detail on completing this item. <table border="1" data-bbox="181 472 1451 919"> <tr> <td data-bbox="181 472 1451 514"> Fair Housing Goal: </td> </tr> <tr> <td data-bbox="181 514 1451 919"> <u>Describe fair housing strategies and actions to achieve the goal</u> </td> </tr> </table> <table border="1" data-bbox="181 947 1451 1360"> <tr> <td data-bbox="181 947 1451 989"> Fair Housing Goal: </td> </tr> <tr> <td data-bbox="181 989 1451 1360"> <u>Describe fair housing strategies and actions to achieve the goal</u> </td> </tr> </table> <table border="1" data-bbox="181 1388 1451 1837"> <tr> <td data-bbox="181 1388 1451 1430"> Fair Housing Goal: </td> </tr> <tr> <td data-bbox="181 1430 1451 1837"> <u>Describe fair housing strategies and actions to achieve the goal</u> </td> </tr> </table>	Fair Housing Goal:	<u>Describe fair housing strategies and actions to achieve the goal</u>	Fair Housing Goal:	<u>Describe fair housing strategies and actions to achieve the goal</u>	Fair Housing Goal:	<u>Describe fair housing strategies and actions to achieve the goal</u>
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Instructions for Preparation of Form HUD-50075-HCV

Annual PHA Plan for HCV-Only PHAs

A. PHA Information. All PHAs must complete this section. (24 CFR §903.4)

- A.1 Include the full **PHA Name**, **PHA Code**, **PHA Type**, **PHA Fiscal Year Beginning** (MM/YYYY), **Number of Housing Choice Vouchers (HCVs)**, **PHA Plan Submission Type**, and the **Availability of Information**, specific location(s) of all information relevant to the public hearing and proposed PHA Plan.

PHA Consortia: Check box if submitting a Joint PHA Plan and complete the table. (24 CFR §943.128(a))

B. Plan Elements. All PHAs must complete this section. (24 CFR §903.11(c)(3))

B.1 Revision of Existing PHA Plan Elements. PHAs must:

Identify specifically which plan elements listed below that have been revised by the PHA. To specify which elements have been revised, mark the “yes” box. If an element has not been revised, mark “no.”

☐ **Statement of Housing Needs and Strategy for Addressing Housing Needs.** Provide a statement addressing the housing needs of low-income, very low-income and extremely low-income families and a brief description of the PHA’s strategy for addressing the housing needs of families who reside in the jurisdiction served by the PHA and other families who are on the Section 8 tenant-based assistance waiting lists. The statement must identify the housing needs of (i) families with incomes below 30 percent of area median income (extremely low-income); (ii) elderly families (iii) households with individuals with disabilities, and households of various races and ethnic groups residing in the jurisdiction or on the public housing and Section 8 tenant-based assistance waiting lists. The statement of housing needs shall be based on information provided by the applicable Consolidated Plan, information provided by HUD, and generally available data. The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units, and location. Once the PHA has submitted an Assessment of Fair Housing (AFH), which includes an assessment of disproportionate housing needs in accordance with 24 CFR 5.154(d)(2)(iv), information on households with individuals with disabilities and households of various races and ethnic groups residing in the jurisdiction or on the waiting lists no longer needs to be included in the Statement of Housing Needs and Strategy for Addressing Housing Needs. (24 CFR § 903.7(a)).

The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units, and location. (24 CFR §903.7(a)(2)(i)) Provide a description of the ways in which the PHA intends, to the maximum extent practicable, to address those housing needs in the upcoming year and the PHA’s reasons for choosing its strategy. (24 CFR §903.7(a)(2)(ii))

☐ **Deconcentration and Other Policies that Govern Eligibility, Selection, and Admissions.** A statement of the PHA’s policies that govern resident or tenant eligibility, selection and admission including admission preferences for HCV. (24 CFR §903.7(b))

☐ **Financial Resources.** A statement of financial resources, including a listing by general categories, of the PHA’s anticipated resources, such as PHA HCV funding and other anticipated Federal resources available to the PHA, as well as tenant rents and other income available to support tenant-based assistance. The statement also should include the non-Federal sources of funds supporting each Federal program, and state the planned use for the resources. (24 CFR §903.7(c))

☐ **Rent Determination.** A statement of the policies of the PHA governing rental contributions of families receiving tenant-based assistance, discretionary minimum tenant rents, and payment standard policies. (24 CFR §903.7(d))

☐ **Operation and Management.** A statement that includes a description of PHA management organization, and a listing of the programs administered by the PHA. (24 CFR §903.7(e)).

☐ **Informal Review and Hearing Procedures.** A description of the informal hearing and review procedures that the PHA makes available to its applicants. (24 CFR §903.7(f))

☐ **Homeownership Programs.** A statement describing any homeownership programs (including project number and unit count) administered by the agency under section 8y of the 1937 Act, or for which the PHA has applied or will apply for approval. (24 CFR §903.7(k))

☐ **Self Sufficiency Programs and Treatment of Income Changes Resulting from Welfare Program Requirements.** A description of any PHA programs relating to services and amenities coordinated, promoted, or provided by the PHA for assisted families, including those resulting from the PHA’s partnership with other entities, for the enhancement of the economic and social self-sufficiency of assisted families, including programs provided or offered as a result of the PHA’s partnerships with other entities, and activities subject to Section 3 of the Housing and Community Development Act of 1968 (24 CFR Part 135) and under requirements for the Family Self-Sufficiency Program and others. Include the program’s size (including required and actual size of the FSS program) and means of allocating assistance to households. (24 CFR §903.7(l)(i)) Describe how the PHA will comply with the requirements of section 12(c) and (d) of the 1937 Act that relate to treatment of income changes resulting from welfare program requirements. (24 CFR §903.7(l)(iii)).

☐ **Substantial Deviation.** PHA must provide its criteria for determining a “substantial deviation” to its 5-Year Plan. (24 CFR §903.7(r)(2)(i))

☐ **Significant Amendment/Modification.** PHA must provide its criteria for determining a “Significant Amendment or Modification” to its 5-Year and Annual Plan.

If any boxes are marked “yes”, describe the revision(s) to those element(s) in the space provided.

B.2 New Activities. This section refers to new capital activities which is not applicable for HCV-Only PHAs.

- B.3 Progress Report.** For all Annual Plans following submission of the first Annual Plan, a PHA must include a brief statement of the PHA's progress in meeting the mission and goals described in the 5-Year PHA Plan. (24 CFR §903.11(c)(3), 24 CFR §903.7(r)(1))
- B.4 Capital Improvements.** This section refers to PHAs that receive funding from the Capital Fund Program (CFP) which is not applicable for HCV-Only PHAs
- B.5 Most Recent Fiscal Year Audit.** If the results of the most recent fiscal year audit for the PHA included any findings, mark "yes" and describe those findings in the space provided. (24 CFR §903.7(p))

C. Other Document and/or Certification Requirements.

- C.1 Resident Advisory Board (RAB) comments.** If the RAB had comments on the annual plan, mark "yes," submit the comments as an attachment to the Plan and describe the analysis of the comments and the PHA's decision made on these recommendations. (24 CFR §903.13(c), 24 CFR §903.19)
- C.2 Certification by State of Local Officials.** Form HUD-50077-SL, *Certification by State or Local Officials of PHA Plans Consistency with the Consolidated Plan*, must be submitted by the PHA as an electronic attachment to the PHA Plan. (24 CFR §903.15). Note: A PHA may request to change its fiscal year to better coordinate its planning with planning done under the Consolidated Plan process by State or local officials as applicable.
- C.3 Civil Rights Certification/ Certification Listing Policies and Programs that the PHA has Revised since Submission of its Last Annual Plan.** Provide a certification that the following plan elements have been revised, provided to the RAB for comment before implementation, approved by the PHA board, and made available for review and inspection by the public. This requirement is satisfied by completing and submitting form HUD-50077 ST-HCV-HP, *PHA Certifications of Compliance with PHA Plan, Civil Rights, and Related Laws and Regulations Including PHA Plan Elements that Have Changed*. Form HUD-50077-ST-HCV-HP, *PHA Certifications of Compliance with PHA Plan, Civil Rights, and Related Laws and Regulations Including PHA Plan Elements that Have Changed* must be submitted by the PHA as an electronic attachment to the PHA Plan. This includes all certifications relating to Civil Rights and related regulations. A PHA will be considered in compliance with the certification requirement to affirmatively further fair housing if the PHA fulfills the requirements of §§ 903.7(o)(1) and 903.15(d) and: (i) examines its programs or proposed programs; (ii) identifies any fair housing issues and contributing factors within those programs, in accordance with 24 CFR 5.154; or 24 CFR 5.160(a)(3) as applicable (iii) specifies actions and strategies designed to address contributing factors, related fair housing issues, and goals in the applicable Assessment of Fair Housing consistent with 24 CFR 5.154 in a reasonable manner in view of the resources available; (iv) works with jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; (v) operates programs in a manner consistent with any applicable consolidated plan under 24 CFR part 91, and with any order or agreement, to comply with the authorities specified in paragraph (o)(1) of this section; (vi) complies with any contribution or consultation requirement with respect to any applicable AFH, in accordance with 24 CFR 5.150 through 5.180; (vii) maintains records reflecting these analyses, actions, and the results of these actions; and (viii) takes steps acceptable to HUD to remedy known fair housing or civil rights violations, impediments to fair housing choice within those programs; addresses those impediments in a reasonable fashion in view of the resources available; works with the local jurisdiction to implement any of the jurisdiction's initiatives to affirmatively further fair housing; and assures that the annual plan is consistent with any applicable Consolidated Plan for its jurisdiction. (24 CFR §903.7(o)).
- C.4 Challenged Elements.** If any element of the Annual PHA Plan or 5-Year PHA Plan is challenged, a PHA must include such information as an attachment to the Annual PHA Plan or 5-Year PHA Plan with a description of any challenges to Plan elements, the source of the challenge, and the PHA's response to the public.

D. Affirmatively Furthering Fair Housing (AFFH).

D.1 Affirmatively Furthering Fair Housing. The PHA will use the answer blocks in item D.1 to provide a statement of its strategies and actions to implement each fair housing goal outlined in its accepted Assessment of Fair Housing (AFH) consistent with 24 CFR § 5.154(d)(5) that states, in relevant part: "To implement goals and priorities in an AFH, strategies and actions shall be included in program participants' ... PHA Plans (including any plans incorporated therein) Strategies and actions must affirmatively further fair housing" Use the chart provided to specify each fair housing goal from the PHA's AFH for which the PHA is the responsible program participant – whether the AFH was prepared solely by the PHA, jointly with one or more other PHAs, or in collaboration with a state or local jurisdiction – and specify the fair housing strategies and actions to be implemented by the PHA during the period covered by this PHA Plan. If there are more than three fair housing goals, add answer blocks as necessary.

Until such time as the PHA is required to submit an AFH, the PHA will not have to complete section D., nevertheless, the PHA will address its obligation to affirmatively further fair housing in part by fulfilling the requirements at 24 CFR 903.7(o)(3) enacted prior to August 17, 2015, which means that it examines its own programs or proposed programs; identifies any impediments to fair housing choice within those programs; addresses those impediments in a reasonable fashion in view of the resources available; works with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; and maintain records reflecting these analyses and actions. Furthermore, under Section 5A(d)(15) of the U.S. Housing Act of 1937, as amended, a PHA must submit a civil rights certification with its Annual PHA Plan, which is described at 24 CFR 903.7(o)(1) except for qualified PHAs who submit the Form HUD-50077-CR as a standalone document.

This information collection is authorized by Section 511 of the Quality Housing and Work Responsibility Act, which added a new section 5A to the U.S. Housing Act of 1937, as amended, which introduced the Annual PHA Plan. The Annual PHA Plan provides a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA's operations, programs, and services, and informs HUD, families served by the PHA, and members of the public for serving the needs of low- income, very low- income, and extremely low- income families.

Public reporting burden for this information collection is estimated to average 6.02 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and respondents are not required to complete this form, unless it displays a currently valid OMB Control Number.

Privacy Act Notice. The United States Department of Housing and Urban Development is authorized to solicit the information requested in this form by virtue of Title 12, U.S. Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality

City of Pensacola Housing Department

Streamlined Annual PHA Plan for FY 2024-25 (*HCV Only PHAs*)

B. Plan Elements

Statement of Housing Needs and Strategy for Addressing Housing Needs

Like many areas of the country, Escambia County, FL experienced significant pressures on its housing market and on housing availability during the COVID pandemic, and those pressures have continued, although recent trends show some relief of pressure. In HUD Notice PIH 2021-34, "Expedited Regulatory Waivers for the Public Housing and Housing Choice Voucher (including Mainstream and Mod Rehab) Programs," HUD identified the Pensacola-Ferry Pass-Brent FL FMR Area as one of 227 jurisdictions experiencing "significant rental market fluctuations" in the aftermath of the pandemic. This affected our entire community but had a particularly deleterious effect on low-income, very low-income, and extremely low-income families.

The Housing Office continued to see interest in the Section 8 program from new landlords. However, there have also been a significant amount of units that have sold and changed ownership, with the new owners charging rents that are beyond the affordability of Section 8 clients.

Payment standards were at 110% of the fair market rent throughout the first quarters of 2023. When the fair market rents increased dramatically in October 2023, we held the payment standards at the same amount, which is still slightly above 100% of the fair market rent for all bedroom sizes.

Deconcentration and Other Policies that Govern Eligibility, Selection, and Admissions

Pensacola Housing encourages program applicants and participants to search for units that will meet their needs and provides information regarding the location of low-poverty census tracts, as well as web links to information about school districts, sheriff's office crime data and maps, and public transit routes. Pensacola Housing regularly reviews deconcentration data in accordance with the SEMAP indicator to determine the percent of tenant-based families with children that live within, or who have moved to, a low poverty census tract within the jurisdiction.

In July 2022, as the waiting period for a voucher climbed to more than two years, we closed our waiting list, and as of May 2024 the waiting list remains closed. Though we have continued to pull names from the waitlist and issue vouchers regularly, the average wait time has continued to increase as our success rate and average time to lease up for new applicants continue to be impacted by market conditions.

Pensacola Housing gives preference to those families on the waiting list who are victims of federal- or state-declared natural disasters. Third-party verification of displacement may be required before a voucher is issued. In addition, federal guidelines stipulate that at least 75% of the families newly assisted by Pensacola Housing each fiscal year must be extremely-low-income families. To ensure this goal is met, there may be occasions when Pensacola Housing will assist an extremely-low-income household from the waiting list before assisting a very-low-income household, even if the very-low-income household has been on the waiting list longer.

Some of the vouchers administered by Pensacola Housing have been allocated to assist specific populations; for example, non-elderly disabled families (NED), homeless veterans (VASH), or homeless (EHV). Pensacola Housing follows HUD guidelines regarding the administration of these programs. At times this may result in a NED family receiving a voucher before other families from the Section 8 waiting list, or in a VASH family receiving a voucher before all families on the Section 8 waiting list.

Beyond ensuring that all the requirements stipulated above are met, Pensacola Housing does not utilize preferences on its HCV waiting list. City Council has tentatively approved a small set aside of 25 vouchers specifically for a homeless preference, but the production of policies and procedures to govern this set aside is in progress and formal Council approval and implementation is not expected until next fiscal year.

Financial Resources

Pensacola Housing's financial resources are limited to the funding allocated through the federal budget process and awarded annually in the Consolidated Annual Contributions Contract. FY2024 renewal funding of \$16,175,054 was received mid-May, which included VASH vouchers. Our authorized budget authority to implement the EHV program is \$369,687.

Rent Determination

Pensacola Housing determines total tenant payment of rent in accordance with federal guidelines.

The Total Tenant Payment (TTP) is the minimum amount that a voucher household is required to pay toward rent and utilities, regardless of the unit selected. In Pensacola Housing's jurisdiction, TTP is the greater of:

- 30 percent of monthly adjusted income;
- 10 percent of monthly gross income; or
- Pensacola Housing's minimum rent

Family share is the actual amount the family pays toward rent and utilities (with the utility cost based on Pensacola Housing's utility allowance, not on the family's actual utility bills). If the family selected a unit where the gross rent is higher than the payment standard, then the family share will be higher than the TTP.

Tenant rent is the portion of the contract rent paid by the assisted family. TTP will be the same regardless of the unit selected, whereas family share and tenant rent are dependent on the characteristics of the specific unit.

Pensacola Housing has established a minimum rent of \$50 for participants in its HCV programs. Minimum rent refers to the Total Tenant Payment, not the tenant rent, and means that Pensacola Housing expects program participants to pay a minimum of \$50 toward utilities and/or rent.

The minimum rent applies to all participants of Pensacola Housing's HCV programs. Any household subject to the minimum rent may petition for a temporary or long-term hardship waiver for one of the following reasons:

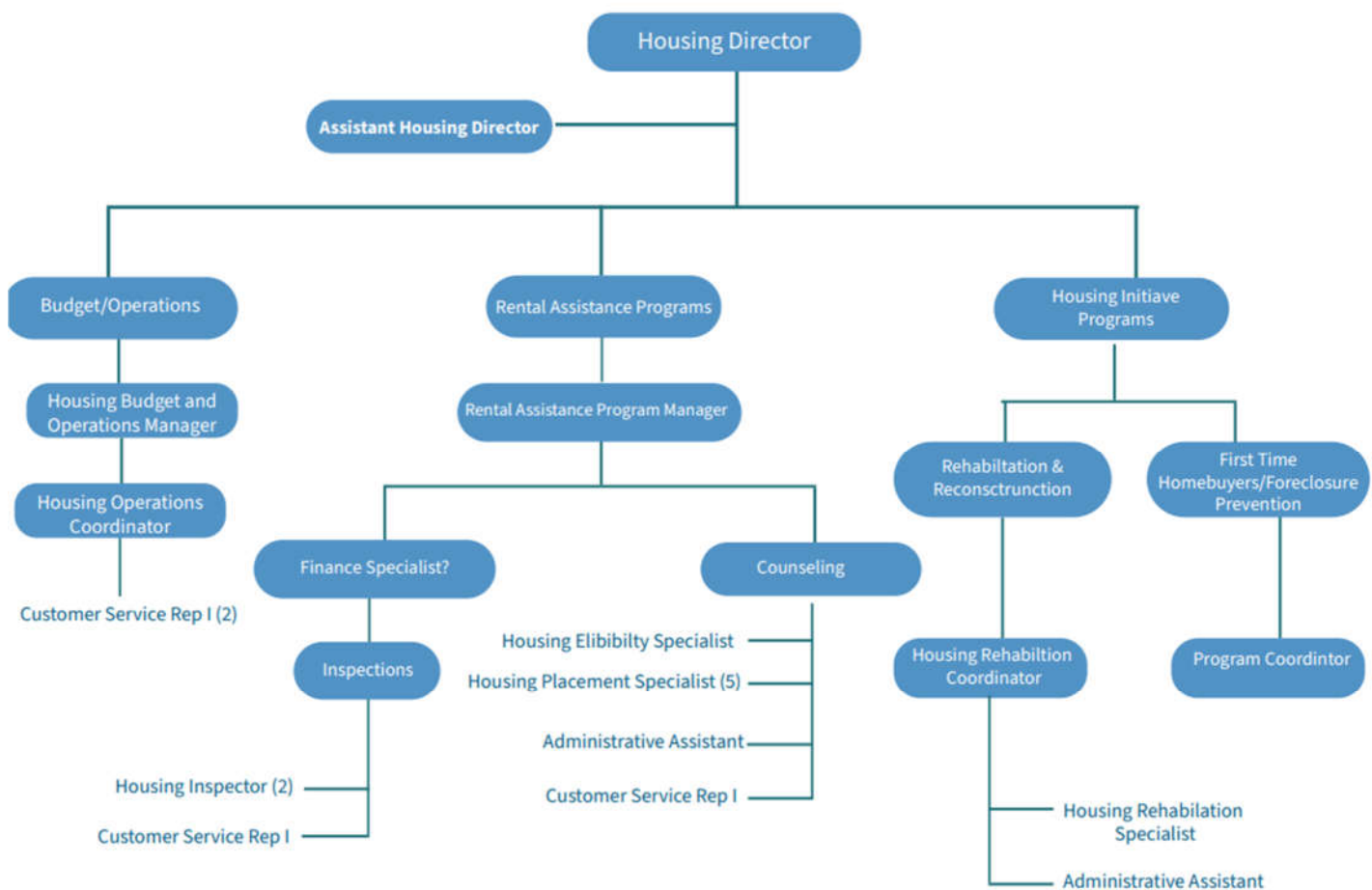
1. A recent death in the immediate family has occurred and no income was received into the household the previous month.
2. The household's out-of-pocket medical expenses equal or exceed 50% of the gross household income, and calculated rent, minus utility estimate if applicable, would be less than \$50.
3. The household has lost federal, state, or local government assistance or is waiting for an eligibility determination, and no income was received into the household the previous month.
4. The household income has decreased due to a change in circumstances, such as loss of employment, and no income was received into the household the previous month.

Operation and Management

Pensacola Housing administers the following programs:

- Housing Choice Voucher Program (HCV) throughout Escambia County FL
- HUD-VASH Program (VASH) throughout Escambia County FL
- Emergency Housing Voucher Program (EHV) throughout Escambia County FL
- State Housing Initiatives Partnership (SHIP) First-Time Home Buyers Program, in conjunction with Escambia County
- HOME Homebuyers Program, in conjunction with Escambia County
- City of Pensacola Homebuyer Incentive Program within the City of Pensacola
- Homebuyer & Foreclosure education classes
- Community Development Block Grant Program
- HOME, CDBG, and SHIP Housing Rehabilitation Programs within the City of Pensacola

Here is the Pensacola Housing organizational chart effective May 2024:



Informal Review and Hearing Procedures

Pensacola Housing uses the following procedures regarding informal reviews for applicants who are denied assistance on its HCV programs, as defined in Chapter 22 of its HCV Program Administrative Plan:

22.2.1 Notice of Denial

When Pensacola Housing determines that an applicant is ineligible, the applicant will be notified of the decision in writing. The notification will state:

1. The reason(s) for ineligibility;
2. A statement that the applicant may request an informal review if they disagree with the decision;
3. The procedure for requesting a review if the applicant does not agree with the decision; and
4. The deadline for requesting a review.

When an application is denied because of criminal activity described in a criminal record, Pensacola Housing will, on request, provide the applicant a copy of the criminal record upon which the denial decision was based, in accordance with 24 CFR 5.903 (f).

22.2.3 Informal Review Process

A request for an informal review must be submitted in writing to Pensacola Housing within 10 business days from the date of Pensacola Housing's notice of denial. An informal review will be scheduled within 10 business days from the date the review request is received.

The review will be conducted by a staff person who was not involved in the decision under review, and who is not subordinate to the person who made the decision.

The applicant will be given the opportunity to present oral or written objections to the decision. Both Pensacola Housing and the applicant may present evidence and witnesses.

The applicant may, at the applicant's own expense, be represented by an attorney or other representative.

Upon request, the applicant may be present at the review to provide information, though the applicant's presence is not required. At the discretion of Pensacola Housing, the review may also be conducted as a conference call.

An applicant may request a reasonable accommodation to participate in the informal review process. Pensacola Housing will provide such reasonable accommodation, unless doing so would result in a fundamental alteration in the nature of the services Pensacola Housing offers.

The decision of the review officer shall be provided to the applicant in writing within 10 business days after the date of the review and shall include an explanation of the reasons for the decision.

All review requests, supporting documentation, and a copy of the final decision will be retained in the applicant's file.

Pensacola Housing uses the following procedures regarding informal hearings for participants whose program assistance is terminated from its HCV programs, as defined in Chapter 22 of its HCV Program Administrative Plan:

22.3 Informal Hearings for Participants

Except for participants whose moving or port vouchers have expired, an opportunity for an informal hearing will always be provided when Pensacola Housing has made a determination to terminate assistance. In addition, Pensacola Housing will offer participant families an opportunity for an informal hearing to consider whether the following decisions relating to the participant family were made in accordance with the law, HUD regulations, and Pensacola Housing policies:

1. A determination of the family's annual or adjusted income, and the use of such income to compute the HAP.
 2. A determination of the appropriate utility assistance payment, if any, to assist toward tenant-paid utilities from Pensacola Housing's utility estimate schedule.
 3. A determination of the family voucher size and payment standard under Pensacola Housing's subsidy standards.
 4. A determination to terminate assistance for a participant family because of the family's action or failure to act.
 5. A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under Pensacola Housing policy and HUD rules.
- Pensacola Housing will make reasonable accommodations to ensure that persons with disabilities have complete access to participate in the informal hearing process.

22.4 Informal Hearing Procedures

Pensacola Housing will adhere to the following procedures in conducting informal hearings.

22.4.1 Discovery

Before the hearing, the family will be provided copies of, and adequate time to examine any documents Pensacola Housing intends to present at the hearing. If Pensacola Housing doesn't make a document available for examination prior to the hearing, it may not rely on the document at the hearing.

Prior to the informal hearing, Pensacola Housing must also be given the opportunity to examine any documents the family intends to present that are directly relevant to the hearing. Pensacola Housing will be allowed to copy any such documents at Pensacola Housing's expense. If the family doesn't make a document available for examination prior to the hearing, the family may not rely on the document at the hearing.

For the purpose of an informal hearing, the term document includes records and regulations.

22.4.2 Representation of the Family

At its own expense, the family may be represented by a lawyer, advocate, or other representative.

22.4.3 Hearing Officer

The informal hearing shall be conducted by a Hearing Officer appointed by Pensacola Housing who is neither the person who made or approved the decision under review, nor a subordinate of that person.

The person who conducts the hearing will regulate the conduct of the hearing in accordance with the informal hearing procedures described in this section of the Pensacola Housing Administrative Plan.

22.4.4 Evidence

Pensacola Housing and the family will have the opportunity to present evidence and to question any witnesses. The family may request that Pensacola Housing staff be present at the hearing to answer questions pertinent to the case. Evidence presented at the hearing may be considered without regard to admissibility under the rules of evidence used in judicial proceedings.

22.4.5 Conduct of the Hearing

Only the issues subject to appeal, and raised by the participant in their notice of appeal, shall be addressed at the hearing. A participant family may present any relevant legal argument arising from any valid source of law, and hearing officers shall consider such arguments to the extent that they are relevant and germane to the case. Relevance shall be determined by the hearing officer based on the specific facts and circumstances of each particular case. No legal theories or authorities shall be precluded from consideration at informal hearings or otherwise excluded on a categorical or near-categorical basis.

Evidence presented at the hearing may be considered without regard to admissibility under the rules of evidence used in judicial proceedings, except that the hearing officer may exclude evidence that is irrelevant, immaterial, unduly repetitious, or fails to meet the following evidentiary principles:

1. That the information offered presents a danger of unfair prejudice, confusion of the issues, undue delay, or other delay, or other deleterious effects that substantially outweigh the probative value of the information;
2. That the information is offered in violation of some public policy, such as evidence unlawfully obtained in violation of a family's legal or constitutional rights; or
3. That the information lacks competence or is not based on personal knowledge.

No documents may be presented at the hearing that weren't provided to the other party, if requested, before the hearing. "Documents" include all written records.

The hearing officer may ask the family for additional information and/or may adjourn the hearing as needed. The hearing officer will not impose arbitrary limits on the length of time that a hearing may last, or the amount of time a specific portion of the hearing may consume, or impose unreasonable limits on the number of witnesses that may be called or the number of exhibits that may be presented. The hearing officer may impose such limits, but only as warranted for good cause, in which case the hearing officer should state the reasons for imposing the limits on the record and in the written decision.

22.4.6 Failure to Appear

If the family fails to appear at the informal hearing, or fails to meet a deadline imposed by the hearing officer, Pensacola Housing's decision shall become final and take effect immediately. No new hearing will be granted unless the participant is able to demonstrate to Pensacola Housing, by clear and compelling evidence, that their failure to appear or meet the deadline was caused by circumstances beyond their control.

22.4.7 Issuance of Decision

The hearing officer will issue a written decision within 10 business days from the date of the hearing. The decision will include:

1. The names of all persons present at the hearing, and identification of their roles (whether as the hearing officer, a representative for Pensacola Housing, a member of the family, a witness, interpreter, or other);
2. The date and location of the hearing;
3. A summary of the factual allegations and the Pensacola Housing action or decision under review;
4. A summary of any evidence and arguments presented by the parties;
5. A statement of the facts upon which the decision is based;
6. A clear statement of the Hearing Officer's findings, conclusion, and decision;
7. A clear summary of the decision and explanation for the decision;
8. If the decision involves money owed, a clear statement of the amount owed, and documentation of how the amount owed was calculated;
9. The date the decision is effective; and
10. If the decision is to uphold termination of assistance, notice of the availability of judicial review. Such notice shall also indicate that time limitations for seeking judicial review may apply; that participants who seek judicial review must do so at their own expense; that neither the hearing officer nor Pensacola Housing can offer legal

advice; and that participants who cannot afford an attorney may seek referral to a legal services provider such as Legal Services of North Florida, Inc.

22.4.8 Decisions Not Binding on Pensacola Housing

Pensacola Housing shall not be bound by any decision that:

1. Concerns matters for which no opportunity for a hearing is required to be provided;
2. Conflicts with or contradicts HUD regulations or requirements;
3. Conflicts with or contradicts federal, state, or local laws;
4. Exceeds the authority of the hearing officer; or
5. Involves issues not raised in the participant's appeal notice.

If Pensacola Housing determines that it is not bound by a hearing decision, it will notify the family within 10 business days of the hearing officer's determination, and provide a summary of the reasons for Pensacola Housing's determination, and the results of it.

22.4.9 Recordkeeping

Pensacola Housing will record all informal hearings by electronic means.

If a party seeks to record any informal hearing by means other than audio/video recording, such as by stenographic transcription, the hearing officer will permit such alternative recording at the requesting party's expense, unless good cause exists to disallow the method of recording, in which case the hearing officer should state the reasons for denial on the record and in the written decision.

Pensacola Housing will provide a copy of a hearing recording to the family or its representative on request, provided that the family or its representative shall pay reasonable reproduction costs prior to receiving the recordings.

All hearing requests, supporting documentation, and a copy of the final decision shall be retained in the participant's file.

Pensacola Housing will safely keep and maintain the electronic recordings of all informal hearings involving voucher terminations as a public record on file for no fewer than 5 years after the decision date. If a family's HCV program participation is terminated pursuant to the informal hearing decision, Pensacola Housing will keep the hearing recording for at least 5 years from the date of the last HAP payment made on the family's behalf.

Pensacola Housing will also keep, for the same duration as the hearing recording, copies of all exhibits and all other tangible materials presented to the Hearing Officer, whether or not admitted into evidence.

22.5 Informal Hearing Procedures for Denial of Assistance on the Basis of Ineligible Immigrant Status

If a family member claims to be an eligible immigrant and the INS SAVE system and manual search do not verify the claim, the participant or applicant will be notified within 10 business days of the right to appeal to the INS. Such an appeal must be filed with INS within 30 days of receipt of Pensacola Housing's decision. The applicant or participant may also request an informal hearing with Pensacola Housing. The request for a hearing must be made within 10 business days of receipt of Pensacola Housing's initial decision.

If the applicant or participant appeals to the INS, he or she must provide a copy of the appeal and proof of mailing to Pensacola Housing, or Pensacola Housing may proceed to deny the application or terminate assistance.

After receipt of a request for an informal hearing, Pensacola Housing shall schedule and conduct the hearing in accordance with the procedures described in Section 22.4 above.

22.5.1 Ineligibility Determinations

If the hearing officer determines that the applicant or participant is not eligible, and there are no other eligible family members, Pensacola Housing will terminate assistance.

If there are eligible members in the household, Pensacola Housing will offer to pro-rate assistance, or give the family the option to remove the ineligible members.

Participants whose assistance is pro-rated (either because some members are ineligible, or because of the failure to verify eligible immigrant status for some members after exercising their appeal and hearing rights described above) are entitled to an informal hearing regarding TTP and tenant rent determinations.

Families denied or terminated for fraud in connection with the non-citizens rule are entitled to an informal review or informal hearing in the same manner as terminations for any other fraud.

22.6 Hearing Officer Selection

Persons having no other affiliation with Pensacola Housing (that is, other than as hearing officers) shall serve as hearing officers for all informal hearings.

Pensacola Housing will make outreach to persons from the community with knowledge of contract law; Fair Housing law; landlord/tenant law; and/or regulations and processes governing federal and state benefit or assistance programs to serve as hearing officers for its voucher programs.

Homeownership Programs

Pensacola Housing does not currently offer a voucher-based HCV Homeownership program, though we plan to update our HCV Administrative Plan to allow us to offer one in the future. Comments received by Resident Advisory Board members include the desire to participate in a homeownership program.

Pensacola Housing does administer the State Housing Initiatives Partnership (SHIP) First-Time Home Buyers Program and a HOME Homebuyers Program, both in conjunction with Escambia County, Florida. Additionally, Pensacola Housing offers homebuyer assistance utilizing ARPA funding to buyers wishing to purchase properties within the Pensacola city limits.

Self Sufficiency Programs and Treatment of Income Changes Resulting from Welfare Program Requirements

Although Pensacola Housing does not administer a formal Family Self-Sufficiency Program, historically each quarter several HCV families have reached the program goal of zero HAP/self-sufficiency, a trend that continued in 2023, despite inflation and rising housing costs. Pensacola Housing staff coaches families who achieve this milestone on available homebuyer programs such as under SHIP, HOME, and Habitat for Humanity.

Pensacola Housing's treatment of income changes resulting from welfare program requirements are as follows, as defined in section 16.6 of our HCV Administrative Plan in accordance with federal requirements:

16.6 Income Changes Resulting from Welfare Program Requirements

Pensacola Housing will not reduce the family share or tenant rent for families whose welfare assistance is reduced due to a "specified welfare benefit reduction," which is a reduction in benefits by the welfare agency specifically because of:

1. Fraud in connection with the welfare program; or
2. Non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program.

However, Pensacola Housing will reduce the tenant rent if the welfare assistance reduction is a result of:

1. The expiration of a lifetime limit on receiving benefits;
2. A reduction in welfare assistance resulting from the family's failure to obtain employment, after having complied with welfare program requirements; or
3. A reduction in welfare assistance resulting from a family member's failure to comply with other welfare agency requirements.

16.6.1 Families Affected by Welfare Rules

Families are affected by the welfare rules discussed above if they are currently receiving benefits for welfare or public assistance from a state or public agency program that requires, as a condition of eligibility to receive assistance, the participation of a family member in an economic self-sufficiency program.

16.6.2 Definition of "Imputed Welfare Income"

"Imputed welfare income" is an amount of annual income, not actually received by a family, that results from a specified welfare benefit reduction, and that is included in the family's income for purposes of determining tenant rent.

The amount of imputed welfare income is determined by Pensacola Housing, based on written information supplied to Pensacola Housing by the welfare agency, including:

1. The amount of the benefit reduction;
2. The term of the benefit reduction;

3. The reason for the reduction; and
4. Subsequent changes in the term or amount of the benefit reduction.

The family's annual income will include the imputed welfare income, as determined at the family's annual or interim re-examination, during the term of the welfare benefits reduction specified by the welfare agency. The amount of imputed welfare income will be offset by the amount of additional income the family receives that commences after the sanction is imposed. When additional income from other sources is at least equal to the imputed welfare income, the imputed welfare income will be reduced to zero. If the family was not an assisted resident when the welfare sanction began, imputed welfare income will not be included in annual income.

16.6.3 Verification Before Denying a Request to Reduce Rent

Before denying the family's request for rent reduction, Pensacola Housing will obtain written verification from the welfare agency stating that the family's benefits have been reduced due to fraud or non-compliance with welfare agency economic self-sufficiency or work activity requirements.

16.6.4 Family Dispute of Amount of Imputed Welfare Income

If the family disputes the amount of imputed income, the housing specialist or a supervisor will review the calculation for accuracy. If Pensacola Housing denies the family's request to modify the amount, Pensacola Housing will provide the tenant with a notice of denial, which will include:

1. An explanation for Pensacola Housing's determination of the amount of imputed welfare income;
2. A statement that the tenant may request an informal hearing; and
3. A statement that the grievance information received from the welfare agency cannot be disputed at the informal hearing, and the issue to be examined at the informal hearing will be Pensacola Housing's determination of the amount of imputed welfare income, not the welfare agency's determination to sanction the welfare benefits.

Substantial Deviation

Pensacola Housing considers the following a substantial deviation from its 5-Year Plan:

- The addition of new activities that do not otherwise further Pensacola Housing's stated mission or further the goals set forth in the current 5-Year Plan.

An exception to this definition will be made for any new activities that are adopted to reflect changes in HUD regulatory requirements or as a result of a declared emergency. Such changes will not be considered a substantial deviation by Pensacola Housing.

Significant Amendment/Modification

Pensacola Housing considers the following a Significant Amendment or Modification to its 5-Year Plan:

- Addition of new program initiatives not included in the current 5-Year Plan.
- Demolition or disposition, designation or conversion activities not currently identified in the plan or otherwise approved by HUD.

An exception to this definition will be made for any of the above that are adopted to reflect changes in HUD regulatory requirements or as a result of a declared emergency. Such changes will not be considered significant amendments or modifications by Pensacola Housing.

Attachment B.3 – Progress Report

PHA Goal: Increase the availability of decent, safe, and affordable housing.

1. Apply for additional rental vouchers.

Update: On May 7, 2021, HUD offered Pensacola Housing an allocation of 35 Emergency Housing Vouchers (EHVs) and on May 13, 2021, Pensacola Housing accepted the allocation. 2 vouchers were lost after the September 2023 deadline and were not available for turnover leasing, so the current voucher allocation stands at 33. As of April 2024, all of Pensacola Housing's EHV vouchers are allocated, and our EHV leasing utilization is 100%. We are hopeful that HUD will consider us for an additional EHV allocation if more of these vouchers become available as a result of voluntary returns or underutilization elsewhere. We have continued to partner with Opening Doors in instances where the tenant needs to move by allocating non-EHV funds for deposit and related expenses to continue to assist this population with remaining stably housed now that EHV supportive service funds have been exhausted.

In September 2023, we discussed applying for additional VASH vouchers under the mid-year Registration of Interest in partnership with the VA, but due to support staffing, the VA did not want to proceed at that time.

City Council amendment the PHA Administrative Plan in September 2023 to allow for special vouchers under the Foster Youth to Independence program, but to date we have been unable to secure a partnership with a local PCWA that will provide the required case management and support services. The Housing Department is continuing conversations with youth agencies in hopes of finding a partnership to serve this special population.

2. Leverage private or other public funds to create additional housing opportunities.

Update: The City of Pensacola has committed to create an attainable housing infill program to support homeownership. Municipally owned property will be made available to eligible applicants for the construction of owner-occupied housing. Last fiscal year, funding was leveraged through the State Housing Initiatives Partnership (SHIP) program, HOME Program, and ARPA program to assist 3 families reach the goal of homeownership within the City limits. The city's Community Development Block Grant funds provided homebuyer and foreclosure prevention educational classes to 42 families. ARPA and SHIP funds assisted 12 families rehabilitate their homes, stabilizing the neighborhoods and ensuring a supply of attainable housing stock for the future.

The City has also acquired an older motel utilizing Community Redevelopment Agency funding and has issued a Request for Letters of Interest to generate support from a developer specifically to create new affordable housing rental opportunities.

Last fiscal year, both local governments supported various low income housing tax credit applications under various RFAs issued by Florida Housing Finance Corporation (FHFC). Under the 4%/State Apartment Incentive Loan (SAIL) program RFA to FHFC, Escambia County supported one 120 unit elderly development called Magnolia Trail and one 75 unit family development called Corry Family Housing. The City of Pensacola supported a family development named Avery Place Apartments under the same RFA. Both the County and the City had a partnership with Escambia County Housing Finance Authority (ECHFA) to provide the required \$37,500 minimum local government funding contribution for development of these units as well as use of bond financing through ECHFA. Additionally, the City supported an elderly application named Kupfrian Manor under the 9% housing tax credit RFA through provision of a \$460,000 local government contribution utilizing ARPA funding. Unfortunately, the RFA application process is very competitive statewide and none of the submitted applications were selected for funding.

City staff continues to provide support to the joint City-County Affordable Housing Advisory Committee which reviews and provides recommendations to each local government regarding monetary and non-monetary incentives for affordable housing. The State of Florida passed SB 102, or the "Live Local Act," in March 2023, which contains various provisions related to affordable housing. Public policy impacts included in the bill include state mandated affordable housing tax exemptions such as a "multi-family property exemption" for developments with 70 or more units with agreements with Florida Housing Finance Corporation (FHFC) and the "Affordable Housing Property Exemption" for non-profit owned properties serving households up to 120% area median income (AMI). The new bill permits an optional local property exemption for properties with 50 or more units serving households at or below 60% AMI; at this time, the City is reviewing whether to offer these additional property tax exemptions. The new law also requires local governments to allow multi-family and mixed-use residential in areas zoned for commercial or mixed use without obtaining zoning or land use changes or other plan exceptions if at least 40% of the units are affordable to income eligible households for 30 years. The City has seen interest in these new opportunities under the Live Local Act.

3. **Encourage landlords and owners to participate in the HCV programs.**

Update: Staff has seen an increase in interest in the section 8 program from new landlords as rental prices have beginning a slight cooling. Staff is working on reinstituting a landlord outreach meeting, which has not been held since COVID.

PHA Goal: Improve the quality of assisted housing.

Update: Housing staff attended a 3 day NSPIRE training offered by Nan McKay in order to prepare for the HUD required changes expected to be implemented in Fall 2024. Staff has discussed some the compliance issues anticipated with smaller scale developments owned by "mom and pop" landlords particularly with hardwired detectors and the possibility of offering some financial assistance through non-Section 8 funding to these owners within the City limits in order to encourage continued assistance under the Section 8 program.

All Section 8 staff have received training related to new HOTMA requirements in order to ensure program compliance with new regulations and program management.

The Administrative Plan was most recently reviewed and updated in September 2023 and will be updated again before the end of the fiscal year to accommodate new HOTMA and NSPIRE rules as well as minor updates to program operations.

The City Housing Department continues to offer housing rehabilitation to low income homeowners, and recently was awarded a \$5.8M Community Development Block Grant-Disaster Recovery Grant to specifically serve low income homeowners affected by Hurricane Sally.

PHA Goal: Promote self-sufficiency and asset development for individuals.

Update: Pensacola Housing continues to provide first-time homebuyer and foreclosure prevention classes. In addition, Housing staff advises voucher families who reach the program goal of self-sufficiency about homebuyer programs including the homebuyer programs administered by the Housing Department and Habitat for Humanity. Members of the rental assistance team are eager to offer our clients an HCV Homeownership Program and we hope to have the necessary updates to the HCV Administrative Plan to be able to offer this.

Attachment C.1 – Resident Advisory Board (RAB) Comments

In 2024, Pensacola Housing appointed all currently assisted HCV program participants to the Resident Advisory Board (RAB), forming a committee of the whole. Participants were notified of this appointment, and of their rights and responsibilities regarding the development of the PHA Plan. The RAB was invited to participate in an online survey to share opinions and ideas and demonstrate knowledge of the voucher program. We assured members that participation was voluntary and anonymous, and that the survey was accessible from an array of devices including smart phones. Hyperlinks and a QR code for the survey were posted on our website and on the walls of our physical office. The survey was open through June 7, 2024.

Common trends last calendar year included complaints regarding unit conditions as well as fair housing concerns, so the survey targeted these subject matters. Survey results/comments are included as an attachment.

Certification by State or Local Official of PHA Plans Consistency with the Consolidated Plan or State Consolidated Plan (All PHAs)	U.S. Department of Housing and Urban Development Office of Public and Indian Housing OMB No. 2577-0226 Expires 3/31/2024
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**Certification by State or Local Official of PHA Plans
Consistency with the Consolidated Plan or State Consolidated Plan**

I, D.C. Reeves, the Mayor certify that the 5-Year PHA Plan for fiscal years _____ and/or Annual PHA Plan for fiscal year 2024 of the FL092 - City of Pensacola Housing Division is consistent with the Consolidated Plan or State Consolidated Plan including the Analysis of Impediments (AI) to Fair Housing Choice or Assessment of Fair Housing (AFH) as applicable to the City of Pensacola pursuant to 24 CFR Part 91 and 24 CFR § 903.15.

Provide a description of how the PHA Plan's contents are consistent with the Consolidated Plan or State Consolidated Plan.

The PHA Plan for the City of Pensacola Housing Department is consistent with the Consolidated Plan in its missions and goals to provide decent, safe, and affordable housing to low income residents in the community.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

Name of Authorized Official:	D.C. Reeves	Title:	Mayor
Signature:		Date:	

The United States Department of Housing and Urban Development is authorized to solicit the information requested in this form by virtue of Title 12, U.S. Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality. This information is collected to ensure consistency with the consolidated plan or state consolidated plan.

Public reporting burden for this information collection is estimated to average 0.16 hours per year per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and respondents are not required to complete this form, unless it displays a currently valid OMB Control Number.

Form identification: FL092-City of Pensacola Housing Division form HUD-50077-SL (Form ID - 418)
printed by Meredith Reeves in HUD Secure Systems/Public Housing Portal at 05/20/2024 10:44AM EST

Certification of Compliance with PHA Plan and Related Regulations (Standard, Troubled, HCV-Only, and High Performer PHAs)	U.S. Department of Housing and Urban Development Office of Public and Indian Housing OMB No. 2577-0226 Expires 3/31/2024
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PHA Certifications of Compliance with PHA Plan, Civil Rights, and Related Laws and Regulations including PHA Plan Elements that Have Changed

Acting on behalf of the Board of Commissioners of the Public Housing Agency (PHA) listed below, as its Chairperson or other authorized PHA official if there is no Board of Commissioners, I approve the submission of the 5-Year and/or X Annual PHA Plan, hereinafter referred to as "the Plan", of which this document is a part, and make the following certification and agreements with the Department of Housing and Urban Development (HUD) for the PHA fiscal year beginning 10/2024, in connection with the submission of the Plan and implementation thereof:

1. The Plan is consistent with the applicable comprehensive housing affordability strategy (or any plan incorporating such strategy) for the jurisdiction in which the PHA is located (24 CFR § 91.2).
2. The Plan contains a certification by the appropriate State or local officials that the Plan is consistent with the applicable Consolidated Plan, which includes a certification that requires the preparation of an Analysis of Impediments (AI) to Fair Housing Choice, or Assessment of Fair Housing (AFH) when applicable, for the PHA's jurisdiction and a description of the manner in which the PHA Plan is consistent with the applicable Consolidated Plan (24 CFR §§ 91.2, 91.225, 91.325, and 91.425).
3. The PHA has established a Resident Advisory Board or Boards, the membership of which represents the residents assisted by the PHA, consulted with this Resident Advisory Board or Boards in developing the Plan, including any changes or revisions to the policies and programs identified in the Plan before they were implemented, and considered the recommendations of the RAB (24 CFR 903.13). The PHA has included in the Plan submission a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the Plan addresses these recommendations.
4. The PHA provides assurance as part of this certification that:
 - (i) The Resident Advisory Board had an opportunity to review and comment on the changes to the policies and programs before implementation by the PHA;
 - (ii) The changes were duly approved by the PHA Board of Directors (or similar governing body); and
 - (iii) The revised policies and programs are available for review and inspection, at the principal office of the PHA during normal business hours.
5. The PHA made the proposed Plan and all information relevant to the public hearing available for public inspection at least 45 days before the hearing, published a notice that a hearing would be held and conducted a hearing to discuss the Plan and invited public comment.
6. The PHA certifies that it will carry out the public housing program of the agency in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d—4), the Fair Housing Act (42 U.S.C. 3601-19), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), title II of the Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and other applicable civil rights requirements and that it will affirmatively further fair housing in the administration of the program. In addition, if it administers a Housing Choice Voucher Program, the PHA certifies that it will administer the program in conformity with the Fair Housing Act, title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, title II of the Americans with Disabilities Act, and other applicable civil rights requirements, and that it will affirmatively further fair housing in the administration of the program.
7. The PHA will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in the Assessment of Fair Housing (AFH) conducted in accordance with the requirements of 24 CFR § 5.150 through 5.180, that it will take no action that is materially inconsistent with its obligation to affirmatively further fair

housing, and that it will address fair housing issues and contributing factors in its programs, in accordance with 24 CFR § 903.7(o)(3). The PHA will fulfill the requirements at 24 CFR § 903.7(o) and 24 CFR § 903.15(d). Until such time as the PHA is required to submit an AFH, the PHA will fulfill the requirements at 24 CFR § 903.7(o) promulgated prior to August 17, 2015, which means that it examines its programs or proposed programs; identifies any impediments to fair housing choice within those programs; addresses those impediments in a reasonable fashion in view of the resources available; works with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; and maintains records reflecting these analyses and actions.

8. For PHA Plans that include a policy for site-based waiting lists:

- The PHA regularly submits required data to HUD's 50058 PIC/IMS Module in an accurate, complete and timely manner (as specified in PIH Notice 2011-65);
- The system of site-based waiting lists provides for full disclosure to each applicant in the selection of the development in which to reside, including basic information about available sites; and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types at each site;
- Adoption of a site-based waiting list would not violate any court order or settlement agreement or be inconsistent with a pending complaint brought by HUD;
- The PHA shall take reasonable measures to assure that such a waiting list is consistent with affirmatively furthering fair housing; and
- The PHA provides for review of its site-based waiting list policy to determine if it is consistent with civil rights laws and certifications, as specified in 24 CFR 903.7(o)(1).

9. The PHA will comply with the prohibitions against discrimination on the basis of age pursuant to the Age Discrimination Act of 1975.

10. In accordance with 24 CFR § 5.105(a)(2), HUD's Equal Access Rule, the PHA will not make a determination of eligibility for housing based on sexual orientation, gender identify, or marital status and will make no inquiries concerning the gender identification or sexual orientation of an applicant for or occupant of HUD-assisted housing.

11. The PHA will comply with the Architectural Barriers Act of 1968 and 24 CFR Part 41, Policies and Procedures for the Enforcement of Standards and Requirements for Accessibility by the Physically Handicapped.

12. The PHA will comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, Employment Opportunities for Low-or Very-Low Income Persons, and with its implementing regulation at 24 CFR Part 135.

13. The PHA will comply with acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations at 49 CFR Part 24 as applicable.

14. The PHA will take appropriate affirmative action to award contracts to minority and women's business enterprises under 24 CFR 5.105(a).

15. The PHA will provide the responsible entity or HUD any documentation that the responsible entity or HUD needs to carry out its review under the National Environmental Policy Act and other related authorities in accordance with 24 CFR Part 58 or Part 50, respectively.

16. With respect to public housing the PHA will comply with Davis-Bacon or HUD determined wage rate requirements under Section 12 of the United States Housing Act of 1937 and the Contract Work Hours and Safety Standards Act.

17. The PHA will keep records in accordance with 2 CFR 200.333 and facilitate an effective audit to determine compliance with program requirements.

18. The PHA will comply with the Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and 24 CFR Part 35.

19. The PHA will comply with the policies, guidelines, and requirements of 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Financial Assistance, including but not limited to submitting the assurances required under 24 CFR §§ 1.5, 3.115, 8.50, and 107.25 by submitting an SF-424, including the required assurances in SF-424B or D, as applicable.

20. The PHA will undertake only activities and programs covered by the Plan in a manner consistent with its Plan and will utilize covered grant funds only for activities that are approvable under the regulations and included in its Plan.
21. All attachments to the Plan have been and will continue to be available at all times and all locations that the PHA Plan is available for public inspection. All required supporting documents have been made available for public inspection along with the Plan and additional requirements at the primary business office of the PHA and at all other times and locations identified by the PHA in its PHA Plan and will continue to be made available at least at the primary business office of the PHA.
22. The PHA certifies that it is in compliance with applicable Federal statutory and regulatory requirements, including the Declaration of Trust(s).

City of Pensacola Housing Division

FL092

PHA Name

PHA Number/HA Code

☒ Annual PHA Plan for Fiscal Year 2024

☐ 5-Year PHA Plan for Fiscal Years 20__ - 20__

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

Name of Executive Director MS Meredith Reeves		Name Board Chairman D.C. Reeves	
Signature	Date	Signature	Date

The United States Department of Housing and Urban Development is authorized to solicit the information requested in this form by virtue of Title 12, U.S. Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality. This information is collected to ensure compliance with PHA Plan, Civil Rights, and related laws and regulations including PHA plan elements that have changed.

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City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-506

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

LOCAL GOVERNMENT AREA OF OPPORTUNITY FOR 9% HOUSING TAX CREDIT APPLICATION

RECOMMENDATION:

That City Council authorize funding in the amount of \$460,000 to support a Local Government Area of Opportunity application for Kupfrian Manor for Florida Housing Finance Corporation's RFA 2024-201 Housing Credit Financing for Affordable Housing Developments located in Medium and Small Counties. Further, that City Council authorize the Mayor to sign the Local Government Verification of Contribution Form as required by Florida Housing Finance Corporation.

HEARING REQUIRED: No Hearing Required

SUMMARY:

A priority recommendation made to the City in 2020 as part of the Final Report presented by the City's Affordable Housing Task Force was for the City to support tax credit development applications as a means of producing affordable rental developments. Support of an affordable multi-family rental development also supports multiple housing goals as outlined in the City's current Comprehensive Plan. City Council approved Coronavirus State and Local Fiscal Recovery funds under the American Rescue Plan Act (ARPA) for affordable housing initiatives in a special workshop in June 2021. City Council also approved the use of Community Development Block Grant (CDBG) funding in July 2022 to support neighborhood improvement projects that directly support affordable housing development.

Florida Housing Finance Corporation (FHFC), the agency that oversees the low income housing tax credit (LIHTC) application process in Florida, is expected to release RFA 2024-201 Housing Credit Financing for Affordable Housing Developments located in Small and Medium Counties on June 18, 2024, which provides the 9% competitive housing tax credits. For this year's annual RFA, the state established the following funding priorities for medium counties:

- Six Local Government Area of Opportunity applications (two with local government support since 2022 or earlier; two with local government support from 2023 or earlier;

- and two additional applications with local government support regardless of year)
- One SunRail application
- At least three Family developments that are located in a HUD defined "Geographic Area of Opportunity" OR "Small Area Difficult to Develop Areas" (no SADDAs are located in Escambia County)
- One "Permit Ready" application in a small or medium county

The Local Government Area of Opportunity (LGAO) preference requires a local government to select one development for support and provide a minimum funding amount based on County size. The minimum funding commitment under this year's RFA for a development located in Escambia County is \$460,000. The Housing Department issued a request for applications from developers interested in submitting an application to FHFC under RFA 2024-201 in order to select a LGAO application that can be competitive for funding in the City limits. Applicants had to submit a proposal for a 9% housing tax credit within the City limits that would also meet local grant requirements.

The only proposal received by the deadline was from Paces Preservation Partners, LLC (Paces), a partnership between The Paces Foundation, Inc. and Soho Housing Partners, LLC, to develop a 94 unit senior multi-family development at the southeast corner of H and Avery Streets, to be called Kupfrian Manor. The proposal demonstrated developer experience and capacity, zoning/land use compliance, a 50 year minimum commitment to affordability, and ability to proceed.

Since the City supported this development last year and in 2022 as a LGAO, this proposal has a higher chance of receiving a LIHTC from FHFC. Because of the competitive nature of the FHFC 9% housing tax credit RFA process, there is no guarantee that funding will be received from the State. Applications are due to FHFC July 9, 2024. The FHFC Review Committee Meeting is scheduled for August 7 with FHFC Board approval of those recommendations on August 23, 2024. Should Kupfrian Manor be selected for award by the State, an agreement will come back to City Council for approval to formally obligate funds and outline developer commitments. This rental development will comply with all City planning and zoning requirements. Properties awarded LIHTC funding are routinely monitored by FHFC for set asides, rents, and other property conditions as outlined in the RFA.

Kupfrian Manor will consist of 47-1 bedroom/1 bath units and 47-2 bedroom/2 bath units. Paces is committing to unit affordability for a minimum of 50 years. All of the units will be targeted to households at or below 80% area median income (AMI) to meet both IRS, FHFC, and local grant requirements. 16 units will be set aside for residents at or below 30% AMI; 56 units at or below 60% AMI; and 22 units at or below 80% AMI (for reference, the current maximum income limits for a one-person household at 30% AMI may not exceed \$18,900; 60% AMI may not exceed \$37,800; and 80% AMI may not exceed \$50,350). Additionally, 8 of the 30% AMI units will be set aside for special needs households. Based on unit set asides, the one-bedroom rents are expected to range from \$390-1234/month based on income and two-bedroom rents are expected to range from \$459-1472/month based on income. The following programs will be available to Kupfrian Manor residents at no additional cost: financial

management, daily activities, and computer training.

PRIOR ACTION:

June 20, 2021-City Council workshop for ARPA funds

July 21, 2022-City Council approved the annual allocation of CDBG funds, to include an activity to support affordable housing development.

December 12, 2022-CRA approved designation of Kupfrian Manor as a LGAO under RFA 2022-2021 with \$460,000 in CRA funds

August 17, 2023-City Council approved designation of Kupfrian Manor as a LGAO under RFA 2023-201 with \$460,000 in ARPA funds

FUNDING:

Budget:

\$360,000 ARPA funds

\$100,000 CDBG funds

\$460,000 Project Total

Actual: \$460,000

FINANCIAL IMPACT:

No City general funds are required. The \$460,000 contribution will be funded from Housing ARPA funds and CDBG funds already in the budget. No funds will be provided to the developer unless the proposed development is awarded funding from FHFC under RFA 2024-201.

The statewide housing tax credit application process through FHFC is extremely competitive, so there is no guarantee of this project being funded by the state. Should this project be awarded a 9% tax credit, an agreement will come back to City Council outlining developer responsibilities in accordance with all grant requirements.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

5/29/2024

STAFF CONTACT:

David Forte, Deputy City Administrator
Meredith Reeves, Housing Administrator

ATTACHMENTS:

1. Local Government Verification of Contribution-Loan Form
2. Proposed Site Map-Kupfrian Manor
3. LGAO application Kupfrian Manor

PRESENTATION: No

**FLORIDA HOUSING FINANCE CORPORATION
LOCAL GOVERNMENT VERIFICATION OF CONTRIBUTION – LOAN FORM**

Name of Development: _____

Development Location: _____
(At a minimum, provide the address number, street name and city, and/or provide the street name, closest designated intersection and either the city (if located within a city) or county (if located in the unincorporated area of the county). If the Development consists of Scattered Sites, the Development Location stated above must reflect the Scattered Site where the Development Location Point is located.)

The City/County of Pensacola, commits \$ 460,000.00 at face value, (which may be used as an FHFC Non-Corporation Funding Proposal in an Application for FHFC funding if it meets the required criteria) in the form of a reduced interest rate loan to the Applicant for its use solely for assisting the proposed Development referenced above.

Please note: In some competitive processes, Florida Housing will use the face value of the commitment minus the net present value of the commitment for scoring purposes. The net present value of the above-referenced loan, based on its payment stream, inclusive of a reduced interest rate and the designated discount rate (as stated in the applicable RFA) is: \$ _____.

No consideration or promise of consideration has been given with respect to the loan. For purposes of the foregoing, the promise of providing affordable housing does not constitute consideration. The commitment for this loan must be effective as of the Application Deadline for the applicable RFA, and is provided specifically with respect to the proposed Development.

CERTIFICATION

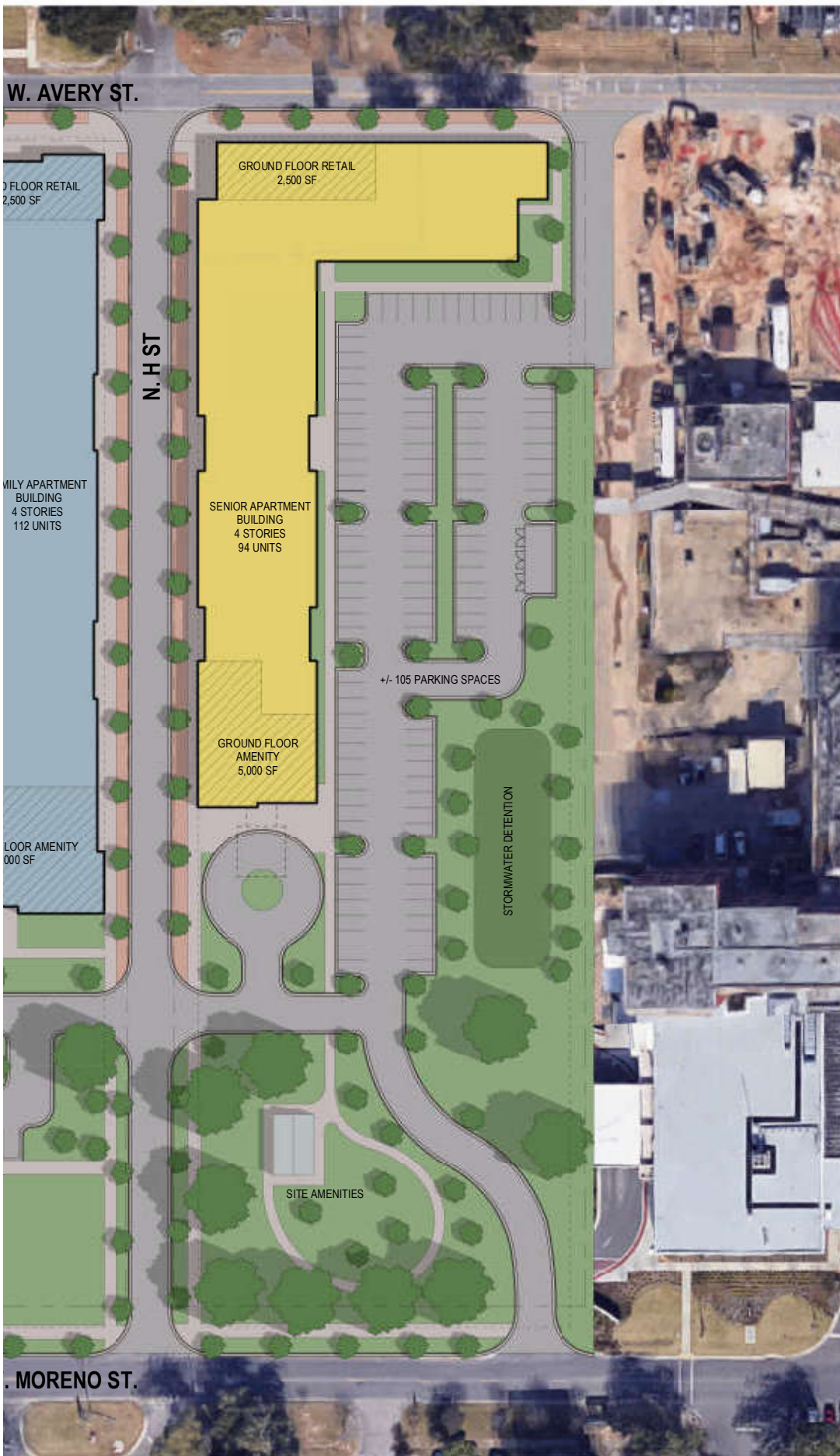
I certify that the foregoing information is true and correct and that this commitment is effective at least through the date required in the applicable RFA.

_____ Signature Mayor	_____ D.C. Reeves Print or Type Name
_____ Print or Type Title	_____ Date Signed

NOTE TO LOCAL GOVERNMENT OFFICIAL: Additional information is set forth in the applicable Request for Application under which the Applicant is applying for funding for the above referenced Development.

This certification must be signed by the chief appointed official (staff) responsible for such approvals, Mayor, City Manager, County Manager /Administrator/Coordinator, Chairperson of the City Council/Commission or Chairperson of the Board of County Commissioners. If the contribution is from a Land Authority organized pursuant to Chapter 380.0663, Florida Statutes, this certification must be signed by the Chair of the Land Authority. One of the authorized persons named above may sign this form for certification of state, federal or Local Government funds initially obtained by or derived from a Local Government that is directly administered by an intermediary such as a housing finance authority, a community reinvestment corporation, or a state-certified Community Housing Development Organization (CHDO). Other signatories are not acceptable. The Applicant will not receive credit for this contribution if the certification is improperly signed. The amount of the contribution stated on this form must be a precise dollar amount and cannot include words such as estimated, up to, maximum of, not to exceed, etc.

If there are alterations made to this form that change the meaning of the form, the form will not be accepted.



EAST SITE

SENIOR APARTMENT BUILDING
4 STORIES
94 UNITS

UNIT TOTALS

1 BED / 1 BATH:	47
2 BED / 2 BATH:	47
TOTAL UNITS:	94

SQUARE FOOTAGE

1 BED / 1 BATH:	700 RSF
2 BED / 2 BATH:	950 RSF
TOTAL RENTABLE:	77,500 RSF

COMMERCIAL:	2,500 GSF
RESIDENTIAL UNITS:	85,000 GSF
AMENITY:	5,000 GSF
COMMON AREA:	23,500 GSF
TOTAL GROSS:	116,000 GSF

PARKING

REQUIRED		
RESIDENTIAL:	1/UNIT	94 SPACES
COMMERCIAL:	1/300 SF	10 SPACES
TOTAL:		104 SPACES
TOTAL PROVIDED:		+/- 105 SPACES

**CITY OF PENSACOLA LOCAL GOVERNMENT AREA OF OPPORTUNITY
CONTRIBUTION APPLICATION FOR RFA 2024-201**

1. APPLICANT INFORMATION:

Applicant:	Kupfrian Manor, LLC		
Applicant Type:	☐ Individual ☐ Partnership ☒ For-Profit Entity ☐ Non Profit Entity ☐ Limited Liability Comp ☐ Other: _____		
CEO/President:	Mark du Mas		
Federal EIN:	193-2290421		
Date Agency was established:	11/17/2022		
Address:	2730 Cumberland Blvd SE		
City:	Smyrna	Zip:	30080
Phone:	770-431-9696	Fax:	770-431-9699
Email:	mark@pacesfoundation.org		
CERTIFICATION CONTACT INFORMATION (if different from above):			
Contact Name:	Renee Sandell		
Title:	Vice President/COO		
Email:	renee@pacesfoundation.org	@ Phone	321-431-3164

Will the development have a co-sponsor? ☐ NO ☒ YES (if yes, please complete information on the co-sponsor below)

Co-Sponsor:	Soho GP Holdings, LLC		
Co-Sponsor Type:	☐ Individual ☐ Partnership ☒ For-Profit Entity ☐ Non Profit Entity ☐ Limited Liability Comp ☐ Other: _____		
CEO/President:	Stephen Bien		
Federal EIN:	85-3002406		
Date Agency was established:	9/21/2020		
Address:	1408 North Westshore Blvd Ste 804		
City:	Tampa	Zip:	33607
Phone:	813-731-1244		
Email:	steve@sohohousingpartners.com		

2. DEVELOPMENT SUMMARY:

Is the development location within the Pensacola city limits? ☐ NO (STOP. Not eligible) ☒ YES

Is the project located in a City Community Redevelopment Area? ☐ NO ☒ YES

If yes, provide name of CRA: WCRA

(Pensacola CRA District maps at: <http://cityofpensacola.com/534/CRA-District-Maps>)

Is the development location within a Special Flood Hazard Area? ☒ NO (STOP. Not eligible) ☐ YES

Development Name:	Kupfrian Manor		
Development Address: (within City limits)	Southeast corner of North H Street & West Avery Street		
Parcel Ref. Number:	Parcel ID 172S301000001001 and a portion of Parcel ID 00S009050001058		
Project Type:	☒ New ☐ Rehabilitation ☐ Acquisition/Rehabilitation		
Development Type (select all that apply):	☒ Elderly ☐ Family ☐ Special Needs ☐ Homeless		
Development Design:	☐ Garden Apts ☐ High Rise ☒ Mid Rise, 4-6 Stories ☐ Townhomes ☐ Quadraplexes ☐ Duplexes ☐ Other: _____		
Total No. of Units:	94	Total No. of Set Aside Units:	94

DETAILED DEVELOPMENT BREAKDOWN BY UNIT. Please show the proposed number of units for each income category.

BR SIZE→ ↓INCOME LEVEL	Studio	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
0-30% Area Median Income (AMI)		8	8		
31-50% AMI					
51-60% AMI		28	28		
61-80% AMI		11	11		
81-140% AMI					
TOTALS:					

NUMBER OF UNITS TO BE SET ASIDE FOR SPECIAL NEEDS HOUSEHOLDS: 8

For special needs units, the developer commits to providing units specifically for households that meet the definition of special needs as defined in Section 420.0004(13) F.S., which is a household receiving benefits from Social Security Disability Insurance, Supplemental Security Income, or Veteran's Disability; a domestic violence survivor; a young adult formerly in foster care; or a household with a disabling condition requiring independent living services.

PROPOSED RENTS. Please show the proposed rents by bedroom size and income levels.

BR SIZE→ ↓INCOME LEVEL	Studio	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
0-30% Area Median Income (AMI)		\$390	\$459		
31-50% AMI					
51-60% AMI		\$896	\$1067		
61-80% AMI		\$1234	\$1472		
81-140% AMI					

3. PROPERTY MANAGEMENT TEAM:

- a. Name of Proposed Property Management Company: United Apartment Group
- b. Address of Management Company: 7334 Blanco Rd Ste 300 San Antonio, TX 78216

4. RESIDENT PROGRAM OFFERINGS: FHFC mandates provision of resident programs. Please list all resident programs that will be offered at the development (FHFC required, plus any additional):

- ☐ Assistance with Light-Housekeeping, Grocery Shopping and/or Laundry (Elderly Only)
- ☐ After School Program for Children
- ☒ Daily Activities (Elderly)
- ☐ Family Support Coordinator
- ☐ Homeownership Opportunity Program
- ☐ Resident Assurance Check-In Program (Elderly)
- ☒ Computer Training
- ☐ Employment Assistance Program
- ☒ Financial Management Program
- ☐ Adult Literacy Training
- ☐ Other: _____

5. APPLICANT CAPACITY AND EXPERIENCE: Provide examples of applicant's record of performance, qualifications, and capacity to perform the responsibility of this development.

- a. Has applicant or co-sponsor ever declared bankruptcy? No
- b. Is applicant (and co-sponsor) in good standing with FHFC, Escambia County, and City housing programs (i.e., developer/principals not on FHFC non-compliance list, no outstanding monitoring issues with County/City housing programs, etc)? Yes
- c. Has the applicant or developer ever developed multi-family housing with federal funds? Yes
☐ NO ☒ YES If yes, provide federal funding source: Tax Credits, Bonds, HOME Funds, and CDBGs
- d. Complete EXHIBIT A to include developments underway by applicant/co-sponsor; developments completed in last 5 years; and at least 3 completed developments of similar size/scale.
- e. Complete EXHIBIT B to include info on proposed qualified development team members.

6. FINANCIAL CAPACITY:

- a. Total Development Cost: \$30,231,152
- b. Cost per Unit: \$321,608
- c. Attach development and operating cash flow and proposed sources and uses of funds to demonstrate long-term cash flow for the development. Documents should be based on assumptions of occupancy, rents, and expenses for the duration of the affordability period. (Submit own Forms)

7. ABILITY TO PROCEED

- a. Provide anticipated project timeline (subject to FHFC approval and underwriting) after approval of agreement by the City Council. Include key dates such as site acquisition, design, permitting, construction loan financing dates, FHFC funding closing dates, construction start and completion dates, and lease-up.

Please see the attached timeline for Kupfrian Manor ad attachment 7a.

- b. Site Control. Provide evidence of site control (submit own forms), which has been achieved by the following:

☐ Deed/Certificate of Title ☒ Purchase Contract ☐ Option Agreement ☐ Long Term Lease
Expiration/Maturity Date (n/a for deed):12/1/24

- c. Site Plan. Provide preliminary site plan including building footprint and proposed site improvements (submit own forms).
- d. Provide FHFC Ability to Proceed Form: Local Government Verification that Development is Consistent with Zoning and Land Use Regulations

8. FHFC FUNDING GOALS. Does your development meet any of the following funding goals set by the State?

- a. Prior LGAO designation? ☐ NO ☒ YES If yes, state year of support: 2022
- b. Family development that qualifies as a Geographic Area of Opportunity or SADDa development?
☒ NO ☐ YES If yes, provide census tract or zip code: _____

9. **PROJECT CHARACTERISTICS:** Provide a narrative regarding community benefits to be provided by the development, including any amenities/programs that may be available to the surrounding neighborhood or ways the development will improve the surrounding neighborhood. Describe any ways the development supports the City's goals and objectives for the production of affordable housing units, particularly for households negatively impacted by the pandemic.

We have attached a PDF to this application detailing the programs that will be available to the residents of Kupfrian Manor. Please refer to Attachment 9 for our response.

CERTIFICATION:

The proposer certifies that all documents included with this application are valid as of the date of this application and that current, dated copies have been submitted with this proposal. The person executing this document represents that s/he has the authority to bind the applicant.

Signature: _____

Date: _____

DEVELOPMENT NAME

Kupfrian Manor

APPLICANT

Kupfrian Manor, LLC

CURRENT PROJECTS UNDERWAY

Applicant/Co-Sponsor Name	Project Name	Stage	# of Units	Date Initiated	Planned Completion Date	Total Development Budget	County/ City
The Paces Foundation, Inc.	Tupelo Park Apartments	Under Construction	47	6/9/22	12/21/23	16,702,231	Panama City Beach
The Paces Foundation, Inc/Soho GP Holdings, LLC	Historic Nathaniel Carr	Under Construction	120	10/7/22	4/30/24	31,135,080	Charlotte
The Paces Foundation, Inc/Soho GP Holdings, LLC	Waterside Oaks	Under Construction	196	8/26/22	3/1/24	54,464,573	Gainesville
The Paces Foundation, Inc/Soho GP Holdings, LLC	Handsel Morgan Village	Under Construction	45	4/18/23	7/1/24	18,040,786	Buford
The Paces Foundation, Inc/Soho GP Holdings, LLC	Maryalice Apartments	Under Construction	98	4/20/23	7/1/24	41,511,942	Buford

PROJECTS COMPLETED

Applicant/Co-Sponsor Name	Project Name	Project Type	# of Units	Date Initiated	Date Completed	Total Development Budget	County/ City
The Paces Foundation, Inc.	Ashland Park	Family - Garden	184	4/12/21	6/22/22	33,427,587	Rome
The Paces Foundation, Inc.	Gateway Townhomes	Family - Garden	50	2016	2017	6,280,025	Port St. Joe
The Paces Foundation, Inc.	Meadowhill Estates	Family - Single	35	2014	2015	6,583,342	Hazlehurst
The Paces Foundation, Inc.	Las Brisas Manor	Senior - Garden	48	2011	2012	6,852,751	Del Rio
The Paces Foundation, Inc.	Panama Commons	Family - Garden	92	2009	2010	9,502,133	Panama City

PROJECTS OF SIMILAR TYPE & SCALE

Applicant/Co-Sponsor Name	Project Name	Project Type	# of Units	Date Initiated	Date Completed	Total Development Budget	County/ City
The Paces Foundation, Inc.	Century Park	Family - Garden	50	2016	2018	6,188,500	Century
The Paces Foundation, Inc.	Fairfield Manor	Senior - Midrise	92	2013	2015	14,309,475	Pensacola
The Paces Foundation, Inc.	Brownsville Manor	Senior - Midrise	88	2019	2020	12,909,489	Pensacola

EXHIBIT B: DEVELOPMENT TEAM INFORMATION

DEVELOPMENT NAME	Kupfrian Manor	APPLICANT	Kupfrian Manor, LLC
<u>APPLICANT</u>			
(Owner/Mortgagor):	Kupfrian Manor, LLC		
Address:	2730 Cumberland Blvd SE		
	Website: pacesfoundation.org		
Principal(s):	Kupfrian Manor Services Corporation and Soho Kupfrian Manor, LLC		
Contact Person:	Renee Sandell	Email Address:	renee@pacesfoundation.org
Telephone Number:	321-431-3164	Fax Number:	770-431-9699

<u>DEVELOPER</u>	Paces Preservation Partners, LLC		
(Legal Name):	Address: 2730 Cumberland Blvd SE Smyrna, GA 30080		
	Website: pacesfoundation.org		
Principal(s):	The Paces Foundation, Inc. and Soho Realty Development, LLC		
Contact Person:	Renee Sandell	Email Address:	renee@pacesfoundation.org
Telephone Number:	321-431-3164	Fax Number:	770-431-9699

<u>ARCHITECT</u>	Neighboring Concepts		
Address:	1635 W Trade St #1A Charlotte, NC 28216		
	Website: neighboringconcepts.com		
Principal(s):	Ian Shelton		
Contact Person:	Ian Shelton	Email Address:	ian@neighboringconcepts.com
Telephone Number:	704-594-7977 x 2514	Fax Number:	

<u>CONTRACTOR</u>	Fyffe Construction (Brownsville Manor)		
Address:	1544 Main St, Fyffe, AL 35971		
	Website: thevantagegroup.biz/fyffe-construction/		
Principal(s):	Lowell Barron		
Contact Person:	Steve Brice	Email Address:	sbrice@fyffeconstruction.com
Telephone Number:	256-601-4208	Fax Number:	1-880-536-8236

<u>OTHER</u>	Nelson Mullins		
Address:	390 North Orange Avenue Ste 1400, Orlando, FL 32801		
	Website: nelsonmullins.com		
Principal(s):	David Leon		
Contact Person:	David Leon	Email Address:	david.leon@nelsonmullins.com
Telephone Number:	407-669-4276	Fax Number:	407-425-8377



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-418

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

AIRPORT - U.S. GENERAL SERVICES ADMINISTRATION (GSA) LEASE AGREEMENT

RECOMMENDATION:

That City Council authorize the Mayor to execute the lease agreement with U.S. General Services Administration (GSA) to provide for office and training space for the Transportation Security Administration at the Pensacola International Airport. Further, that City Council authorize the Mayor to execute any amendments to the lease agreement governing the annual terminal building rental rate adjustment. Finally, that City Council authorize the Mayor to take the actions necessary to execute and administer this lease 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 July 15, 2019, the City of Pensacola and GSA entered into a lease agreement to provide the Transportation Security Administration (TSA) with the administrative and training space needed to support its passenger screening operations at Pensacola International Airport. The lease encompasses 3,965 square feet of space on the second level of the passenger terminal and 1,312 square feet of space on the first floor of the terminal.

The current lease expires July 15, 2024, and GSA wishes to continue leasing the area for the TSA. The new agreement is substantially similar to the current one, has a ten (10) year term, and requires the Federal Government to pay the same rental rate as charged to the airlines and rental car companies. The terminal building rental rates are adjusted on an annual basis, and therefore, a lease amendment may be required annually when the new rates take effect.

PRIOR ACTION:

June 9, 2005 - City Council approved the Lease Agreement with GSA
June 24, 2010 - City Council approved the Lease Agreement with GSA
March 28, 2013 - City Council approved the Lease Agreement with GSA
May 12, 2016 - City Council approved the Lease Agreement with GSA

May 30, 2019 - City Council approved the Lease Agreement with GSA

FUNDING:

N/A

FINANCIAL IMPACT:

The lease will generate an estimated \$198,773.23 for the first year of the agreement. The terminal building rental rates are adjusted on an annual basis, and therefore, the revenue generated will fluctuate.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

5/31/2024

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Miller, Deputy City Administrator
Matthew Coughlin, Airport Director

ATTACHMENTS:

1. Lease Agreement with US General Services Administration 2024
2. REVISED - Lease Agreement with US General Services Administration 2024

PRESENTATION: No

**LEASE AGREEMENT BETWEEN THE CITY OF PENSACOLA AND
THE U.S. GENERAL SERVICES ADMINISTRATION IN SUPPORT OF
TRANSPORTATION SECURITY ADMINISTRATION SCREENING OPERATIONS AT
THE PENSACOLA INTERNATIONAL AIRPORT**

LEASE GS-04P-LFL60501

THIS LEASE AGREEMENT (hereinafter referred to as "Agreement" or "Lease") **IN SUPPORT OF TRANSPORTATION SECURITY ADMINISTRATION SCREENING OPERATIONS** at the Pensacola International Airport, 2430 Airport Boulevard, Pensacola, FL 32504, is made and entered into this ____ day of _____, 20____, by and between the **City of Pensacola**, a municipal corporation of the State of Florida with the business address of 222 W. Main Street, Pensacola, Florida 32502 (hereinafter referred to as "City") and the **United States of America**, acting through the **General Services Administration** with the business address of 77 Forsyth Street, Atlanta, GA 30303 , (hereinafter referred to as "Lessee" or "Government"). (Each at times hereinafter referred to as a "party" or collectively as "parties").

WITNESSETH:

WHEREAS, the City owns, operates, and maintains Pensacola International Airport (hereinafter referred to as "Airport") located in Escambia County, Florida to serve the traveling public with airline services; and

WHEREAS, Lessee desires to continue to lease space in the Airport in support of the Transportation Security Administration's federally mandated passenger security screening mission at the Airport to protect customers using the nation's airlines; and

WHEREAS, as a result, the parties agree that this lease is necessary and proper to ensure the safety and well-being of the traveling public and should be entered into as provided herein.

NOW, THEREFORE, for and in consideration of the premises, and of the mutual covenants and agreements and the payment of money herein contained, the City and Lessee do hereby mutually undertake, promise and agree, each for itself and its successors and assigns, as follows:

**ARTICLE I
LEASED PREMISES**

The City hereby leases to Lessee, and Lessee hereby hires and takes from the City, certain space inside the Airport Terminal building at Pensacola International Airport (herein referred to as the "Leased Premises"), more particularly shown on Exhibit "A". In the event the United States Congress authorizes the Lessee to pay rent for security checkpoint screening areas in use on the effective date of the statute, then the City and

_____ city

Lessee agree to increase the Leased Premises by 10,421 square feet of area as depicted in Exhibit "B", at a rental rate as required by and payable under federal law.

The Leased Premises shall be taken by Lessee in the AS IS condition, subject to all defects, latent and patent, and shall be improved, maintained, and operated at Lessee's sole cost and expense except as may otherwise be specifically provided in this Agreement. It is the express intention of the parties hereto that the Lessee's improvements, use and occupancy of the Leased Premises, and all costs associated therewith, shall be and remain the financial obligation of the Lessee.

ARTICLE II GRANT OF USE

The City hereby grants Lessee the right to use the Leased Premises for general administrative offices, training rooms, and employee break rooms for its security screening operation at Pensacola International Airport.

Lessee shall not use, nor permit others to use, the Leased Premises, and any improvements thereon, for any purpose other than the authorized purposes set forth above, nor shall Lessee use the Leased Premises to store any material not required for the prosecution of the authorized purposes. Should the Lessee wish to perform any additional services from its Leased Premises, Lessee shall make written application to the City requesting permission to provide such additional services. If the City determines that the Lessee may perform the requested additional services and if the Lessee and City execute an amendment to the Lease setting forth the terms and conditions by which Lessee shall perform the additional services or activities, then Lessee shall be deemed authorized to perform said additional services or activities.

ARTICLE III COMPLIANCE WITH RULES AND REGULATIONS

The Lessee agrees to conform to all Federal, State, or local laws and regulations, as well as all City of Pensacola Codes and Ordinances, all of which may apply to the services to be performed.

The Lessee shall obtain and maintain in force all licenses, permits, and other certificates required by Federal, State, County, or municipal authorities for its operation under the terms of this Agreement.

The Lessee agrees to observe all security requirements of Transportation Security Administration 49 CFR 1542 (formerly Federal Aviation Regulations Part 107), and the Airport Security Program, as may be applicable, and as the same may, from time to time, be amended, and to take such steps as may be necessary or directed by the City to ensure that employees, invitees, agents, and guests observe these requirements.

If the City incurs any fines and/or penalties imposed by Federal, State, County, or Municipal authorities as a result of the acts or omissions of Lessee, its partners, officers, agents, employees, contractors, subcontractors, assigns, subtenants, or anyone acting under its direction and control, then Lessee shall be responsible to pay or reimburse the City for all such reasonable costs and expenses, if allowable under federal law.

ARTICLE IV

TERM

The term of this Agreement shall commence at midnight on July 15, 2024 (hereinafter referred to as the "commencement date") and shall continue for a period of ten (10) years.

ARTICLE V

RENT & FEES

For space inside the Terminal building, in consideration of the rights and privileges herein granted, the Lessee hereby covenants and agrees to pay the City upon commencement of this Agreement a monthly rental rate identical to that same square foot rental rate charged to the signatory air carriers, as adjusted annually by the City. The rental rate for the Terminal building shall be adjusted annually on October 1st by dividing the debt service requirements plus the maintenance and operating requirements by the amount of usable space in the Terminal building. "Usable Space" is defined as the total square feet in the Terminal building less mechanical and utility space. The City shall provide the Lessee notification of the adjusted lease rate thirty (30) days prior to the effective date of the change. In no event shall rental due during the term of this lease for space inside the Terminal building exceed \$75.00 per square foot. The lease rates effective July 15, 2024 shall be as follows:

5,331.9 Rentable Square Feet/ABOA SF

Terminal Building AREA	RATE PER RSF / ABOA	RSF / ABOA	ANNUAL RENT	MONTHLY RENT
2nd Floor Inspector Offices	\$37.28	1,367.0	\$ 50,961.76	\$ 4,246.81
2nd Floor Administration Offices	\$37.28	3,964.9	\$147,811.47	\$12,317.62
TOTAL	\$37.28	5,331.9	\$198,773.23	\$16,564.43

Lessee agrees to pay rent due to the City, without invoice in arrears for the month for which rent is due. Rent for a period less than one month shall be prorated on a daily basis (365 day year). It is understood by the Lessor and Lessee that the United States of America (Federal Government) is tax exempt as the sovereign.

Rent payments shall be made payable to the City of Pensacola via electronic funds transfer.

ARTICLE VI TAXES AND ASSESSMENTS

The Lessee, as the United States of America is tax exempt as the sovereign. The Lessee shall pay only such taxes and assessments required to be paid under federal law including, but not limited to, ad valorem taxes payable to the Escambia County Tax Collector.

ARTICLE VII INDEMNIFICATION

The Lessee agrees to be liable to the Lessor under the Federal Tort Claims Act (28 USC § 2671-2677).

ARTICLE VIII IMPROVEMENTS

During the term of this Agreement, Lessee shall have the right to construct, at its own expense, improvements, alterations, or additions to the Leased Premises to facilitate and further the authorized usage of the Leased Premises, provided that Lessee conforms with all conditions of this Article including:

- (a) the proposed improvements and alterations are submitted to the City for its prior review;
- (b) the City determines, in its sole discretion (which discretion shall be reasonably applied), that the proposed improvements and alterations will be consistent with the Airport's Master Plan, land use plan and architectural design and quality of construction in effect at the time of construction; and
- (c) the improvements, alterations, and additions are to be constructed by qualified and licensed contractors and subcontractors. The Lessee shall ensure that its contract with the contractor includes the City as an additional insured on the insurance required of the contractor.

General Construction Requirements:

Prior to the commencement of any construction activity, Lessee shall submit detailed plans, specifications, and a construction time schedule for the improvements, to the City for approval. The Airport Director shall either approve or disapprove the plans and/or specifications submitted by the Lessee. Approval by the Airport Director of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural and aesthetic plan for the area assigned to the Lessee. Such plans are not

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approved for architectural or engineering design or compliance with applicable laws or codes and the City, acting through the Airport Director, by approving such plans and specifications, assumes no liability or responsibility hereof or for defect in any structure or improvement constructed according to such plans and specifications. The Airport Director reserves the right to reject any design submitted and shall state the reasons for such action. No changes or alterations shall be made to said plans and specifications after approval by the Airport Director.

Immediately upon receipt of the City's written approval of said plans, specifications, and construction time schedule, Lessee shall proceed with construction of said improvements. Work shall not be performed at times other than shown on the construction time schedule without the prior approval of the Airport Director.

Lessee shall construct all improvements and additions to the Leased Premises at its own expense. Although the City has the right to review proposed improvement plans, and veto the plans if the plans are inconsistent with the airport development plans or construction quality and design control, pursuant to the standards set forth above, if the City does not veto said improvement plans, and Lessee thereafter constructs the improvements, the improvements shall be commissioned and constructed at Lessee's sole initiative and behest, and nothing herein shall be construed as an authorization by City to Lessee to construct the improvements, or as an agreement by City to be responsible for paying for the improvements, and neither the Leased Premises, nor the City's interest in said Leased Premises or any improvements constructed thereon, shall be subjected to a mechanic's lien for any improvements constructed by Lessee hereunder.

The Lessee agrees to provide performance and payment bonds as required by the Miller Act.

Lessee shall be responsible for assuring that all of the improvements, alterations and additions to the Leased Premises are constructed in accordance with applicable local, state and federal law. Lessee shall contractually require its contractor, if any, to reimburse the City for all costs and an expense, including attorney's fees, the City incurs:

- (a) as a result of the fact that the improvements, additions, or alterations do not comply with local, state, and federal law;
- (b) in defending against, settling, or satisfying any claims that the City is responsible for paying for improvements commissioned by Lessee hereunder; or
- (c) in defending against, settling, or satisfying any mechanic's lien claims, asserted as a result of unpaid-for improvements commissioned by Lessee hereunder.

Should Lessee construct improvements, alterations, or additions without fulfilling its obligations hereunder, Lessee shall remove said improvements, alterations, or additions if

_____ city

so directed by the City, and shall do so at its own expense and within the time limits specified.

The City shall, at any period during construction of Lessee's improvements, alterations, or additions, have the right to inspect any or all construction work, workmanship, material and installation involved in, or incidental to, the construction or installation of the improvements, alterations, or additions, for conformance with the applicable standards set forth in this Agreement, provided that such inspection shall not include internal work that is exclusively of an operations (non-structural) nature, and provided further that no such inspections shall be deemed to constitute consent to or approval of any such work.

Lessee shall provide City with one complete set of "as-built" drawings for each improvement, alteration, or addition made to the Leased Premises during the term of this Agreement.

Title to all permanent leasehold improvements, alterations, or additions, as defined by Florida Law, will vest in the City upon termination or sooner expiration of this agreement, free and clear on any liens or encumbrances whatsoever.

Notwithstanding the above paragraph, title to all of the Lessee's personal property shall at all times during the term of this Agreement remain with the Lessee.

Lessee shall not remove or demolish, in whole or in part, any improvements upon the Leased Premises without the prior written consent of the Airport Director.

Lessee shall be responsible for making repairs at its sole expense for any damage, other than from normal wear and tear, resulting from the removal by Lessee of its said furniture, trade fixtures, etc. Space must be returned with all custodial and maintenance requirements under Article XI met and in leasable condition.

The City shall have the right to construct or install over, in, under, or through the Leased Premises new lines, pipes, mains, wires, conduits and equipment, provided, however, that such repair, alteration, replacement, or construction shall not unreasonably interfere with Lessee's use of the Leased Premises. The City will repair any damage resulting from such activities.

ARTICLE IX SIGNS

Lessee agrees that no signs, logos, or advertising displays shall be painted on 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. Signs identifying Lessee shall conform to reasonable standards established by the City, with respect to type, size, design, condition, and location.

ARTICLE X VENDING MACHINES

No amusement or vending machines or other machines operated by coins or tokens shall be installed or maintained in or upon the Leased Premises, or any improvements or additions thereon, except with the permission of the City, and the number, type, kind and locations thereof shall be solely in the discretion of the City. Lessee shall not permit the installation of any such machines, except by a concessionaire authorized by the City or unless the City agrees to Lessee or its subtenants installing their own machines for use by the employees and guests of Lessee and its subtenants.

ARTICLE XI UTILITIES, MAINTENANCE, AND CUSTODIAL SERVICES

Utilities:

During the term of this Agreement, the City shall provide, at its expense, existing power, air conditioning, and heating for the Leased Premises. The City shall not be obligated to provide for the extension of these utilities or to provide for the installation of any other utilities. The Lessee, at the Lessee's sole cost and expense, shall arrange for the extension of these utilities as needed. Throughout the term of this Agreement, the Lessee shall not render any utility lines inaccessible.

The City reserves the right to assess a reasonable charge associated with providing for power, air conditioning and heating. Such charge for lessee utilities shall not exceed that which is charged to other commercial tenants in the Terminal building. The Lessee shall be solely liable for the cost of telephone services from the Leased Premises and the Lessee shall obtain a separate account accordingly.

The City reserves the right to install, maintain, repair, replace, or remove and replace any utility lines located on the Leased Premises as necessary or appropriate, along with the right to enter the Leased Premises at all reasonable time in order to accomplish the foregoing, provided, however, that the City shall take reasonable precautions to avoid the disruption of the Lessee's authorized activity.

Maintenance:

During the term of this agreement, the City shall provide, at its expense:

1. Structural repairs to the roof, floor, exterior walls and windows of the Terminal building.
2. General maintenance and upkeep of the Terminal building's interior common use area and external area. The City agrees to keep and maintain in

reasonable condition all trunk water and sewer mains, supply mains and electrical power to the Leased Premises.

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 damage caused by disrepair of any kind until the City has had reasonable opportunity to perform repairs after being notified in writing of the need for same by Lessee.

Lessee, at its own expense, shall perform all preventive maintenance and ordinary upkeep and nonstructural repair of its Leased Premises and equipment, including but not limited to fixtures, doors, floor coverings, and walls (painting and wall covering). Lessee shall be required to keep all such areas in good operating condition and repair at all times.

Custodial:

During the term of this Agreement, the City shall provide, at its expense:

1. Custodial services for the non-leased public areas of the Terminal building.
2. Pest control services for the Leased Premises and the adjacent areas.

Lessee agrees to keep all of the Leased Premises in the Terminal building, and any areas outside the Terminal building used in the course of its normal daily operations, in a neat, clean, safe, sanitary and orderly condition at all times; that it will keep such areas free at all times of all paper, rubbish and debris; and that Lessee will deposit all trash and debris resulting from its operations in its Leased Premises in containers approved by the City.

Unless otherwise agreed to by the Parties, Lessee agrees to provide, at its own expense, such janitorial and cleaning services and supplies for the maintenance of its Leased Premises. Lessee also agrees to keep and maintain the Leased Premises in a clean, neat, and sanitary condition and attractive appearance.

General:

Should Lessee fail to maintain the Leased Premises in conformance with the terms and conditions of this article within a period of seven (7) days following written notice of such failure (or for those items that cannot be reasonably cured within seven (7) days, Lessee fails to undertake action to cure and diligently pursue such cure), the City reserves the right to take any action to cure said failure. Should the City take action to cure failures, the Lessee shall pay to the City an amount equal to the City's reasonable cost for such actions plus a reasonable administrative charge.

ARTICLE XIII MAINTENANCE OF PROVIDED FINISHES

The Airport's February 2020 Master Plan identified several redevelopment and expansion projects including a need for an additional concourse and aircraft gates to meet current and future needs of the traveling public. During the term of this agreement, the City of Pensacola may undertake such redevelopment and expansion projects.

Should the City undertake such redevelopment projects, Lessee shall be given the opportunity to request improvements to provided finishes including, but not limited to paint, wall coverings, carpet, and flooring.

All work shall be done after normal working hours and shall include the moving and returning of furnishings, as well as disassembly and reassembly of systems furniture per manufacturer's warranty.

ARTICLE XII DAMAGE OR DESTRUCTION

Lessee shall be liable for any damage to its Leased Premises and fixtures therein and to the Airport and to any improvements thereon caused by Lessee, its partners, officers, agents, employees, invitees, contractors, subcontractors, assigns, subtenants, or anyone acting under its direction and control, ordinary wear and tear excepted, as permitted under the Federal Tort Claims Act (28 USC § 2671-2677) and the Disputes clause required by the Contract Disputes Act of 1978 (41 USC § 601 (2002)), which is incorporated herein by reference.

The City shall not be liable to Lessee, the Lessee's employees, patrons, or vendors for any damage to their merchandise, trade fixtures, or personal property caused by water leakage from the roof, water lines, sprinkler, or heating and air conditioning equipment unless caused by the sole negligence of the City, its employees or agents.

ARTICLE XIII LESSEE PARKING PRIVILEGES

Lessee shall have the right to the use of reasonably adequate vehicular parking facilities available to other employees at the Airport. Such facilities shall be located in an area designated by the Airport Director. The City reserves the right to assess a reasonable charge for such employee parking facilities. Such charge for lessee employee parking shall be billed directly to the employee and shall not exceed that which is charged to other commercial tenants in the Terminal Building. Notwithstanding the foregoing, the Lessor is not providing reserved parking for government owned vehicles; therefore, Lessor shall not assess parking fees to the government under this lease.

ARTICLE XIV EMPLOYEES

Lessee shall ensure that its employees conduct themselves in a professional and courteous manner at all times. The Lessee's employees will be appropriately dressed at all times, and maintain a clean, neat, well-groomed appearance. The Lessee will be obligated to control the actions of its employees and cooperate with the City in controlling any employee whose conduct the City feels is detrimental to the best interest of the Airport and public.

ARTICLE XV LAWFUL AND REASONABLE USE

Lessee may not do anything in or upon the Leased Premises, nor bring or keep anything therein, which shall unreasonably increase or tend to increase the risk of fire, or cause a safety hazard to persons, or obstruct or interfere with the rights of any other tenant(s) or in any way injure or annoy them, or which violates or causes violation of any applicable health, fire, environmental, or other regulation of any level of government. The Airport Director may inform Lessee of such violation and set a date for abatement. It is hereby acknowledged that Lessee's employees may be armed with firearms and ammunition, and this shall not be deemed a violation of this Article.

ARTICLE XVI RIGHT TO ENTER

The City and its authorized officers, employees, agents, contractors, subcontractors, and other representatives shall have the right to enter upon the Lease Premises at any time in cases of emergency. An emergency is herein defined as an event or the appearance of an event which, if left uninvestigated, may result in injury or damage to persons or property. At all other times, the City and its authorized officers, employees, agents, contractors, subcontractors, and other representatives shall have the right, with reasonable advanced notice to local tenant, to enter upon the Leased Premises and inspect any improvements and alterations thereon at reasonable times for the following purposes:

1. To inspect such Leased Premises to determine whether Lessee has complied and is complying with the terms and conditions of this Agreement.
2. To perform maintenance and make repairs in any case where Lessee is obligated but has failed to do so.
3. To perform any and all things that the Lessee is obligated to perform and has failed to perform after reasonable notice to do so.
4. In the exercise of City's police powers.

ARTICLE XVII QUIET ENJOYMENT

The City warrants and represents that it has good and marketable title to the Leased Premises free of encumbrances. The City represents that upon payment of fees when due and upon performance of all other conditions required herein, and under other agreements between the parties, Lessee shall peaceably and quietly have, hold, possess and enjoy the Leased Premises, and all improvements thereon, for all terms under this Agreement, subject to the City's rights of inspection and maintenance contained herein.

ARTICLE XVIII NON-DISCRIMINATION

Lessee, for itself, its personal representatives, successors in interest, assigns and subtenants, as part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, religion, sex, national origin, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Leased Premises and any improvements thereon; (2) no person on the grounds of race, color, religion, sex, national origin, or disability shall be subjected to discrimination in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services therein; and (3) Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the secretary, Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation, effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

Lessee shall furnish its accommodations and/or services on a fair, equal, and non-discriminatory basis to all users thereof.

ARTICLE XIX WAIVER

Should Lessee breach any of its obligations hereunder, the City, nevertheless, thereafter may accept from Lessee any payment or payments due under this Agreement, and continue this Agreement in effect without in any way waiving its ability to exercise and enforce all available remedies upon default provided hereunder or provided by law for said breach. In addition, any waiver by either party of any default, breach, or omission of the other under this Agreement shall not be construed as a waiver of any subsequent or different default, breach, or omission.

ARTICLE XX DEFAULT AND REMEDIES

The following shall constitute defaults by Lessee:

_____ city

1. The failure to pay fees owed under this Agreement, or under any other agreement between City and Lessee, when due, and the failure to cure said default within a period of thirty (30) days following receipt of written notice of said default;
2. Any other failure by Lessee to perform any covenant or obligation required by this Agreement after giving reasonable notice and opportunity to cure;
3. Lessee undertakes any other commercial or non-commercial service or activity not specifically permitted under this Agreement;

If Lessee defaults, the City may utilize any one or more of the following remedies against Lessee. These remedies shall be considered cumulative and not in the alternative:

1. The City may sue for damages incurred by the City, as permitted under the Federal Tort Claims Act (28 USC § 2671-2677) and the Disputes clause required by the Contract Disputes Act of 1978 (41 USC § 601 (2002)), which is incorporated herein by reference.
2. The City may terminate this Agreement. The termination of this Agreement, however, shall only be effective upon written notice of same provided by the City to Lessee. In no event shall this Agreement be construed to be terminated unless and until such notice is provided. The termination may be effective immediately upon receipt of said notice, or at any other time specified in the notice. If this Agreement is terminated, Lessee shall continue to be liable for the performance of all terms and conditions and the payment of all fees due hereunder accruing prior to the effective date of said termination, in addition to all damages, including reasonable attorney's fees and other reasonable expenses of collection, incurred by City as a result of any default, to the extent permitted by applicable Federal statutes cited herein.

ARTICLE XXI RELOCATION DURING TERM

If it becomes necessary in the orderly development of the Airport, Lessor may require the relocation of the Leased Premises to other space at the Airport which, in the reasonable judgment of Lessor, is similar and suitable for the purposes for which this Lease is entered as such purposes are set forth herein. Should such relocation be necessary, the Lessor shall provide the GSA a minimum of 120 days prior written notice. Lessor shall be responsible for all costs for such relocation, including all costs for moving furniture, office equipment, telephone and data lines, and any other costs associated with replicating necessary operational features provided in the space originally leased. The Airport shall provide such relocated Leased Premises at the same rental rate as the original Leased Premises, unless the new Leased Premises are located in an area for which the Airport charges tenants a lower rate, in which event the parties shall

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negotiate a reduction in the rental rate. The Government will not reimburse the Lessor for any increased square footage as a result of such relocation.

ARTICLE XXII FORCE MAJEURE

Subject to the provisions herein concerning the payment of fees and other monies by Lessee to the City, and except and otherwise expressly provided herein, neither the City nor Lessee shall be liable for any failure, delay, or interruption in performing its obligations hereunder (other than the Lessee's obligations to pay fees and other monies) due to causes or conditions beyond their control; by which is meant acts of God, the elements, weather conditions, hurricanes, earthquakes, fire, acts of governmental authority (other than the City or agency thereof), war, shortage of labor or fuel, or materials, acts of terrorism or third parties for which neither the City nor Lessee is responsible, injunctions, labor troubles or disputes of every kind (including those affecting the City, Lessee, their contractors, suppliers, or subcontractors), or any other condition or circumstance, whether similar to or different from the foregoing (it being agreed that the foregoing enumeration shall not limit or be characteristic of such conditions or circumstances), which is beyond the control of the City or Lessee or which could not be prevented or remedied by reasonable effort and at reasonable expense.

ARTICLE XXIII SURRENDER UPON TERMINATION

Upon the expiration or sooner termination of this Agreement, for any reason whatsoever, Lessee shall peaceably surrender to the City possession of the Leased Premises, together with any improvements, alterations, or fixtures previously constructed by Lessee or the City within said Leased Premises, and any of the City's personal property located thereon, in as good a condition as the Leased Premises and improvements, alterations and fixtures constructed thereon were initially provided to, or constructed by, the City or Lessee, ordinary wear and tear excepted, without any compensation whatsoever, and free and clear of any claims or interests of Lessee or of any mortgages or any other third party whose position was derived from or through Lessee. If any of said improvements, alterations or fixtures are encumbered by a mortgage or lien at the time of expiration or sooner termination of this Agreement, Lessee shall be responsible for eliminating said mortgage or lien.

Title to all personal property not removed by Lessee from the Leased Premises shall be subject to the City taking ownership of such personal property, without payment by the City to Lessee of any compensation whatsoever, and said personal property shall thereafter be owned by the City free and clear of any claim or interest by Lessee or of any mortgagee or any third party whose position was derived from or through Lessee. Nothing in the Lease shall be deemed as a waiver of the rights of the Lessee as sovereign.

ARTICLE XXIV HOLDING OVER

_____ city

If Lessee remains in possession of the Leased Premises after the expiration of this Agreement without any written renewal thereof, such holding over shall not be deemed as a renewal or extension of this Agreement but shall create only a tenancy from month to month which may be terminated at any time by the City upon thirty (30) days written notice. Such holding over shall otherwise be upon the same terms and conditions as set forth in this Agreement.

ARTICLE XXV RENEWAL

Lessee has no guaranteed or preferential right, as against other third parties, of reletting the Leased Premises, or any improvements thereon, following the termination of this Agreement. Should Lessee desire to relet the Leased Premises following the termination of the term of this Agreement, Lessee shall submit an application for Lease in accordance with Airport leasing rules and regulations in effect at that time. Lessee's application will be reviewed by the City along with other applications, if any, in accordance with then applicable Airport leasing rules and regulations.

ARTICLE XXVI AIRPORT DEVELOPMENT RIGHTS

The City reserves the right to further develop or improve all areas within the Airport, including landing areas and the passenger Terminal building, as the City may determine in its sole discretion, which discretion shall not unreasonably be exercised, to be in the best interests of the Airport, regardless of the desires or views of Lessee, and without further interference or hindrance from Lessee.

Except as may be required by this Agreement or any other agreement between the parties, the City reserves the right, but shall not be obligated to Lessee, to keep and repair all areas, including landing areas, of the Airport.

ARTICLE XXVII SUBORDINATION

This Agreement shall be subordinate to existing and future Airport Bond Resolutions. This agreement shall also be subject to and subordinate to agreements between the City and State and Federal agencies for grants-in-aid and to the provisions of any agreements heretofore made between the City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights of property to the City for Airport purposes, or to the expenditure of federal funds for the extension, expansion, or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Airport Act of 1958, as it has been amended from time to time. Any agreement hereafter made between the City and the United States will not be inconsistent with rights granted to Lessee herein.

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ARTICLE XXVII
ASSIGNMENT

Lessee shall not assign its rights, title and interest herein without the written consent of the City, said consent not to be unreasonably denied or delayed. If an assignment is made, Lessee shall continue to be liable, jointly and severally, with its assignee, for the fulfillment of all terms and conditions arising under this Agreement subsequent to the assignment, unless the City releases Lessee in writing for such liability for future obligations. The release shall be effective only if made in writing. All subsequent assignors and assignees shall be subject to this Section as if they were the original lessee/assignor.

ARTICLE XXIX
SUBLEASE

Lessee may not sublease all or any portion of the Leased Premises or all or any portion of the improvements thereon, without first obtaining written consent of the City, said consent not to be unreasonably denied or delayed. Any such sublease must be in writing and be made subject to the terms and conditions of this Agreement. In addition, before any sublease may take effect, any sub lessee must execute an agreement with the City, in a form and for a fee acceptable to the City, by which such sub lessee is authorized to do business on the Airport.

ARTICLE XXX
SUCCESSORS

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

ARTICLE XXXI
PARTIAL INVALIDITY

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

ARTICLE XXXII
NOTICES

All notices by either party to the other shall be made by depositing such notice in the registered or certified mail of the United States of America, postage prepaid, or with another delivery service requiring signature and receipt, and such notice shall be deemed

_____ city

to have been served on the date of such depositing correctly addressed notice in the registered or certified mail unless otherwise provided. All notices to the City shall be mailed to:

Airport Director
Pensacola International Airport
2430 Airport Boulevard, Suite 225
Pensacola, Florida 32504

All notices to Lessee shall be mailed to:

U.S. General Services Administration, Region 4
ATTN: Leasing Division
77 Forsyth Street
Atlanta, GA 30303

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

ARTICLE XXXIII REPRESENTATIONS REGARDING AUTHORITY

The City represents that it has the authority to enter into this Agreement and grant the rights contained herein to Lessee.

ARTICLE XXXIV RELATIONSHIP OF PARTIES

It is understood that the City is not in any way or for any purpose a partner or joint venturer with, or agent of, Lessee in the use of the Leased Premises or any improvements thereon, for any purpose.

ARTICLE XXXV HEADINGS

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

ARTICLE XXXVI GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the United States. In the event no applicable law of the United States exists, then the laws of the State of Florida.

_____ city

ARTICLE XXXVII
PUBLIC RECORDS ACT

The Parties shall each comply with Florida Public Records laws. The Parties hereby contractually agree that each Party shall allow public access to all documents, papers, letters, or other public records as defined in Chapter 119, Florida Statutes, made or received by either Party in conjunction with this agreement, or related thereto, unless a statutory exemption from disclosure exists. Notwithstanding any provision to the contrary, it is expressly agreed that Lessee's failure to comply with this provision, within seven (7) days of notice from the City, shall constitute an immediate and material breach of this Contract for which the City may, in the City's sole discretion, unilaterally terminate this Contract without prejudice to any right or remedy.

ARTICLE XXXVIII
ENTIRE AGREEMENT

This Agreement, together with all exhibits hereto, constitutes the entire Agreement and understanding between the parties with respect to the Leased Premises, and supersedes all negotiations, prior discussions, letters of intent and preliminary agreements. Exhibit "C", entitled General Clauses, GSA Form 3517, is incorporated herein and specifically made a part hereof. Exhibit "D", entitled Representations and Certifications, GSA Form 3518, is incorporated herein and specifically made a part hereof. This Agreement may not be amended except by a writing executed by all of the parties.

ARTICLE XXXIX
TERMINATION RIGHTS

The Government may terminate this Lease, in whole or in part, under the same terms and conditions as the airline agreements, at any time during the term of this lease with ninety (90) days prior written notice to the Lessor if (i) regularly scheduled commercial air services cease, (ii) the airport opts to replace TSA screeners with private contractors, (iii) the checkpoint supported by the Leased Area is closed, or (iv) the Government reduces its presence at the airport due to a reduction in enplanements. Any partial termination of this Lease must be approved by the Airport Director and shall not result in unmarketable space in the Terminal building. The effective date of the termination shall be the day following the expiration of the required notice period or the termination date set forth in the notice, whichever is later. No rental shall accrue after the effective date of termination.

ARTICLE XL
PERSONAL PROPERTY

Upon expiration or sooner termination of the Agreement, Lessee shall have thirty (30) days from such date of expiration or termination to remove from the Leased Premises all personal property, improvements and fixtures belonging to Lessee.

_____ city

ARTICLE XLI
DOCUMENTS INCORPORATED IN THE LEASE

The following documents are attached to and made part of the Lease:

DOCUMENT NAME	NO. OF PAGES	EXHIBIT
Floor Plan(s)	2	A
Security Checkpoint Screening Areas	1	B
GSA Form 3517B, General Clauses	46	C
GSA Form 3518-SAM, Addendum to System for Award Management (SAM) Representations and Certifications (Acquisitions of Leasehold Interests in Real Property)	2	D

(END OF TEXT; SIGNATURE PAGES TO FOLLOW)

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

ATTEST:

City of Pensacola, Florida, a
Municipal Corporation

Ericka Burnett
City Clerk

By: _____
D.C. Reeves
Mayor

General Services Administration as (Lessee)

By _____
Contracting Officer, GSA

Approved as to substance:

Legal in form and execution:

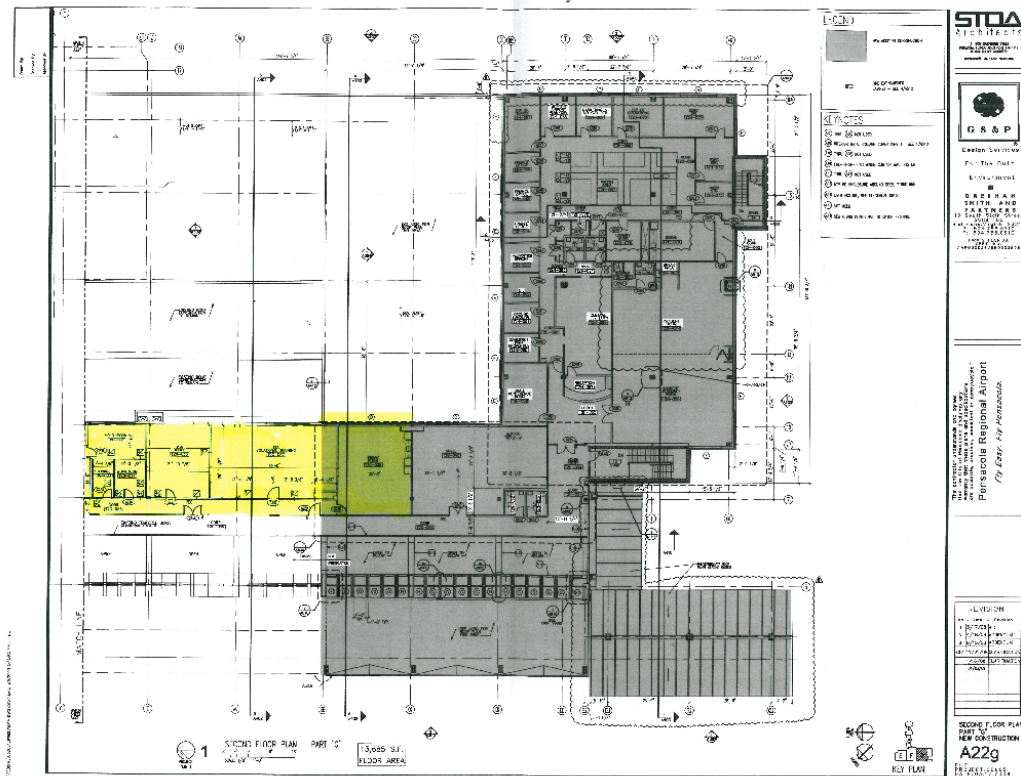
Airport Director

City Attorney

EXHIBIT A **Leased Premises** **Second Floor Inspector Offices**

FISB FEDERAL INSPECTION SERVICE U.S. DEPARTMENT OF MARSHALS SERVICE FEDERAL BUREAU OF INVESTIGATION AND U.S. CUSTOMS SERVICE 100 N. 17th St. Alexandria, VA 22304-6077	Transportation Security Administration U.S. DEPARTMENT OF HOMELAND SECURITY	OWNER'S AND DESIGNER'S INTENT TO CONSTRUCT THIS PROJECT ONLY AND NOT FOR THE INFORMATION AND DETERMINATION OF THE DESIGNER'S INTENT. PLAN IS ISSUED. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED. ALL DIMENSIONS FOR LOCATIONS, ALL LOCATIONS FOR CONSTRUCTION AND DATA MUST BE VERIFIED. NO CHANGES FOR ALTERNATE AND SPACE ALLOCATION HAVE BEEN REQUESTED. THE DESIGNER'S INTENT IS TO CONSTRUCT THIS PROJECT TO THE PLAN. THE DESIGNER'S INTENT IS TO PROVIDE THE FOLLOWING DIMENSIONS, DETAILS, AND FINISHES. DRAWING NOT TO SCALE	PROJECT CODE: PNS	PROJECT NO.: RTN: 8470	ON SITE ON SITE
DATE: 04/17/2011 PROJECT MANAGER: TRD POINT OF CONTACT (P.O.C.): NAME: SIGNATURE: REVISION NO.: 0 DATE:					
SHEET NO.: FP-1B					

Second Floor Administration Offices



Pensacola Gulf Coast Regional Airport

Lease Exhibits



L 2.1 2nd FLOOR EXCLUSIVE USE

Area Name	Room No.	Room name	AREA	Subtotal
TSA	T2G-030	Toilet	70.7	
	T2G-031	Hold Room	251.4	
	T2G-032	Hazard Storage	135.3	
	T2G-033	Storage	100.6	
	T2G-034	Workroom	149.7	
	T2G-029&35	Corridor	771.4	
	T2G-036	Office	569.6	
	T2G-037	Training	895.1	
		Storage	218.9	
	T2G-038	Breakroom	802.2	
TSA subtotal				3,964.9
2nd floor Exclusive Area Grand Total				3,964.9

EXHIBIT B Security Checkpoint Screening Areas

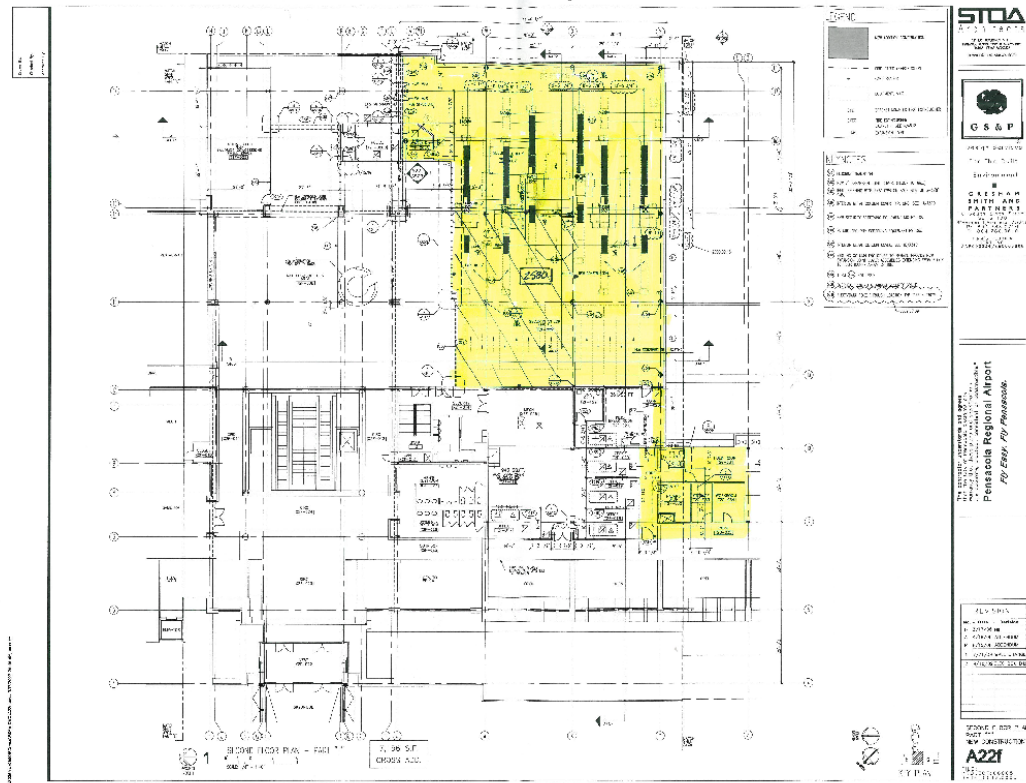


EXHIBIT C
GENERAL CLAUSES – FORM 3517B

GENERAL CLAUSES
(Acquisition of Leasehold Interests in Real Property)

CATEGORY	CLAUSE NO.	48 CFR REF.	CLAUSE TITLE
GENERAL	1		SUBLETTING AND ASSIGNMENT
	2	552.270-11	SUCCESSORS BOUND
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The information collection requirements contained in this solicitation/contract that are not required by regulation have been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act and assigned the OMB Control No. 3090-0163.

GENERAL CLAUSES
(Acquisition of Leasehold Interests in Real Property)

1. SUBLETTING AND ASSIGNMENT (JAN 2011)

The Government may sublet any part of the Leased Premises but shall not be relieved from any obligations under this lease by reason of any such subletting. The Government may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any, that have accrued to the date of said assignment. Any subletting or assignment shall be subject to prior written consent of Lessor, which shall not be unreasonably withheld.

2. 552.270-11 SUCCESSORS BOUND (SEP 1999)

This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, and assigns.

3. 552.270-23 SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT (SEP 1999)

(a) Lessor warrants that it holds such title to or other interest in the Leased Premises and other property as is necessary to the Government's access to the Leased Premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the Leased Premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the Leased Premises, and to any water, sewer or access easement necessary or desirable to serve the Leased Premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

(b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.

(c) In the event of any sale of the Leased Premises or any portion thereof by foreclosure

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of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the Leased Premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

(d) None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

4. 552.270-24 STATEMENT OF LEASE (SEP 1999)

(a) The Contracting Officer will, within thirty (30) days next following the Contracting Officer's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that (1) the lease is in full force and effect; (2) the date to which the rent and other charges have been paid in advance, if any; and (3) whether any notice of default has been issued.

(b) Letters issued pursuant to this clause are subject to the following conditions:

(1) That they are based solely upon a reasonably diligent review of the Contracting Officer's lease file as of the date of issuance;

(2) That the Government shall not be held liable because of any defect in or condition of the Leased Premises or building;

(3) That the Contracting Officer does not warrant or represent that the Leased Premises or building comply with applicable Federal, State and local law; and

(4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable pre-purchase and pre-commitment inspection of the Leased Premises and Building and by inquiry to appropriate Federal, State and local Government officials.

5. 552.270-25 SUBSTITUTION OF TENANT AGENCY (SEP 1999)

The Government may, at any time and from time to time, substitute any Government agency or agencies for the Government agency or agencies, if any, named in the lease.

6. 552.270-26 NO WAIVER (SEP 1999)

No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

7. INTEGRATED AGREEMENT (JUN 2012)

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease. Except as expressly attached to and made a part of the Lease, neither the Request for Lease Proposals nor any pre-award communications by either party shall be incorporated in the Lease.

8. 552.270-28 MUTUALITY OF OBLIGATION (SEP 1999)

The obligations and covenants of the Lessor, and the Government's obligation to pay rent and other Government obligations and covenants, arising under or related to this Lease, are interdependent. The Government may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this lease. No setoff pursuant to this clause shall constitute a breach by the Government of this lease.

9. DELIVERY AND CONDITION (JAN 2011)

(a) Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit.

(b) The Government may elect to accept the Space notwithstanding the Lessor's failure to deliver the Space substantially complete; if the Government so elects, it may reduce the rent payments.

10. DEFAULT BY LESSOR (APR 2012)

(a) The following conditions shall constitute default by the Lessor, and shall give rise to the following rights and remedies for the Government:

(1) Prior to Acceptance of the Leased Premises. Failure by the Lessor to diligently perform all obligations required for Acceptance of the Space within the times specified, without excuse, shall constitute a default by the Lessor. Subject to provision of notice of default to the Lessor, and provision of a reasonable opportunity for the Lessor to cure its default, the Government may terminate the Lease on account of the Lessor's default.

(2) After Acceptance of the Leased Premises. Failure by the Lessor to perform any service, to provide any item, or satisfy any requirement of this Lease, without excuse, shall constitute a default by the Lessor. Subject to provision of notice of default to the Lessor, and provision of a reasonable opportunity for the Lessor to cure its default, the Government may perform the service, provide the item, or obtain satisfaction of the requirement by its

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own employees or contractors. If the Government elects to take such action, the Government may deduct from rental payments its costs incurred in connection with taking the action. Alternatively, the Government may reduce the rent by an amount reasonably calculated to approximate the cost or value of the service not performed, item not provided, or requirement not satisfied, such reduction effective as of the date of the commencement of the default condition.

(3) Grounds for Termination. The Government may terminate the Lease if:

(i) The Lessor's default persists notwithstanding provision of notice and reasonable opportunity to cure by the Government, or

(ii) The Lessor fails to take such actions as are necessary to prevent the recurrence of default conditions,

and such conditions (i) or (ii) substantially impair the safe and healthful occupancy of the Leased Premises, or render the Space unusable for its intended purposes.

(4) Excuse. Failure by the Lessor to timely deliver the Space or perform any service, provide any item, or satisfy any requirement of this Lease shall not be excused if its failure in performance arises from:

(i) Circumstances within the Lessor's control;

(ii) Circumstances about which the Lessor had actual or constructive knowledge prior to the Lease Award Date that could reasonably be expected to affect the Lessor's capability to perform, regardless of the Government's knowledge of such matters;

(iii) The condition of the Property;

(iv) The acts or omissions of the Lessor, its employees, agents or contractors; or

(v) The Lessor's inability to obtain sufficient financial resources to perform its obligations.

(5) The rights and remedies specified in this clause are in addition to any and all remedies to which the Government may be entitled as a matter of law.

11. 552.270-19 PROGRESSIVE OCCUPANCY (SEP 1999)

The Government shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire Leased Premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by the Government. The Government shall pay rent commencing with the first business day following substantial completion of the entire leased premise unless the Government has elected to occupy the Leased Premises incrementally. In case of incremental occupancy, the Government shall pay rent pro rata upon the first business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following

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the month in which it was substantially complete. The commencement date of the firm lease term will be a composite determined from all rent commencement dates.

12. MAINTENANCE OF THE PROPERTY, RIGHT TO INSPECT (APR 2015)

The Lessor shall maintain the Property, including the building, building systems, and all equipment, fixtures, and appurtenances furnished by the Lessor under this Lease, in good repair and tenantable condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, safety systems, access and other things to the Leased Premises, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupancy, possession, use and enjoyment of the Leased Premises as provided in this lease. For the purpose of so maintaining the Leased Premises, the Lessor may at reasonable times enter the Leased Premises with the approval of the authorized Government representative in charge. Upon request of the Lease Contracting Officer (LCO), the Lessor shall provide written documentation that building systems have been properly maintained, tested, and are operational within manufacturer's warranted operating standards. The Lessor shall maintain the Leased Premises in a safe and healthful condition according to applicable OSHA standards and all other requirements of this Lease, including standards governing indoor air quality, existence of mold and other biological hazards, presence of hazardous materials, etc. The Government shall have the right, at any time after the Lease Award Date and during the term of the Lease, to inspect all areas of the Property to which access is necessary for the purpose of determining the Lessor's compliance with this clause.

13. FIRE AND CASUALTY DAMAGE (MAR 2013)

If the building in which the Leased Premises are located is totally destroyed or damaged by fire or other casualty, this Lease shall immediately terminate. If the building in which the Leased Premises are located are only partially destroyed or damaged, so as to render the Leased Premises untenable, or not usable for their intended purpose, the Lessor shall have the option to elect to repair and restore the Leased Premises or terminate the Lease. The Lessor shall be permitted a reasonable amount of time, not to exceed **270 days** from the event of destruction or damage, to repair or restore the Leased Premises, provided that the Lessor submits to the Government a reasonable schedule for repair of the Leased Premises within **60 days** of the event of destruction or damage. If the Lessor fails to timely submit a reasonable schedule for completing the work, the Government may elect to terminate the Lease effective as of the date of the event of destruction or damage. If the Lessor elects to repair or restore the Leased Premises, but fails to repair or restore the Leased Premises within **270 days** from the event of destruction or damage, or fails to diligently pursue such repairs or restoration so as to render timely completion commercially impracticable, the Government may terminate the Lease effective as of the date of the destruction or damage. During the time that the Leased Premises are unoccupied, rent shall be abated. Termination of the Lease by either party under this clause shall not give rise to liability for either party.

This clause shall not apply if the event of destruction or damage is caused by the Lessor's negligence or willful misconduct.

14. COMPLIANCE WITH APPLICABLE LAW (JAN 2011)

Lessor shall comply with all Federal, state and local laws applicable to its ownership and leasing of the Property, including, without limitation, laws applicable to the construction, ownership, alteration or operation of all buildings, structures, and facilities located thereon, and obtain all necessary permits, licenses and similar items at its own expense. The Government will comply with all Federal, State and local laws applicable to and enforceable against it as a tenant under this lease, provided that nothing in this Lease shall be construed as a waiver of the sovereign immunity of the Government. This Lease shall be governed by Federal law.

15. 552.270-12 ALTERATIONS (SEP 1999)

The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect structures or signs in or upon the Leased Premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said Leased Premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. If the lease contemplates that the Government is the sole occupant of the building, for purposes of this clause, the Leased Premises include the land on which the building is sited and the building itself. Otherwise, the Government shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the Leased Area.

16. ACCEPTANCE OF SPACE AND CERTIFICATE OF OCCUPANCY (APR 2015)

(a) Ten (10) working days prior to the completion of the Space, the Lessor shall issue written notice to the Government to schedule the inspection of the Space for acceptance. The Government shall accept the Space only if the construction of building shell and TIs conforming to this Lease and the approved DIDs is substantially complete, and a Certificate of Occupancy has been issued as set forth below.

(b) The Space shall be considered substantially complete only if the Space may be used for its intended purpose and completion of remaining work will not unreasonably interfere with the Government's enjoyment of the Space. Acceptance shall be final and binding upon the Government with respect to conformance of the completed TIs to the approved DIDs, with the exception of items identified on a punchlist generated as a result of the inspection, concealed conditions, latent defects, or fraud, but shall not relieve the Lessor of any other Lease requirements.

(c) The Lessor shall provide a valid Certificate of Occupancy, issued by the local jurisdiction, for the intended use of the Government. If the local jurisdiction does not issue Certificates of Occupancy or if the Certificate of Occupancy is not available, the Lessor may satisfy this condition by providing a report prepared by a licensed fire protection engineer that indicates that the Space and Building are compliant with all applicable local codes and ordinances and all fire protection and life safety-related requirements of this Lease to ensure an acceptable level of safety is provided. Under such circumstances, the Government shall only accept the Space without a Certificate of Occupancy if a licensed fire protection engineer determines that the offered space is compliant with all applicable local codes and ordinances and fire protection and life safety-related requirements of this Lease.

17. 52.204-7 SYSTEM FOR AWARD MANAGEMENT (JUL 2013)

(a) Definitions. As used in this provision—

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“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional System for Award Management records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at [Subpart 32.11](#)) for the same concern.

“Registered in the System for Award Management (SAM) database” means that—

(1) The offeror has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [Subpart 4.14](#)) into the SAM database;

(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in the SAM database;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS +4” followed by the DUNS or DUNS +4 number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the SAM database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) Via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

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(2) The offeror should be prepared to provide the following information:

- (i) Company legal business.
- (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
- (iii) Company Physical Street Address, City, State, and ZIP Code.
- (iv) Company Mailing Address, City, State and ZIP Code (if separate from physical).
- (v) Company Telephone Number.
- (vi) Date the company was started.
- (vii) Number of employees at your location.
- (viii) Chief executive officer/key manager.
- (ix) Line of business (industry).
- (x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) Offerors may obtain information on registration at <https://www.acquisition.gov> .

18. 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (JUL 2013)

(a) *Definitions.* As used in this clause—

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities, which is used as the identification number for Federal contractors.

“Data Universal Numbering System+4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at subpart [32.11](#)) for the same concern.

“Registered in the System for Award Management (SAM) database” means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [Subpart 4.14](#)), into the SAM database;

(2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in the SAM database;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record "Active".

"System for Award Management (SAM)" means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;

(2) Prospective contractor-submitted annual representations and certifications in accordance with FAR [Subpart 4.14](#); and

(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

(b) The Contractor is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(c) (1) (i) If a Contractor has legally changed its business name, *doing business as* name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart [42.12](#), the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to—

(A) Change the name in the SAM database;

(B) Comply with the requirements of subpart [42.12](#) of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (c)(1)(i) of this clause, or fails to perform the agreement at paragraph (c)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart [32.8](#), Assignment of Claims). Assignees shall be separately registered in the SAM. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the EFT clause of this contract.

(3) The Contractor shall ensure that the DUNS number is maintained with Dun & Bradstreet throughout the life of the contract. The Contractor shall communicate any change to the DUNS number to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the DUNS number does not necessarily require a novation be accomplished. Dun & Bradstreet may be contacted

(i) Via the internet at <http://fedgov.dnb.com/webform> or if the contractor does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(d) Contractors may obtain additional information on registration and annual confirmation requirements at <https://www.acquisition.gov>.

19. 552.270-31 PROMPT PAYMENT (JUN 2011)

The Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

(a) *Payment due date—*

(1) *Rental payments.* Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15th day of the month or earlier, the initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15th day of the month, the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) *Other payments.* The due date for making payments other than rent shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of the work or service. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date

shall be deemed to be the 30th day after the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(b) *Invoice and inspection requirements for payments other than rent.*

(1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:

- (i) Name and address of the Contractor.
- (ii) Invoice date.
- (iii) Lease number.
- (iv) Government's order number or other authorization.
- (v) Description, price, and quantity of work or services delivered.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptability of the work performed or services delivered within seven days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the seven day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the seven days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless actual acceptance by the Government occurs.

(c) *Interest Penalty.*

(1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date.

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(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date. This rate is referred to as the “Renegotiation Board Interest Rate,” and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than one year. Interest penalties of less than \$1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(d) *Overpayments.* If the Lessor becomes aware of a duplicate payment or that the Government has otherwise overpaid on a payment, the Contractor shall—

(1) Return the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected lease number; (iii) Affected lease line item or sub-line item, if applicable;
and

(iii) Lessor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

20. 552.232-23 ASSIGNMENT OF CLAIMS (SEP 1999)
(Applicable to leases over \$3,000.)

In order to prevent confusion and delay in making payment, the Contractor shall not assign any claim(s) for amounts due or to become due under this contract. However, the Contractor is permitted to assign separately to a bank, trust company, or other financial institution, including any Federal lending agency, under the provisions of the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as “the Act”), all amounts due or to become due under any order amounting to \$1,000 or more issued by any Government agency under this contract. Any such assignment takes effect only if and when the assignee files written notice of the assignment together with a true copy of the instrument of assignment with the contracting officer issuing the order and the finance office designated in the order to make payment. Unless otherwise stated in the order, payments to an assignee of any amounts due or to become due under any order assigned may, to the extent specified in the Act, be subject to reduction or set-off.

21. 552.270-20 PAYMENT (MAY 2011)

(a) When space is offered and accepted, the amount of American National Standards Institute/Building Owners and Managers Association Office Area (ABOA) square footage delivered will be confirmed by:

(1) The Government's measurement of plans submitted by the successful Offeror as approved by the Government, and an inspection of the space to verify that the delivered space is in conformance with such plans or

(2) A mutual on-site measurement of the space, if the Contracting Officer determines that it is necessary.

(b) Payment will not be made for space which is in excess of the amount of ABOA square footage stated in the lease.

(c) If it is determined that the amount of ABOA square footage actually delivered is less than the amount agreed to in the lease, the lease will be modified to reflect the amount of ABOA space delivered and the annual rental will be adjusted as follows:

ABOA square feet not delivered multiplied by one plus the common area factor (CAF), multiplied by the rate per rentable square foot (RSF). That is: $(1+CAF) \times \text{Rate per RSF} = \text{Reduction in Annual Rent}$

22. 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—SYSTEM FOR AWARD MANAGEMENT (JUL 2013)

(a) Method of payment.

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment;
or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the System for Award Management (SAM) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the SAM database.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in the SAM database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the SAM database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Liability for uncompleted or erroneous transfers.

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the SAM database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to [Subpart 32.8](#), is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the SAM database.

(a) *Definitions. As used in this clause—*

“Agent” means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

“Full cooperation”—

(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors’ and investigators’ request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require—

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from—

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

“United States,” means the 50 States, the District of Columbia, and outlying areas.

(b) *Code of business ethics and conduct.*

(1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—

(i) Have a written code of business ethics and conduct; and

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) *The Contractor shall—*

(i) *Exercise due diligence to prevent and detect criminal conduct; and*

(ii) *Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.*

(3) (i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act ([31 U.S.C. 3729-3733](#)).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, [5 U.S.C. Section 552](#), without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including—

- Monitoring and auditing to detect criminal conduct;
- Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and
- Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

- If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

- If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

- The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

- The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

24. 552.270-32 COVENANT AGAINST CONTINGENT FEES (JUN 2011)

(Applicable to leases over \$150,000 average net annual rental including option periods.)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

(b) *Bona fide agency*, as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

(1) *Bona fide employee*, as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

(2) *Contingent fee*, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

(3) *Improper influence*, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

25. 52.203-7 ANTI-KICKBACK PROCEDURES (MAY 2014)

(Applicable to leases over \$150,000 average net annual rental including option periods.)

(a) *Definitions.*

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or

rewarding favorable treatment in connection with a prime contractor in connection with a subcontract relating to a prime contract.

“Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

“Prime contract,” as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

“Prime Contractor” as used in this clause, means a person who has entered into a prime contract with the United States.

“Prime Contractor employee,” as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

“Subcontract,” as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

“Subcontractor,” as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

“Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) 41 U.S.C. chapter 87, Kickbacks, prohibits any person from—

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless

the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed \$150,000.

26. 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

(Applicable to leases over \$150,000 average net annual rental including option periods, as well as to leases of any value awarded to an individual.)

(a) *Definitions.* As used in this clause—

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an Offeror/Contractor that has no more than one employee including the Offeror/Contractor.

(b) The Contractor, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

27. 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007)

(Applicable to leases over \$5 Million and performance period is 120 days or more.)

(a) *Definition.*

"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).* Except as provided in paragraph (c)—

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

<i>Poster(s)</i>	<i>Obtain from</i>
_____	_____
_____	_____

(Contracting Officer shall insert—

(i) Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster); and

(ii) The website(s) or other contact information for obtaining the poster(s).)

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

28. 552.270-30 PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JUN 2011)
(Applicable to leases over \$150,000 average net annual rental including option periods.)

(a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may—

(1) Reduce the monthly rental under this lease by five percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover five percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by five percent of the amount of the alterations agreement; or

_____ city

(3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis thereof. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

29. 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (AUG 2011)
(Applicable when cost or pricing data are required for work or services over \$700,000.)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

(1) The Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(c) (1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Interest compounded daily, as required by [26 U.S.C. 6622](#), on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under [26 U.S.C. 6621\(a\)\(2\)](#); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

30. 552.270-13 PROPOSALS FOR ADJUSTMENT (SEP 1999)

(a) The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.

(b) If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds \$100,000. The proposal, including all subcontractor work, will contain at least the following detail—

(1) Material quantities and unit costs;

(2) Labor costs (identified with specific item or material to be placed or operation to be performed;

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- (3) Equipment costs;
- (4) Worker's compensation and public liability insurance;
- (5) Overhead;
- (6) Profit; and
- (7) Employment taxes under FICA and FUTA.

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding \$500,000 in cost—

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.403-4) and

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds \$500,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.406-2).

(d) Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

31. CHANGES (MAR 2013)

(a) The LCO may at any time, by written order, direct changes to the Tenant Improvements within the Space, Building Security Requirements, or the services required under the Lease.

(b) If any such change causes an increase or decrease in Lessor's costs or time required for performance of its obligations under this Lease, whether or not changed by the order, the Lessor shall be entitled to an amendment to the Lease providing for one or more of the following:

- (1) An adjustment of the delivery date;
- (2) An equitable adjustment in the rental rate;
- (3) A lump sum equitable adjustment; or
- (4) A change to the operating cost base, if applicable.

(c) The Lessor shall assert its right to an amendment under this clause within 30 days from the date of receipt of the change order and shall submit a proposal for adjustment. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, the pendency of an adjustment or existence of a dispute shall not excuse the Lessor from proceeding with the change as directed.

(d) Absent a written change order from the LCO, or from a Government official to whom the LCO has explicitly and in writing delegated the authority to direct changes, the Government shall not be liable to Lessor under this clause.

32. 552.215-70 EXAMINATION OF RECORDS BY GSA (FEB 1996)

The Contractor agrees that the Administrator of General Services or any duly authorized representative shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor involving transactions related to the subcontract or compliance with any clauses thereunder. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding \$100,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

33. 52.215-2 AUDIT AND RECORDS—NEGOTIATION (OCT 2010)

(Applicable to leases over \$150,000 average net annual rental including option periods.)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Certified cost or pricing data.* If the Contractor has been required to submit certified cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

(1) The proposal for the contract, subcontract, or modification;

- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) Comptroller General—

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

(1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in [Subpart 4.7](#), Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable type or any combination of these;

(2) For which certified cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

34. 52.233-1 DISPUTES (MAY 2014)

(a) This contract is subject to [41 U.S.C chapter 71](#), Contract Disputes.

(b) Except as provided in [41 U.S.C chapter 71](#), all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under [41 U.S.C chapter 71](#) until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under [41 U.S.C chapter 71](#). The submission may be converted to a claim under [41 U.S.C chapter 71](#), by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in [41 U.S.C chapter 71](#).

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR [33.201](#), interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

35. 52.222-26 EQUAL OPPORTUNITY (MAR 2007)

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c) (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its Leased Premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

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(10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

36. 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

37. 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JUL 2013)
(Applicable to leases exceeding \$3,000.)

(a) *Definitions.* As used in this clause—

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at [52.217-8](#), Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause. Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive

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status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and
(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/content/table-small-business-size-standards>.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the representation required by paragraph (b) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it ☐ is, ☐ is not a small business concern under NAICS Code _____ assigned to contract number _____.
[Contractor to sign and date and insert authorized signer's name and title].

38. 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUL 2014)
(Applicable to leases over \$100,000.)

(a) *Definitions.* As used in this clause—

“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at FAR [22.1301](#).

(b) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) *Subcontracts.* The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

39. 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUL 2014)
(Applicable to leases over \$15,000.)

(a) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

40. 52.222-37 EMPLOYMENT REPORTS VETERANS (JUL 2014)
(Applicable to leases over \$100,000.)

(a) *Definitions.* As used in this clause, “Armed Forces service medal veteran,” “disabled veteran,” “active duty wartime or campaign badge veteran,” and “recently separated veteran,” have the meanings given in FAR [22.1301](#).

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are disabled veterans, other protected veterans (*i.e.*, active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans;

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans (*i.e.*, active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans; and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by completing the Form VETS-100A, entitled "Federal Contractor Veterans' Employment Report (VETS-100A Report)."

(d) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under [38 U.S.C. 4212](#).

(g) The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

41. 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (AUG 2013)
(Applicable to leases over \$30,000.)

(a) *Definition.* "Commercially available off-the-shelf (COTS)" item, as used in this clause—

- (1) Means any item of supply (including construction material) that is—
 - (i) A commercial item (as defined in paragraph (1) of the definition in FAR [2.101](#));
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

(b) The Government suspends or debars Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the System for Award Management (SAM) Exclusions). The notice must include the following:

- (1) The name of the subcontractor.
- (2) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.
- (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—

- (1) Exceeds \$30,000 in value; and
- (2) Is not a subcontract for commercially available off-the-shelf items.

42. 52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (OCT 2010)
(Applicable if over \$700,000.)

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the _____ city

threshold for submission of certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Certified Cost or Pricing Data—Modifications.

43. 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2014)
(Applicable to leases over \$150,000 average net annual rental including option periods.)

(a) *Definitions.* As used in this contract—

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C. 101\(16\)](#).

“Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small disadvantaged business concern”, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that—

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any

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studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(d) (1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or <http://www.sba.gov/hubzone>;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

44. 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2014) ALTERNATE III (OCT 2014)

(Applicable to leases over \$650,000.)

a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).

“Commercial item” means a product or service that satisfies the definition of commercial item in section [2.101](#) of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C.A. 1601](#) et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror’s subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all sub-contracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](#):

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

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(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the System for Award Management (SAM), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294 Subcontracting Report for Individual Contract in accordance with paragraph (I) of this clause. Submit the Summary Subcontract Report (SSR), in accordance with paragraph (I) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations; and

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294 in accordance with paragraph (I) of this clause. Ensure that its subcontractors with subcontracting plans agree to submit the SSR in accordance with paragraph (I) of this clause using the eSRS.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the SAM database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in [19.702](#) for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at [52.244-6](#), Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(l) *The Contractor shall submit a SF 294.* The Contractor shall submit SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *SF 294*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan. For prime contractors the report shall be submitted to the contracting officer, or as specified elsewhere in this contract. In the case of a subcontract with a subcontracting plan, the report shall be submitted to the entity that awarded the subcontract.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(2) *SSR*. (i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve-month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in the eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

45. 52.219-16 LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (JAN 1999)
(Applicable to leases over \$650,000.)

(a) *Failure to make a good faith effort to comply with the subcontracting plan*, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

**46 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER
SUBCONTRACT AWARDS (JUL 2013)**
(Applicable if over \$25,000.)

(a) *Definitions.* As used in this clause:

“Executive” means officers, managing partners, or any other employees in management positions.

“First-tier subcontract” means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect costs.

“Months of award” means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- (1) *Salary and bonus.*
- (2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board’s Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.
- (3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
- (5) *Above-market earnings on deferred compensation which is not tax-qualified.*

- (6) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information

(d) (1) *Executive compensation of the prime contractor.* As a part of its annual registration requirement in the System for Award Management (SAM) database (FAR provision [52.204-7](#)), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(2) *First-tier subcontract information.* Unless otherwise directed by the contracting officer, or as provided in paragraph (h) of this clause, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, the Contractor shall report the following information at <http://www.fsrs.gov> for that first-tier subcontract. (The Contractor shall follow the instructions at <http://www.fsrs.gov> to report the data.)

- (i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.
- (ii) Name of the subcontractor.
- (iii) Amount of the subcontract award.
- (iv) Date of the subcontract award.

- (v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
- (vi) Subcontract number (the subcontract number assigned by the Contractor).
- (vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (ix) The prime contract number, and order number if applicable.
- (x) Awarding agency name and code.
- (xi) Funding agency name and code.
- (xii) Government contracting office code.
- (xiii) Treasury account symbol (TAS) as reported in FPDS.
- (xiv) The applicable North American Industry Classification System code (NAICS).

(3) *Executive compensation of the first-tier subcontractor.* Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at <http://www.fhrs.gov>, if—

(i) In the subcontractor's preceding fiscal year, the subcontractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(e) The Contractor shall not split or break down first-tier subcontract awards to a value less than \$25,000 to avoid the reporting requirements in paragraph (d).

(f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.

(g) (1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards for that subcontractor.

(h) The FSRS database at <http://www.fsrs.gov> will be prepopulated with some information from SAM and FPDS databases. If FPDS information is incorrect, the contractor should notify the contracting officer. If the SAM database information is incorrect, the contractor is responsible for correcting this information.

ADDENDUM to the System for Award Management (SAM) REPRESENTATIONS AND CERTIFICATIONS (Acquisitions of Leasehold Interests in Real Property)	Request for Lease Proposals Number	Dated
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EXHIBIT D
REPRESENTATIONS AND CERTIFICATIONS – FORM 3518-SAM

Complete appropriate boxes, sign the form, and attach to offer.

The Offeror makes the following additional Representations. NOTE: The "Offeror," as used on this form, is the owner of the property offered, not an individual or agent representing the owner.

**1. ANNUAL REPRESENTATIONS AND CERTIFICATIONS FOR LEASEHOLD ACQUISITIONS
(APR 2015)**

- (a) (1) The North American Industry Classification System (NAICS) code for this acquisition is 531120, unless the real property is self-storage (#531130), land (#531190), or residential (#531110).
 - (2) The small business size standard is 38.5 Million in annual average gross revenue of the concern for the last 3 fiscal years.
 - (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.
 - (b) The System for Award Management (SAM) is a centrally located, searchable database which assists in the development, maintenance, and provision of sources for future procurements. The Offeror, by signing this addendum, hereby certifies he is registered in SAM.
- [] Registration Active and Copy Attached**

**2. 552.203-72 REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID
DELINQUENT FEDERAL TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL
LAW (DEVIATION) (OCT 2013)**

- (a) In accordance with Sections 630 and 631 of Division of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), and Section 101 of the Continuing Appropriations Act, 2014 (Pub. L. 113-16) none of the funds made available by the Continuing Appropriations Act 2014 may be used to enter into a contract action with any corporation that---
- (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government, or
- (2) Was convicted, or had an officer or agent of such corporation acting on behalf of the corporation convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation or such officer

or agent and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Contractor represents that—

- (1) It is ☐ is not ☐ a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- (2) It is ☐ is not ☐ a corporation that was convicted, or had an officer or agent of the corporation acting on behalf of the corporation, convicted of a felony criminal violation under any Federal law within the preceding 24 months.

3. OFFEROR'S DUNS NUMBER

(a) Enter number: _____

(b) An offeror may obtain a DUNS number (i) via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or (ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

OFFEROR OR LEGALLY AUTHORIZED REPRESENTATIVE	NAME, ADDRESS (INCLUDING ZIP CODE) _____ Signature	TELEPHONE NUMBER _____ Date
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**LEASE AGREEMENT BETWEEN THE CITY OF PENSACOLA AND
THE U.S. GENERAL SERVICES ADMINISTRATION IN SUPPORT OF
TRANSPORTATION SECURITY ADMINISTRATION SCREENING OPERATIONS AT
THE PENSACOLA INTERNATIONAL AIRPORT**

LEASE GS-04P-LFL60501

THIS LEASE AGREEMENT (hereinafter referred to as "Agreement" or "Lease") **IN SUPPORT OF TRANSPORTATION SECURITY ADMINISTRATION SCREENING OPERATIONS** at the Pensacola International Airport, 2430 Airport Boulevard, Pensacola, FL 32504, is made and entered into this _____ day of _____, 20____, by and between the **City of Pensacola**, a municipal corporation of the State of Florida with the business address of 222 W. Main Street, Pensacola, Florida 32502 (hereinafter referred to as "City") and the **United States of America**, acting through the **General Services Administration** with the business address of 77 Forsyth Street, Atlanta, GA 30303 , (hereinafter referred to as "Lessee" or "Government"). (Each at times hereinafter referred to as a "party" or collectively as "parties").

WITNESSETH:

WHEREAS, the City owns, operates, and maintains Pensacola International Airport (hereinafter referred to as "Airport") located in Escambia County, Florida to serve the traveling public with airline services; and

WHEREAS, Lessee desires to continue to lease space in the Airport in support of the Transportation Security Administration's federally mandated passenger security screening mission at the Airport to protect customers using the nation's airlines; and

WHEREAS, as a result, the parties agree that this lease is necessary and proper to ensure the safety and well-being of the traveling public and should be entered into as provided herein.

NOW, THEREFORE, for and in consideration of the premises, and of the mutual covenants and agreements and the payment of money herein contained, the City and Lessee do hereby mutually undertake, promise and agree, each for itself and its successors and assigns, as follows:

**ARTICLE I
LEASED PREMISES**

The City hereby leases to Lessee, and Lessee hereby hires and takes from the City, certain space inside the Airport Terminal building at Pensacola International Airport (herein referred to as the "Leased Premises"), more particularly shown on Exhibit "A". In the event the United States Congress authorizes the Lessee to pay rent for security checkpoint screening areas in use on the effective date of the statute, then the City and

_____ city

Lessee agree to increase the Leased Premises by 10,421 square feet of area as depicted in Exhibit "B", at a rental rate as required by and payable under federal law.

The Leased Premises shall be taken by Lessee in the AS IS condition, subject to all defects, latent and patent, and shall be improved, maintained, and operated at Lessee's sole cost and expense except as may otherwise be specifically provided in this Agreement. It is the express intention of the parties hereto that the Lessee's improvements, use and occupancy of the Leased Premises, and all costs associated therewith, shall be and remain the financial obligation of the Lessee.

ARTICLE II GRANT OF USE

The City hereby grants Lessee the right to use the Leased Premises for general administrative offices, training rooms, and employee break rooms for its security screening operation at Pensacola International Airport.

Lessee shall not use, nor permit others to use, the Leased Premises, and any improvements thereon, for any purpose other than the authorized purposes set forth above, nor shall Lessee use the Leased Premises to store any material not required for the prosecution of the authorized purposes. Should the Lessee wish to perform any additional services from its Leased Premises, Lessee shall make written application to the City requesting permission to provide such additional services. If the City determines that the Lessee may perform the requested additional services and if the Lessee and City execute an amendment to the Lease setting forth the terms and conditions by which Lessee shall perform the additional services or activities, then Lessee shall be deemed authorized to perform said additional services or activities.

ARTICLE III COMPLIANCE WITH RULES AND REGULATIONS

The Lessee agrees to conform to all Federal, State, or local laws and regulations, as well as all City of Pensacola Codes and Ordinances, all of which may apply to the services to be performed.

The Lessee shall obtain and maintain in force all licenses, permits, and other certificates required by Federal, State, County, or municipal authorities for its operation under the terms of this Agreement.

The Lessee agrees to observe all security requirements of Transportation Security Administration 49 CFR 1542 (formerly Federal Aviation Regulations Part 107), and the Airport Security Program, as may be applicable, and as the same may, from time to time, be amended, and to take such steps as may be necessary or directed by the City to ensure that employees, invitees, agents, and guests observe these requirements.

If the City incurs any fines and/or penalties imposed by Federal, State, County, or Municipal authorities as a result of the acts or omissions of Lessee, its partners, officers, agents, employees, contractors, subcontractors, assigns, subtenants, or anyone acting under its direction and control, then Lessee shall be responsible to pay or reimburse the City for all such reasonable costs and expenses, if allowable under federal law.

ARTICLE IV

TERM

The term of this Agreement shall commence at midnight on July 15, 2024 (hereinafter referred to as the "commencement date") and shall continue for a period of ten (10) years.

ARTICLE V

RENT & FEES

For space inside the Terminal building, in consideration of the rights and privileges herein granted, the Lessee hereby covenants and agrees to pay the City upon commencement of this Agreement a monthly rental rate identical to that same square foot rental rate charged to the signatory air carriers, as adjusted annually by the City. The rental rate for the Terminal building shall be adjusted annually on October 1st by dividing the debt service requirements plus the maintenance and operating requirements by the amount of usable space in the Terminal building. "Usable Space" is defined as the total square feet in the Terminal building less mechanical and utility space. The City shall provide the Lessee notification of the adjusted lease rate thirty (30) days prior to the effective date of the change. In no event shall rental due during the term of this lease for space inside the Terminal building exceed \$75.00 per square foot. The lease rates effective July 15, 2024 shall be as follows:

5,331.9 Rentable Square Feet/ABOA SF

Terminal Building AREA	RATE PER RSF / ABOA	RSF / ABOA	ANNUAL RENT	MONTHLY RENT
2nd Floor Inspector Offices	\$37.28	1,367.0	\$ 50,961.76	\$ 4,246.81
2nd Floor Administration Offices	\$37.28	3,964.9	\$147,811.47	\$12,317.62
TOTAL	\$37.28	5,331.9	\$198,773.23	\$16,564.43

Lessee agrees to pay rent due to the City, without invoice in arrears for the month for which rent is due. Rent for a period less than one month shall be prorated on a daily basis (365 day year). It is understood by the Lessor and Lessee that the United States of America (Federal Government) is tax exempt as the sovereign.

Rent payments shall be made payable to the City of Pensacola via electronic funds transfer.

ARTICLE VI TAXES AND ASSESSMENTS

The Lessee, as the United States of America is tax exempt as the sovereign. The Lessee shall pay only such taxes and assessments required to be paid under federal law including, but not limited to, ad valorem taxes payable to the Escambia County Tax Collector.

ARTICLE VII INDEMNIFICATION

The Lessee agrees to be liable to the Lessor under the Federal Tort Claims Act (28 USC § 2671-2677).

ARTICLE VIII IMPROVEMENTS

During the term of this Agreement, Lessee shall have the right to construct, at its own expense, improvements, alterations, or additions to the Leased Premises to facilitate and further the authorized usage of the Leased Premises, provided that Lessee conforms with all conditions of this Article including:

- (a) the proposed improvements and alterations are submitted to the City for its prior review;
- (b) the City determines, in its sole discretion (which discretion shall be reasonably applied), that the proposed improvements and alterations will be consistent with the Airport's Master Plan, land use plan and architectural design and quality of construction in effect at the time of construction; and
- (c) the improvements, alterations, and additions are to be constructed by qualified and licensed contractors and subcontractors. The Lessee shall ensure that its contract with the contractor includes the City as an additional insured on the insurance required of the contractor.

General Construction Requirements:

Prior to the commencement of any construction activity, Lessee shall submit detailed plans, specifications, and a construction time schedule for the improvements, to the City for approval. The Airport Director shall either approve or disapprove the plans and/or specifications submitted by the Lessee. Approval by the Airport Director of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural and aesthetic plan for the area assigned to the Lessee. Such plans are not

_____ city

approved for architectural or engineering design or compliance with applicable laws or codes and the City, acting through the Airport Director, by approving such plans and specifications, assumes no liability or responsibility hereof or for defect in any structure or improvement constructed according to such plans and specifications. The Airport Director reserves the right to reject any design submitted and shall state the reasons for such action. No changes or alterations shall be made to said plans and specifications after approval by the Airport Director.

Immediately upon receipt of the City's written approval of said plans, specifications, and construction time schedule, Lessee shall proceed with construction of said improvements. Work shall not be performed at times other than shown on the construction time schedule without the prior approval of the Airport Director.

Lessee shall construct all improvements and additions to the Leased Premises at its own expense. Although the City has the right to review proposed improvement plans, and veto the plans if the plans are inconsistent with the airport development plans or construction quality and design control, pursuant to the standards set forth above, if the City does not veto said improvement plans, and Lessee thereafter constructs the improvements, the improvements shall be commissioned and constructed at Lessee's sole initiative and behest, and nothing herein shall be construed as an authorization by City to Lessee to construct the improvements, or as an agreement by City to be responsible for paying for the improvements, and neither the Leased Premises, nor the City's interest in said Leased Premises or any improvements constructed thereon, shall be subjected to a mechanic's lien for any improvements constructed by Lessee hereunder.

The Lessee agrees to provide performance and payment bonds as required by the Miller Act.

Lessee shall be responsible for assuring that all of the improvements, alterations and additions to the Leased Premises are constructed in accordance with applicable local, state and federal law. Lessee shall contractually require its contractor, if any, to reimburse the City for all costs and an expense, including attorney's fees, the City incurs:

- (a) as a result of the fact that the improvements, additions, or alterations do not comply with local, state, and federal law;
- (b) in defending against, settling, or satisfying any claims that the City is responsible for paying for improvements commissioned by Lessee hereunder; or
- (c) in defending against, settling, or satisfying any mechanic's lien claims, asserted as a result of unpaid-for improvements commissioned by Lessee hereunder.

Should Lessee construct improvements, alterations, or additions without fulfilling its obligations hereunder, Lessee shall remove said improvements, alterations, or additions if

_____ city

so directed by the City, and shall do so at its own expense and within the time limits specified.

The City shall, at any period during construction of Lessee's improvements, alterations, or additions, have the right to inspect any or all construction work, workmanship, material and installation involved in, or incidental to, the construction or installation of the improvements, alterations, or additions, for conformance with the applicable standards set forth in this Agreement, provided that such inspection shall not include internal work that is exclusively of an operations (non-structural) nature, and provided further that no such inspections shall be deemed to constitute consent to or approval of any such work.

Lessee shall provide City with one complete set of "as-built" drawings for each improvement, alteration, or addition made to the Leased Premises during the term of this Agreement.

Title to all permanent leasehold improvements, alterations, or additions, as defined by Florida Law, will vest in the City upon termination or sooner expiration of this agreement, free and clear on any liens or encumbrances whatsoever.

Notwithstanding the above paragraph, title to all of the Lessee's personal property shall at all times during the term of this Agreement remain with the Lessee.

Lessee shall not remove or demolish, in whole or in part, any improvements upon the Leased Premises without the prior written consent of the Airport Director.

Lessee shall be responsible for making repairs at its sole expense for any damage, other than from normal wear and tear, resulting from the removal by Lessee of its said furniture, trade fixtures, etc. Space must be returned with all custodial and maintenance requirements under Article XI met and in leasable condition.

The City shall have the right to construct or install over, in, under, or through the Leased Premises new lines, pipes, mains, wires, conduits and equipment, provided, however, that such repair, alteration, replacement, or construction shall not unreasonably interfere with Lessee's use of the Leased Premises. The City will repair any damage resulting from such activities.

ARTICLE IX SIGNS

Lessee agrees that no signs, logos, or advertising displays shall be painted on 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. Signs identifying Lessee shall conform to reasonable standards established by the City, with respect to type, size, design, condition, and location.

ARTICLE X VENDING MACHINES

No amusement or vending machines or other machines operated by coins or tokens shall be installed or maintained in or upon the Leased Premises, or any improvements or additions thereon, except with the permission of the City, and the number, type, kind and locations thereof shall be solely in the discretion of the City. Lessee shall not permit the installation of any such machines, except by a concessionaire authorized by the City or unless the City agrees to Lessee or its subtenants installing their own machines for use by the employees and guests of Lessee and its subtenants.

ARTICLE XI UTILITIES, MAINTENANCE, AND CUSTODIAL SERVICES

Utilities:

During the term of this Agreement, the City shall provide, at its expense, existing power, air conditioning, and heating for the Leased Premises. The City shall not be obligated to provide for the extension of these utilities or to provide for the installation of any other utilities. The Lessee, at the Lessee's sole cost and expense, shall arrange for the extension of these utilities as needed. Throughout the term of this Agreement, the Lessee shall not render any utility lines inaccessible.

The City reserves the right to assess a reasonable charge associated with providing for power, air conditioning and heating. Such charge for lessee utilities shall not exceed that which is charged to other commercial tenants in the Terminal building. The Lessee shall be solely liable for the cost of telephone services from the Leased Premises and the Lessee shall obtain a separate account accordingly.

The City reserves the right to install, maintain, repair, replace, or remove and replace any utility lines located on the Leased Premises as necessary or appropriate, along with the right to enter the Leased Premises at all reasonable time in order to accomplish the foregoing, provided, however, that the City shall take reasonable precautions to avoid the disruption of the Lessee's authorized activity.

Maintenance:

During the term of this agreement, the City shall provide, at its expense:

1. Structural repairs to the roof, floor, exterior walls and windows of the Terminal building.
2. General maintenance and upkeep of the Terminal building's interior common use area and external area. The City agrees to keep and maintain in

reasonable condition all trunk water and sewer mains, supply mains and electrical power to the Leased Premises.

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 damage caused by disrepair of any kind until the City has had reasonable opportunity to perform repairs after being notified in writing of the need for same by Lessee.

Lessee, at its own expense, shall perform all preventive maintenance and ordinary upkeep and nonstructural repair of its Leased Premises and equipment, including but not limited to fixtures, doors, floor coverings, and walls (painting and wall covering). Lessee shall be required to keep all such areas in good operating condition and repair at all times.

Custodial:

During the term of this Agreement, the City shall provide, at its expense:

1. Custodial services for the non-leased public areas of the Terminal building.
2. Pest control services for the Leased Premises and the adjacent areas.

Lessee agrees to keep all of the Leased Premises in the Terminal building, and any areas outside the Terminal building used in the course of its normal daily operations, in a neat, clean, safe, sanitary and orderly condition at all times; that it will keep such areas free at all times of all paper, rubbish and debris; and that Lessee will deposit all trash and debris resulting from its operations in its Leased Premises in containers approved by the City.

Unless otherwise agreed to by the Parties, Lessee agrees to provide, at its own expense, such janitorial and cleaning services and supplies for the maintenance of its Leased Premises. Lessee also agrees to keep and maintain the Leased Premises in a clean, neat, and sanitary condition and attractive appearance.

General:

Should Lessee fail to maintain the Leased Premises in conformance with the terms and conditions of this article within a period of seven (7) days following written notice of such failure (or for those items that cannot be reasonably cured within seven (7) days, Lessee fails to undertake action to cure and diligently pursue such cure), the City reserves the right to take any action to cure said failure. Should the City take action to cure failures, the Lessee shall pay to the City an amount equal to the City's reasonable cost for such actions plus a reasonable administrative charge.

ARTICLE XII MAINTENANCE OF PROVIDED FINISHES

The Airport's February 2020 Master Plan identified several redevelopment and expansion projects including a need for an additional concourse and aircraft gates to meet current and future needs of the traveling public. During the term of this agreement, the City of Pensacola may undertake such redevelopment and expansion projects.

Should the City undertake such redevelopment projects, Lessee shall be given the opportunity to request improvements to provided finishes including, but not limited to paint, wall coverings, carpet, and flooring.

All work shall be done after normal working hours and shall include the moving and returning of furnishings, as well as disassembly and reassembly of systems furniture per manufacturer's warranty.

ARTICLE XIII DAMAGE OR DESTRUCTION

Lessee shall be liable for any damage to its Leased Premises and fixtures therein and to the Airport and to any improvements thereon caused by Lessee, its partners, officers, agents, employees, invitees, contractors, subcontractors, assigns, subtenants, or anyone acting under its direction and control, ordinary wear and tear excepted, as permitted under the Federal Tort Claims Act (28 USC § 2671-2677) and the Disputes clause required by the Contract Disputes Act of 1978 (41 USC § 601 (2002)), which is incorporated herein by reference.

The City shall not be liable to Lessee, the Lessee's employees, patrons, or vendors for any damage to their merchandise, trade fixtures, or personal property caused by water leakage from the roof, water lines, sprinkler, or heating and air conditioning equipment unless caused by the sole negligence of the City, its employees or agents.

ARTICLE XIV LESSEE PARKING PRIVILEGES

Lessee shall have the right to the use of reasonably adequate vehicular parking facilities available to other employees at the Airport. Such facilities shall be located in an area designated by the Airport Director. The City reserves the right to assess a reasonable charge for such employee parking facilities. Such charge for lessee employee parking shall be billed directly to the employee and shall not exceed that which is charged to other commercial tenants in the Terminal Building. Notwithstanding the foregoing, the Lessor is not providing reserved parking for government owned vehicles; therefore, Lessor shall not assess parking fees to the government under this lease.

ARTICLE XV EMPLOYEES

Lessee shall ensure that its employees conduct themselves in a professional and courteous manner at all times. The Lessee's employees will be appropriately dressed at all times, and maintain a clean, neat, well-groomed appearance. The Lessee will be obligated to control the actions of its employees and cooperate with the City in controlling any employee whose conduct the City feels is detrimental to the best interest of the Airport and public.

ARTICLE XVI LAWFUL AND REASONABLE USE

Lessee may not do anything in or upon the Leased Premises, nor bring or keep anything therein, which shall unreasonably increase or tend to increase the risk of fire, or cause a safety hazard to persons, or obstruct or interfere with the rights of any other tenant(s) or in any way injure or annoy them, or which violates or causes violation of any applicable health, fire, environmental, or other regulation of any level of government. The Airport Director may inform Lessee of such violation and set a date for abatement. It is hereby acknowledged that Lessee's employees may be armed with firearms and ammunition, and this shall not be deemed a violation of this Article.

ARTICLE XVII RIGHT TO ENTER

The City and its authorized officers, employees, agents, contractors, subcontractors, and other representatives shall have the right to enter upon the Lease Premises at any time in cases of emergency. An emergency is herein defined as an event or the appearance of an event which, if left uninvestigated, may result in injury or damage to persons or property. At all other times, the City and its authorized officers, employees, agents, contractors, subcontractors, and other representatives shall have the right, with reasonable advanced notice to local tenant, to enter upon the Leased Premises and inspect any improvements and alterations thereon at reasonable times for the following purposes:

1. To inspect such Leased Premises to determine whether Lessee has complied and is complying with the terms and conditions of this Agreement.
2. To perform maintenance and make repairs in any case where Lessee is obligated but has failed to do so.
3. To perform any and all things that the Lessee is obligated to perform and has failed to perform after reasonable notice to do so.
4. In the exercise of City's police powers.

ARTICLE XVIII QUIET ENJOYMENT

The City warrants and represents that it has good and marketable title to the Leased Premises free of encumbrances. The City represents that upon payment of fees when due and upon performance of all other conditions required herein, and under other agreements between the parties, Lessee shall peaceably and quietly have, hold, possess and enjoy the Leased Premises, and all improvements thereon, for all terms under this Agreement, subject to the City's rights of inspection and maintenance contained herein.

ARTICLE XIX NON-DISCRIMINATION

Lessee, for itself, its personal representatives, successors in interest, assigns and subtenants, as part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, religion, sex, national origin, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Leased Premises and any improvements thereon; (2) no person on the grounds of race, color, religion, sex, national origin, or disability shall be subjected to discrimination in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services therein; and (3) Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the secretary, Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation, effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

Lessee shall furnish its accommodations and/or services on a fair, equal, and non-discriminatory basis to all users thereof.

ARTICLE XX WAIVER

Should Lessee breach any of its obligations hereunder, the City, nevertheless, thereafter may accept from Lessee any payment or payments due under this Agreement, and continue this Agreement in effect without in any way waiving its ability to exercise and enforce all available remedies upon default provided hereunder or provided by law for said breach. In addition, any waiver by either party of any default, breach, or omission of the other under this Agreement shall not be construed as a waiver of any subsequent or different default, breach, or omission.

ARTICLE XXI DEFAULT AND REMEDIES

The following shall constitute defaults by Lessee:

_____ city

1. The failure to pay fees owed under this Agreement, or under any other agreement between City and Lessee, when due, and the failure to cure said default within a period of thirty (30) days following receipt of written notice of said default;
2. Any other failure by Lessee to perform any covenant or obligation required by this Agreement after giving reasonable notice and opportunity to cure;
3. Lessee undertakes any other commercial or non-commercial service or activity not specifically permitted under this Agreement;

If Lessee defaults, the City may utilize any one or more of the following remedies against Lessee. These remedies shall be considered cumulative and not in the alternative:

1. The City may sue for damages incurred by the City, as permitted under the Federal Tort Claims Act (28 USC § 2671-2677) and the Disputes clause required by the Contract Disputes Act of 1978 (41 USC § 601 (2002)), which is incorporated herein by reference.
2. The City may terminate this Agreement. The termination of this Agreement, however, shall only be effective upon written notice of same provided by the City to Lessee. In no event shall this Agreement be construed to be terminated unless and until such notice is provided. The termination may be effective immediately upon receipt of said notice, or at any other time specified in the notice. If this Agreement is terminated, Lessee shall continue to be liable for the performance of all terms and conditions and the payment of all fees due hereunder accruing prior to the effective date of said termination, in addition to all damages, including reasonable attorney's fees and other reasonable expenses of collection, incurred by City as a result of any default, to the extent permitted by applicable Federal statutes cited herein.

ARTICLE XXII RELOCATION DURING TERM

If it becomes necessary in the orderly development of the Airport, Lessor may require the relocation of the Leased Premises to other space at the Airport which, in the reasonable judgment of Lessor, is similar and suitable for the purposes for which this Lease is entered as such purposes are set forth herein. Should such relocation be necessary, the Lessor shall provide the GSA a minimum of 120 days prior written notice. Lessor shall be responsible for all costs for such relocation, including all costs for moving furniture, office equipment, telephone and data lines, and any other costs associated with replicating necessary operational features provided in the space originally leased. The Airport shall provide such relocated Leased Premises at the same rental rate as the original Leased Premises, unless the new Leased Premises are located in an area for which the Airport charges tenants a lower rate, in which event the parties shall

_____ city

negotiate a reduction in the rental rate. The Government will not reimburse the Lessor for any increased square footage as a result of such relocation.

ARTICLE XXIII FORCE MAJEURE

Subject to the provisions herein concerning the payment of fees and other monies by Lessee to the City, and except and otherwise expressly provided herein, neither the City nor Lessee shall be liable for any failure, delay, or interruption in performing its obligations hereunder (other than the Lessee's obligations to pay fees and other monies) due to causes or conditions beyond their control; by which is meant acts of God, the elements, weather conditions, hurricanes, earthquakes, fire, acts of governmental authority (other than the City or agency thereof), war, shortage of labor or fuel, or materials, acts of terrorism or third parties for which neither the City nor Lessee is responsible, injunctions, labor troubles or disputes of every kind (including those affecting the City, Lessee, their contractors, suppliers, or subcontractors), or any other condition or circumstance, whether similar to or different from the foregoing (it being agreed that the foregoing enumeration shall not limit or be characteristic of such conditions or circumstances), which is beyond the control of the City or Lessee or which could not be prevented or remedied by reasonable effort and at reasonable expense.

ARTICLE XXIV SURRENDER UPON TERMINATION

Upon the expiration or sooner termination of this Agreement, for any reason whatsoever, Lessee shall peaceably surrender to the City possession of the Leased Premises, together with any improvements, alterations, or fixtures previously constructed by Lessee or the City within said Leased Premises, and any of the City's personal property located thereon, in as good a condition as the Leased Premises and improvements, alterations and fixtures constructed thereon were initially provided to, or constructed by, the City or Lessee, ordinary wear and tear excepted, without any compensation whatsoever, and free and clear of any claims or interests of Lessee or of any mortgages or any other third party whose position was derived from or through Lessee. If any of said improvements, alterations or fixtures are encumbered by a mortgage or lien at the time of expiration or sooner termination of this Agreement, Lessee shall be responsible for eliminating said mortgage or lien.

Title to all personal property not removed by Lessee from the Leased Premises shall be subject to the City taking ownership of such personal property, without payment by the City to Lessee of any compensation whatsoever, and said personal property shall thereafter be owned by the City free and clear of any claim or interest by Lessee or of any mortgagee or any third party whose position was derived from or through Lessee. Nothing in the Lease shall be deemed as a waiver of the rights of the Lessee as sovereign.

ARTICLE XXV HOLDING OVER

_____ city

If Lessee remains in possession of the Leased Premises after the expiration of this Agreement without any written renewal thereof, such holding over shall not be deemed as a renewal or extension of this Agreement but shall create only a tenancy from month to month which may be terminated at any time by the City upon thirty (30) days written notice. Such holding over shall otherwise be upon the same terms and conditions as set forth in this Agreement.

ARTICLE XXVI RENEWAL

Lessee has no guaranteed or preferential right, as against other third parties, of reletting the Leased Premises, or any improvements thereon, following the termination of this Agreement. Should Lessee desire to relet the Leased Premises following the termination of the term of this Agreement, Lessee shall submit an application for Lease in accordance with Airport leasing rules and regulations in effect at that time. Lessee's application will be reviewed by the City along with other applications, if any, in accordance with then applicable Airport leasing rules and regulations.

ARTICLE XXVII AIRPORT DEVELOPMENT RIGHTS

The City reserves the right to further develop or improve all areas within the Airport, including landing areas and the passenger Terminal building, as the City may determine in its sole discretion, which discretion shall not unreasonably be exercised, to be in the best interests of the Airport, regardless of the desires or views of Lessee, and without further interference or hindrance from Lessee.

Except as may be required by this Agreement or any other agreement between the parties, the City reserves the right, but shall not be obligated to Lessee, to keep and repair all areas, including landing areas, of the Airport.

ARTICLE XXVIII SUBORDINATION

This Agreement shall be subordinate to existing and future Airport Bond Resolutions. This agreement shall also be subject to and subordinate to agreements between the City and State and Federal agencies for grants-in-aid and to the provisions of any agreements heretofore made between the City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights of property to the City for Airport purposes, or to the expenditure of federal funds for the extension, expansion, or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Airport Act of 1958, as it has been amended from time to time. Any agreement hereafter made between the City and the United States will not be inconsistent with rights granted to Lessee herein.

_____ city

ARTICLE XXIX ASSIGNMENT

Lessee shall not assign its rights, title and interest herein without the written consent of the City, said consent not to be unreasonably denied or delayed. If an assignment is made, Lessee shall continue to be liable, jointly and severally, with its assignee, for the fulfillment of all terms and conditions arising under this Agreement subsequent to the assignment, unless the City releases Lessee in writing for such liability for future obligations. The release shall be effective only if made in writing. All subsequent assignors and assignees shall be subject to this Section as if they were the original lessee/assignor.

ARTICLE XXX SUBLEASE

Lessee may not sublease all or any portion of the Leased Premises or all or any portion of the improvements thereon, without first obtaining written consent of the City, said consent not to be unreasonably denied or delayed. Any such sublease must be in writing and be made subject to the terms and conditions of this Agreement. In addition, before any sublease may take effect, any sub lessee must execute an agreement with the City, in a form and for a fee acceptable to the City, by which such sub lessee is authorized to do business on the Airport.

ARTICLE XXXI SUCCESSORS

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

ARTICLE XXXII PARTIAL INVALIDITY

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

ARTICLE XXXIII NOTICES

All notices by either party to the other shall be made by depositing such notice in the registered or certified mail of the United States of America, postage prepaid, or with another delivery service requiring signature and receipt, and such notice shall be deemed

_____ city

to have been served on the date of such depositing correctly addressed notice in the registered or certified mail unless otherwise provided. All notices to the City shall be mailed to:

Airport Director
Pensacola International Airport
2430 Airport Boulevard, Suite 225
Pensacola, Florida 32504

All notices to Lessee shall be mailed to:

U.S. General Services Administration, Region 4
ATTN: Leasing Division
77 Forsyth Street
Atlanta, GA 30303

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

ARTICLE XXXIV REPRESENTATIONS REGARDING AUTHORITY

The City represents that it has the authority to enter into this Agreement and grant the rights contained herein to Lessee.

ARTICLE XXXV RELATIONSHIP OF PARTIES

It is understood that the City is not in any way or for any purpose a partner or joint venturer with, or agent of, Lessee in the use of the Leased Premises or any improvements thereon, for any purpose.

ARTICLE XXXVI HEADINGS

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

ARTICLE XXXVII GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the United States. In the event no applicable law of the United States exists, then the laws of the State of Florida.

ARTICLE XXXVIII
PUBLIC RECORDS ACT

The Parties shall each comply with Florida Public Records laws. The Parties hereby contractually agree that each Party shall allow public access to all documents, papers, letters, or other public records as defined in Chapter 119, Florida Statutes, made or received by either Party in conjunction with this agreement, or related thereto, unless a statutory exemption from disclosure exists. Notwithstanding any provision to the contrary, it is expressly agreed that Lessee's failure to comply with this provision, within seven (7) days of notice from the City, shall constitute an immediate and material breach of this Contract for which the City may, in the City's sole discretion, unilaterally terminate this Contract without prejudice to any right or remedy.

ARTICLE XXXVIX
ENTIRE AGREEMENT

This Agreement, together with all exhibits hereto, constitutes the entire Agreement and understanding between the parties with respect to the Leased Premises, and supersedes all negotiations, prior discussions, letters of intent and preliminary agreements. Exhibit "C", entitled General Clauses, GSA Form 3517, is incorporated herein and specifically made a part hereof. Exhibit "D", entitled Representations and Certifications, GSA Form 3518, is incorporated herein and specifically made a part hereof. This Agreement may not be amended except by a writing executed by all of the parties.

ARTICLE XL
TERMINATION RIGHTS

The Government may terminate this Lease, in whole or in part, under the same terms and conditions as the airline agreements, at any time during the term of this lease with ninety (90) days prior written notice to the Lessor if (i) regularly scheduled commercial air services cease, (ii) the airport opts to replace TSA screeners with private contractors, (iii) the checkpoint supported by the Leased Area is closed, or (iv) the Government reduces its presence at the airport due to a reduction in enplanements. Any partial termination of this Lease must be approved by the Airport Director and shall not result in unmarketable space in the Terminal building. The effective date of the termination shall be the day following the expiration of the required notice period or the termination date set forth in the notice, whichever is later. No rental shall accrue after the effective date of termination.

ARTICLE XLI
PERSONAL PROPERTY

Upon expiration or sooner termination of the Agreement, Lessee shall have thirty (30) days from such date of expiration or termination to remove from the Leased Premises all personal property, improvements and fixtures belonging to Lessee.

_____ city

ARTICLE XLII
DOCUMENTS INCORPORATED IN THE LEASE

The following documents are attached to and made part of the Lease:

DOCUMENT NAME	NO. OF PAGES	EXHIBIT
Floor Plan(s)	2	A
Security Checkpoint Screening Areas	1	B
GSA Form 3517B, General Clauses	46	C
GSA Form 3518-SAM, Addendum to System for Award Management (SAM) Representations and Certifications (Acquisitions of Leasehold Interests in Real Property)	2	D

(END OF TEXT; SIGNATURE PAGES TO FOLLOW)

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

ATTEST:

City of Pensacola, Florida, a
Municipal Corporation

Ericka Burnett
City Clerk

By: _____
D.C. Reeves
Mayor

General Services Administration as (Lessee)

By _____
Contracting Officer, GSA

Approved as to substance:

Legal in form and execution:

Airport Director

City Attorney

[illegible]

Architectural drawing of the second floor plan of the Port of Portland Regional Airport. The drawing shows a large rectangular building with various rooms, corridors, and service areas. A yellow highlight is placed on a section of the plan, likely indicating the location of the new construction. The drawing includes a title block with project information, a legend, and a scale bar.

PORT OF PORTLAND REGIONAL AIRPORT
NEW CONSTRUCTION
SECOND FLOOR PLAN
A22g

LEGEND

1	NEW CONSTRUCTION
2	EXISTING CONSTRUCTION
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SCALE
 1" = 10'-0"

DATE
 10/1/01

BY
 J. J. J.

CHECKED
 J. J. J.

APPROVED
 J. J. J.

PROJECT
 PORT OF PORTLAND REGIONAL AIRPORT

LOCATION
 PORT OF PORTLAND REGIONAL AIRPORT

DATE
 10/1/01

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PROJECT
 PORT OF PORTLAND REGIONAL

Pensacola Gulf Coast
Regional Airport



Area Name	Room No.	Room name	AREA	Subtotal
TSA	T2G-030	Toilet	70.7	
	T2G-031	Hold Room	251.4	
	T2G-032	Hazard Storage	135.3	
	T2G-033	Storage	100.6	
	T2G-034	Workroom	149.7	
	T2G-029&35	Corridor	771.4	
	T2G-036	Office	569.6	
	T2G-037	Training	895.1	
		Storage	218.9	
		T2G-038	Breakroom	802.2
	TSA subtotal			3,964.9
2nd floor Exclusive Area Grand Total				3,964.9

[illegible]

EXHIBIT C
GENERAL CLAUSES – FORM 3517B

GENERAL CLAUSES
(Acquisition of Leasehold Interests in Real Property)

CATEGORY	CLAUSE NO.	48 CFR REF.	CLAUSE TITLE
GENERAL	1		SUBLETTING AND ASSIGNMENT
	2	552.270-11	SUCCESSORS BOUND
	3	552.270-23	SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN
	4	552.270-24	STATEMENT OF LEASE
	5	552.270-25	SUBSTITUTION OF TENANT AGENCY
	6	552.270-26	NO WAIVER
	7		INTEGRATED AGREEMENT
	8	552.270-28	MUTUALITY OF OBLIGATION
PERFORMANCE	9		DELIVERY AND CONDITION
	10		DEFAULT BY LESSOR
	11	552.270-19	PROGRESSIVE OCCUPANCY
	12		MAINTENANCE OF THE PROPERTY, RIGHT TO INSPECT
	13		FIRE AND CASUALTY DAMAGE
	14		COMPLIANCE WITH APPLICABLE LAW
	15	552.270-12	ALTERATIONS
	16		ACCEPTANCE OF SPACE AND CERTIFICATE OF OCCUPANCY
PAYMENT	17	52.204-7	SYSTEM FOR AWARD MANAGEMENT
	18	52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE
	19	552.270-31	PROMPT PAYMENT
	20	552.232-23	ASSIGNMENT OF CLAIMS
	21	552.270-20	PAYMENT
	22	52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER—SYSTEM FOR AWARD MANAGEMENT
STANDARDS OF CONDUCT	23	52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT
	24	552.270-32	COVENANT AGAINST CONTINGENT FEES
	25	52-203-7	ANTI-KICKBACK PROCEDURES
	26	52-223-6	DRUG-FREE WORKPLACE
	27	52.203-14	DISPLAY OF HOTLINE POSTER(S)
ADJUSTMENTS	28	552.270-30	PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY

	29	52-215-10	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA
	30	552.270-13	PROPOSALS FOR ADJUSTMENT
	31		CHANGES
AUDITS	32	552.215-70	EXAMINATION OF RECORDS BY GSA
	33	52.215-2	AUDIT AND RECORDS—NEGOTIATION
DISPUTES	34	52.233-1	DISPUTES
LABOR STANDARDS	35	52.222-26	EQUAL OPPORTUNITY
	36	52.222-21	PROHIBITION OF SEGREGATED FACILITIES
	37	52.219-28	POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION
	38	52.222-35	EQUAL OPPORTUNITY FOR VETERANS
	39	52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
	40	52.222-37	EMPLOYMENT REPORTS VETERANS
SUBCONTRACTING	41	52.209-6	PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT
	42	52.215-12	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA
	43	52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS
	44	52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN
	45	52.219-16	LIQUIDATED DAMAGES—SUBCONTRACTING PLAN
	46	52.204-10	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS

The information collection requirements contained in this solicitation/contract that are not required by regulation have been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act and assigned the OMB Control No. 3090-0163.

GENERAL CLAUSES
(Acquisition of Leasehold Interests in Real Property)

1. SUBLETTING AND ASSIGNMENT (JAN 2011)

The Government may sublet any part of the Leased Premises but shall not be relieved from any obligations under this lease by reason of any such subletting. The Government may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any, that have accrued to the date of said assignment. Any subletting or assignment shall be subject to prior written consent of Lessor, which shall not be unreasonably withheld.

2. 552.270-11 SUCCESSORS BOUND (SEP 1999)

This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, and assigns.

3. 552.270-23 SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT (SEP 1999)

(a) Lessor warrants that it holds such title to or other interest in the Leased Premises and other property as is necessary to the Government's access to the Leased Premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the Leased Premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the Leased Premises, and to any water, sewer or access easement necessary or desirable to serve the Leased Premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

(b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.

(c) In the event of any sale of the Leased Premises or any portion thereof by foreclosure

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of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the Leased Premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

(d) None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

4. 552.270-24 STATEMENT OF LEASE (SEP 1999)

(a) The Contracting Officer will, within thirty (30) days next following the Contracting Officer's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that (1) the lease is in full force and effect; (2) the date to which the rent and other charges have been paid in advance, if any; and (3) whether any notice of default has been issued.

(b) Letters issued pursuant to this clause are subject to the following conditions:

(1) That they are based solely upon a reasonably diligent review of the Contracting Officer's lease file as of the date of issuance;

(2) That the Government shall not be held liable because of any defect in or condition of the Leased Premises or building;

(3) That the Contracting Officer does not warrant or represent that the Leased Premises or building comply with applicable Federal, State and local law; and

(4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable pre-purchase and pre-commitment inspection of the Leased Premises and Building and by inquiry to appropriate Federal, State and local Government officials.

5. 552.270-25 SUBSTITUTION OF TENANT AGENCY (SEP 1999)

The Government may, at any time and from time to time, substitute any Government agency or agencies for the Government agency or agencies, if any, named in the lease.

6. 552.270-26 NO WAIVER (SEP 1999)

No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

7. INTEGRATED AGREEMENT (JUN 2012)

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease. Except as expressly attached to and made a part of the Lease, neither the Request for Lease Proposals nor any pre-award communications by either party shall be incorporated in the Lease.

8. 552.270-28 MUTUALITY OF OBLIGATION (SEP 1999)

The obligations and covenants of the Lessor, and the Government's obligation to pay rent and other Government obligations and covenants, arising under or related to this Lease, are interdependent. The Government may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this lease. No setoff pursuant to this clause shall constitute a breach by the Government of this lease.

9. DELIVERY AND CONDITION (JAN 2011)

(a) Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit.

(b) The Government may elect to accept the Space notwithstanding the Lessor's failure to deliver the Space substantially complete; if the Government so elects, it may reduce the rent payments.

10. DEFAULT BY LESSOR (APR 2012)

(a) The following conditions shall constitute default by the Lessor, and shall give rise to the following rights and remedies for the Government:

(1) Prior to Acceptance of the Leased Premises. Failure by the Lessor to diligently perform all obligations required for Acceptance of the Space within the times specified, without excuse, shall constitute a default by the Lessor. Subject to provision of notice of default to the Lessor, and provision of a reasonable opportunity for the Lessor to cure its default, the Government may terminate the Lease on account of the Lessor's default.

(2) After Acceptance of the Leased Premises. Failure by the Lessor to perform any service, to provide any item, or satisfy any requirement of this Lease, without excuse, shall constitute a default by the Lessor. Subject to provision of notice of default to the Lessor, and provision of a reasonable opportunity for the Lessor to cure its default, the Government may perform the service, provide the item, or obtain satisfaction of the requirement by its

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own employees or contractors. If the Government elects to take such action, the Government may deduct from rental payments its costs incurred in connection with taking the action. Alternatively, the Government may reduce the rent by an amount reasonably calculated to approximate the cost or value of the service not performed, item not provided, or requirement not satisfied, such reduction effective as of the date of the commencement of the default condition.

(3) Grounds for Termination. The Government may terminate the Lease if:

(i) The Lessor's default persists notwithstanding provision of notice and reasonable opportunity to cure by the Government, or

(ii) The Lessor fails to take such actions as are necessary to prevent the recurrence of default conditions,

and such conditions (i) or (ii) substantially impair the safe and healthful occupancy of the Leased Premises, or render the Space unusable for its intended purposes.

(4) Excuse. Failure by the Lessor to timely deliver the Space or perform any service, provide any item, or satisfy any requirement of this Lease shall not be excused if its failure in performance arises from:

(i) Circumstances within the Lessor's control;

(ii) Circumstances about which the Lessor had actual or constructive knowledge prior to the Lease Award Date that could reasonably be expected to affect the Lessor's capability to perform, regardless of the Government's knowledge of such matters;

(iii) The condition of the Property;

(iv) The acts or omissions of the Lessor, its employees, agents or contractors; or

(v) The Lessor's inability to obtain sufficient financial resources to perform its obligations.

(5) The rights and remedies specified in this clause are in addition to any and all remedies to which the Government may be entitled as a matter of law.

11. 552.270-19 PROGRESSIVE OCCUPANCY (SEP 1999)

The Government shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire Leased Premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by the Government. The Government shall pay rent commencing with the first business day following substantial completion of the entire leased premise unless the Government has elected to occupy the Leased Premises incrementally. In case of incremental occupancy, the Government shall pay rent pro rata upon the first business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following

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the month in which it was substantially complete. The commencement date of the firm lease term will be a composite determined from all rent commencement dates.

12. MAINTENANCE OF THE PROPERTY, RIGHT TO INSPECT (APR 2015)

The Lessor shall maintain the Property, including the building, building systems, and all equipment, fixtures, and appurtenances furnished by the Lessor under this Lease, in good repair and tenantable condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, safety systems, access and other things to the Leased Premises, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupancy, possession, use and enjoyment of the Leased Premises as provided in this lease. For the purpose of so maintaining the Leased Premises, the Lessor may at reasonable times enter the Leased Premises with the approval of the authorized Government representative in charge. Upon request of the Lease Contracting Officer (LCO), the Lessor shall provide written documentation that building systems have been properly maintained, tested, and are operational within manufacturer's warranted operating standards. The Lessor shall maintain the Leased Premises in a safe and healthful condition according to applicable OSHA standards and all other requirements of this Lease, including standards governing indoor air quality, existence of mold and other biological hazards, presence of hazardous materials, etc. The Government shall have the right, at any time after the Lease Award Date and during the term of the Lease, to inspect all areas of the Property to which access is necessary for the purpose of determining the Lessor's compliance with this clause.

13. FIRE AND CASUALTY DAMAGE (MAR 2013)

If the building in which the Leased Premises are located is totally destroyed or damaged by fire or other casualty, this Lease shall immediately terminate. If the building in which the Leased Premises are located are only partially destroyed or damaged, so as to render the Leased Premises untenable, or not usable for their intended purpose, the Lessor shall have the option to elect to repair and restore the Leased Premises or terminate the Lease. The Lessor shall be permitted a reasonable amount of time, not to exceed **270 days** from the event of destruction or damage, to repair or restore the Leased Premises, provided that the Lessor submits to the Government a reasonable schedule for repair of the Leased Premises within **60 days** of the event of destruction or damage. If the Lessor fails to timely submit a reasonable schedule for completing the work, the Government may elect to terminate the Lease effective as of the date of the event of destruction or damage. If the Lessor elects to repair or restore the Leased Premises, but fails to repair or restore the Leased Premises within **270 days** from the event of destruction or damage, or fails to diligently pursue such repairs or restoration so as to render timely completion commercially impracticable, the Government may terminate the Lease effective as of the date of the destruction or damage. During the time that the Leased Premises are unoccupied, rent shall be abated. Termination of the Lease by either party under this clause shall not give rise to liability for either party.

This clause shall not apply if the event of destruction or damage is caused by the Lessor's negligence or willful misconduct.

14. COMPLIANCE WITH APPLICABLE LAW (JAN 2011)

Lessor shall comply with all Federal, state and local laws applicable to its ownership and leasing of the Property, including, without limitation, laws applicable to the construction, ownership, alteration or operation of all buildings, structures, and facilities located thereon, and obtain all necessary permits, licenses and similar items at its own expense. The Government will comply with all Federal, State and local laws applicable to and enforceable against it as a tenant under this lease, provided that nothing in this Lease shall be construed as a waiver of the sovereign immunity of the Government. This Lease shall be governed by Federal law.

15. 552.270-12 ALTERATIONS (SEP 1999)

The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect structures or signs in or upon the Leased Premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said Leased Premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. If the lease contemplates that the Government is the sole occupant of the building, for purposes of this clause, the Leased Premises include the land on which the building is sited and the building itself. Otherwise, the Government shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the Leased Area.

16. ACCEPTANCE OF SPACE AND CERTIFICATE OF OCCUPANCY (APR 2015)

(a) Ten (10) working days prior to the completion of the Space, the Lessor shall issue written notice to the Government to schedule the inspection of the Space for acceptance. The Government shall accept the Space only if the construction of building shell and TIs conforming to this Lease and the approved DIDs is substantially complete, and a Certificate of Occupancy has been issued as set forth below.

(b) The Space shall be considered substantially complete only if the Space may be used for its intended purpose and completion of remaining work will not unreasonably interfere with the Government's enjoyment of the Space. Acceptance shall be final and binding upon the Government with respect to conformance of the completed TIs to the approved DIDs, with the exception of items identified on a punchlist generated as a result of the inspection, concealed conditions, latent defects, or fraud, but shall not relieve the Lessor of any other Lease requirements.

(c) The Lessor shall provide a valid Certificate of Occupancy, issued by the local jurisdiction, for the intended use of the Government. If the local jurisdiction does not issue Certificates of Occupancy or if the Certificate of Occupancy is not available, the Lessor may satisfy this condition by providing a report prepared by a licensed fire protection engineer that indicates that the Space and Building are compliant with all applicable local codes and ordinances and all fire protection and life safety-related requirements of this Lease to ensure an acceptable level of safety is provided. Under such circumstances, the Government shall only accept the Space without a Certificate of Occupancy if a licensed fire protection engineer determines that the offered space is compliant with all applicable local codes and ordinances and fire protection and life safety-related requirements of this Lease.

17. 52.204-7 SYSTEM FOR AWARD MANAGEMENT (JUL 2013)

(a) Definitions. As used in this provision—

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“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional System for Award Management records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at [Subpart 32.11](#)) for the same concern.

“Registered in the System for Award Management (SAM) database” means that—

(1) The offeror has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [Subpart 4.14](#)) into the SAM database;

(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in the SAM database;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS +4” followed by the DUNS or DUNS +4 number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the SAM database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) Via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

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(2) The offeror should be prepared to provide the following information:

- (i) Company legal business.
- (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
- (iii) Company Physical Street Address, City, State, and ZIP Code.
- (iv) Company Mailing Address, City, State and ZIP Code (if separate from physical).
- (v) Company Telephone Number.
- (vi) Date the company was started.
- (vii) Number of employees at your location.
- (viii) Chief executive officer/key manager.
- (ix) Line of business (industry).
- (x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) Offerors may obtain information on registration at <https://www.acquisition.gov> .

18. 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (JUL 2013)

(a) *Definitions.* As used in this clause—

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities, which is used as the identification number for Federal contractors.

“Data Universal Numbering System+4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at subpart [32.11](#)) for the same concern.

“Registered in the System for Award Management (SAM) database” means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [Subpart 4.14](#)), into the SAM database;

(2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in the SAM database;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record "Active".

"System for Award Management (SAM)" means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;

(2) Prospective contractor-submitted annual representations and certifications in accordance with FAR [Subpart 4.14](#); and

(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

(b) The Contractor is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(c) (1) (i) If a Contractor has legally changed its business name, *doing business as* name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart [42.12](#), the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to—

(A) Change the name in the SAM database;

(B) Comply with the requirements of subpart [42.12](#) of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (c)(1)(i) of this clause, or fails to perform the agreement at paragraph (c)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart [32.8](#), Assignment of Claims). Assignees shall be separately registered in the SAM. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the EFT clause of this contract.

(3) The Contractor shall ensure that the DUNS number is maintained with Dun & Bradstreet throughout the life of the contract. The Contractor shall communicate any change to the DUNS number to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the DUNS number does not necessarily require a novation be accomplished. Dun & Bradstreet may be contacted

(i) Via the internet at <http://fedgov.dnb.com/webform> or if the contractor does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(d) Contractors may obtain additional information on registration and annual confirmation requirements at <https://www.acquisition.gov>.

19. 552.270-31 PROMPT PAYMENT (JUN 2011)

The Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

(a) *Payment due date—*

(1) *Rental payments.* Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15th day of the month or earlier, the initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15th day of the month, the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) *Other payments.* The due date for making payments other than rent shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of the work or service. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date

shall be deemed to be the 30th day after the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(b) *Invoice and inspection requirements for payments other than rent.*

(1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:

- (i) Name and address of the Contractor.
- (ii) Invoice date.
- (iii) Lease number.
- (iv) Government's order number or other authorization.
- (v) Description, price, and quantity of work or services delivered.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptability of the work performed or services delivered within seven days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the seven day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the seven days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless actual acceptance by the Government occurs.

(c) *Interest Penalty.*

(1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date.

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(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date. This rate is referred to as the “Renegotiation Board Interest Rate,” and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than one year. Interest penalties of less than \$1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(d) *Overpayments.* If the Lessor becomes aware of a duplicate payment or that the Government has otherwise overpaid on a payment, the Contractor shall—

(1) Return the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected lease number; (iii) Affected lease line item or sub-line item, if applicable;
and

(iii) Lessor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

20. 552.232-23 ASSIGNMENT OF CLAIMS (SEP 1999)
(Applicable to leases over \$3,000.)

In order to prevent confusion and delay in making payment, the Contractor shall not assign any claim(s) for amounts due or to become due under this contract. However, the Contractor is permitted to assign separately to a bank, trust company, or other financial institution, including any Federal lending agency, under the provisions of the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as “the Act”), all amounts due or to become due under any order amounting to \$1,000 or more issued by any Government agency under this contract. Any such assignment takes effect only if and when the assignee files written notice of the assignment together with a true copy of the instrument of assignment with the contracting officer issuing the order and the finance office designated in the order to make payment. Unless otherwise stated in the order, payments to an assignee of any amounts due or to become due under any order assigned may, to the extent specified in the Act, be subject to reduction or set-off.

21. 552.270-20 PAYMENT (MAY 2011)

(a) When space is offered and accepted, the amount of American National Standards Institute/Building Owners and Managers Association Office Area (ABOA) square footage delivered will be confirmed by:

(1) The Government's measurement of plans submitted by the successful Offeror as approved by the Government, and an inspection of the space to verify that the delivered space is in conformance with such plans or

(2) A mutual on-site measurement of the space, if the Contracting Officer determines that it is necessary.

(b) Payment will not be made for space which is in excess of the amount of ABOA square footage stated in the lease.

(c) If it is determined that the amount of ABOA square footage actually delivered is less than the amount agreed to in the lease, the lease will be modified to reflect the amount of ABOA space delivered and the annual rental will be adjusted as follows:

ABOA square feet not delivered multiplied by one plus the common area factor (CAF), multiplied by the rate per rentable square foot (RSF). That is: $(1+CAF) \times \text{Rate per RSF} = \text{Reduction in Annual Rent}$

22. 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—SYSTEM FOR AWARD MANAGEMENT (JUL 2013)

(a) Method of payment.

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment;
or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the System for Award Management (SAM) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the SAM database.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in the SAM database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the SAM database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Liability for uncompleted or erroneous transfers.

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the SAM database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to [Subpart 32.8](#), is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the SAM database.

(a) *Definitions. As used in this clause—*

“Agent” means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

“Full cooperation”—

(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors’ and investigators’ request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require—

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from—

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

“United States,” means the 50 States, the District of Columbia, and outlying areas.

(b) *Code of business ethics and conduct.*

(1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—

(i) Have a written code of business ethics and conduct; and

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) *The Contractor shall—*

(i) *Exercise due diligence to prevent and detect criminal conduct; and*

(ii) *Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.*

(3) (i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act ([31 U.S.C. 3729-3733](#)).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, [5 U.S.C. Section 552](#), without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including—

- Monitoring and auditing to detect criminal conduct;
- Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and
- Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

- If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

- If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

- The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

- The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

24. 552.270-32 COVENANT AGAINST CONTINGENT FEES (JUN 2011)

(Applicable to leases over \$150,000 average net annual rental including option periods.)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

(b) *Bona fide agency*, as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

(1) *Bona fide employee*, as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

(2) *Contingent fee*, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

(3) *Improper influence*, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

25. 52.203-7 ANTI-KICKBACK PROCEDURES (MAY 2014)

(Applicable to leases over \$150,000 average net annual rental including option periods.)

(a) *Definitions.*

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or

rewarding favorable treatment in connection with a prime contractor in connection with a subcontract relating to a prime contract.

“Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

“Prime contract,” as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

“Prime Contractor” as used in this clause, means a person who has entered into a prime contract with the United States.

“Prime Contractor employee,” as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

“Subcontract,” as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

“Subcontractor,” as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

“Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) 41 U.S.C. chapter 87, Kickbacks, prohibits any person from—

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless

the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed \$150,000.

26. 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

(Applicable to leases over \$150,000 average net annual rental including option periods, as well as to leases of any value awarded to an individual.)

(a) *Definitions.* As used in this clause—

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an Offeror/Contractor that has no more than one employee including the Offeror/Contractor.

(b) The Contractor, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

- (i) The dangers of drug abuse in the workplace;
- (ii) The Contractor's policy of maintaining a drug-free workplace;
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

27. 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007)

(Applicable to leases over \$5 Million and performance period is 120 days or more.)

(a) *Definition.*

“United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).* Except as provided in paragraph (c)—

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

Poster(s)	Obtain from
_____	_____
_____	_____

(Contracting Officer shall insert—

(i) Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster); and

(ii) The website(s) or other contact information for obtaining the poster(s).)

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

28. 552.270-30 PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JUN 2011)
(Applicable to leases over \$150,000 average net annual rental including option periods.)

(a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may—

(1) Reduce the monthly rental under this lease by five percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover five percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by five percent of the amount of the alterations agreement; or

_____ city

(3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis thereof. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

29. 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (AUG 2011)
(Applicable when cost or pricing data are required for work or services over \$700,000.)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

(1) The Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(c) (1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Interest compounded daily, as required by [26 U.S.C. 6622](#), on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under [26 U.S.C. 6621\(a\)\(2\)](#); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

30. 552.270-13 PROPOSALS FOR ADJUSTMENT (SEP 1999)

(a) The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.

(b) If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds \$100,000. The proposal, including all subcontractor work, will contain at least the following detail—

(1) Material quantities and unit costs;

(2) Labor costs (identified with specific item or material to be placed or operation to be performed;

_____ city

- (3) Equipment costs;
- (4) Worker's compensation and public liability insurance;
- (5) Overhead;
- (6) Profit; and
- (7) Employment taxes under FICA and FUTA.

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding \$500,000 in cost—

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.403-4) and

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds \$500,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.406-2).

(d) Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

31. CHANGES (MAR 2013)

(a) The LCO may at any time, by written order, direct changes to the Tenant Improvements within the Space, Building Security Requirements, or the services required under the Lease.

(b) If any such change causes an increase or decrease in Lessor's costs or time required for performance of its obligations under this Lease, whether or not changed by the order, the Lessor shall be entitled to an amendment to the Lease providing for one or more of the following:

- (1) An adjustment of the delivery date;
- (2) An equitable adjustment in the rental rate;
- (3) A lump sum equitable adjustment; or
- (4) A change to the operating cost base, if applicable.

(c) The Lessor shall assert its right to an amendment under this clause within 30 days from the date of receipt of the change order and shall submit a proposal for adjustment. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, the pendency of an adjustment or existence of a dispute shall not excuse the Lessor from proceeding with the change as directed.

(d) Absent a written change order from the LCO, or from a Government official to whom the LCO has explicitly and in writing delegated the authority to direct changes, the Government shall not be liable to Lessor under this clause.

32. 552.215-70 EXAMINATION OF RECORDS BY GSA (FEB 1996)

The Contractor agrees that the Administrator of General Services or any duly authorized representative shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor involving transactions related to the subcontract or compliance with any clauses thereunder. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding \$100,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

33. 52.215-2 AUDIT AND RECORDS—NEGOTIATION (OCT 2010)

(Applicable to leases over \$150,000 average net annual rental including option periods.)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Certified cost or pricing data.* If the Contractor has been required to submit certified cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

(1) The proposal for the contract, subcontract, or modification;

- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) Comptroller General—

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

(1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in [Subpart 4.7](#), Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable type or any combination of these;

(2) For which certified cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

34. 52.233-1 DISPUTES (MAY 2014)

(a) This contract is subject to [41 U.S.C chapter 71](#), Contract Disputes.

(b) Except as provided in [41 U.S.C chapter 71](#), all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under [41 U.S.C chapter 71](#) until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under [41 U.S.C chapter 71](#). The submission may be converted to a claim under [41 U.S.C chapter 71](#), by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in [41 U.S.C chapter 71](#).

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR [33.201](#), interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

35. 52.222-26 EQUAL OPPORTUNITY (MAR 2007)

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c) (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its Leased Premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

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(10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

36. 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

37. 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JUL 2013)
(Applicable to leases exceeding \$3,000.)

(a) *Definitions.* As used in this clause—

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at [52.217-8](#), Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause. Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive

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status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and
(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/content/table-small-business-size-standards>.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the representation required by paragraph (b) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it ☐ is, ☐ is not a small business concern under NAICS Code _____ assigned to contract number _____.
[Contractor to sign and date and insert authorized signer's name and title].

38. 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUL 2014)
(Applicable to leases over \$100,000.)

(a) *Definitions.* As used in this clause—

“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at FAR [22.1301](#).

(b) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) *Subcontracts.* The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

39. 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUL 2014)
(Applicable to leases over \$15,000.)

(a) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

40. 52.222-37 EMPLOYMENT REPORTS VETERANS (JUL 2014)
(Applicable to leases over \$100,000.)

(a) *Definitions.* As used in this clause, “Armed Forces service medal veteran,” “disabled veteran,” “active duty wartime or campaign badge veteran,” and “recently separated veteran,” have the meanings given in FAR [22.1301](#).

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are disabled veterans, other protected veterans (*i.e.*, active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans;

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans (*i.e.*, active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans; and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by completing the Form VETS-100A, entitled "Federal Contractor Veterans' Employment Report (VETS-100A Report)."

(d) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under [38 U.S.C. 4212](#).

(g) The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

41. 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (AUG 2013)
(Applicable to leases over \$30,000.)

(a) *Definition.* "Commercially available off-the-shelf (COTS)" item, as used in this clause—

- (1) Means any item of supply (including construction material) that is—
 - (i) A commercial item (as defined in paragraph (1) of the definition in FAR [2.101](#));
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

(b) The Government suspends or debars Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the System for Award Management (SAM) Exclusions). The notice must include the following:

- (1) The name of the subcontractor.
- (2) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.
- (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—

- (1) Exceeds \$30,000 in value; and
- (2) Is not a subcontract for commercially available off-the-shelf items.

42. 52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (OCT 2010)
(Applicable if over \$700,000.)

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the _____ city

threshold for submission of certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Certified Cost or Pricing Data—Modifications.

43. 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2014)
(Applicable to leases over \$150,000 average net annual rental including option periods.)

(a) *Definitions.* As used in this contract—

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C. 101\(16\)](#).

“Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small disadvantaged business concern”, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that—

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any

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studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(d) (1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or <http://www.sba.gov/hubzone>;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

44. 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2014) ALTERNATE III (OCT 2014)

(Applicable to leases over \$650,000.)

a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).

“Commercial item” means a product or service that satisfies the definition of commercial item in section [2.101](#) of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C.A. 1601](#) et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror’s subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all sub-contracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](#):

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

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(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the System for Award Management (SAM), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294 Subcontracting Report for Individual Contract in accordance with paragraph (I) of this clause. Submit the Summary Subcontract Report (SSR), in accordance with paragraph (I) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations; and

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294 in accordance with paragraph (I) of this clause. Ensure that its subcontractors with subcontracting plans agree to submit the SSR in accordance with paragraph (I) of this clause using the eSRS.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating—

- (A) Whether small business concerns were solicited and, if not, why not;
- (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
- (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
- (D) Whether HUBZone small business concerns were solicited and, if not, why not;
- (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
- (F) Whether women-owned small business concerns were solicited and, if not, why not; and
- (G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

- (A) Trade associations;
- (B) Business development organizations;
- (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
- (D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

- (A) Workshops, seminars, training, etc.; and
- (B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the SAM database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in [19.702](#) for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at [52.244-6](#), Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(l) *The Contractor shall submit a SF 294.* The Contractor shall submit SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *SF 294*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan. For prime contractors the report shall be submitted to the contracting officer, or as specified elsewhere in this contract. In the case of a subcontract with a subcontracting plan, the report shall be submitted to the entity that awarded the subcontract.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(2) *SSR*. (i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve-month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in the eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

45. 52.219-16 LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (JAN 1999)
(Applicable to leases over \$650,000.)

(a) *Failure to make a good faith effort to comply with the subcontracting plan*, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

**46 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER
SUBCONTRACT AWARDS (JUL 2013)**
(Applicable if over \$25,000.)

(a) *Definitions.* As used in this clause:

“Executive” means officers, managing partners, or any other employees in management positions.

“First-tier subcontract” means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect costs.

“Months of award” means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- (1) *Salary and bonus.*
- (2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board’s Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.
- (3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
- (5) *Above-market earnings on deferred compensation which is not tax-qualified.*

- (6) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information

(d) (1) *Executive compensation of the prime contractor.* As a part of its annual registration requirement in the System for Award Management (SAM) database (FAR provision [52.204-7](#)), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(2) *First-tier subcontract information.* Unless otherwise directed by the contracting officer, or as provided in paragraph (h) of this clause, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, the Contractor shall report the following information at <http://www.fsrs.gov> for that first-tier subcontract. (The Contractor shall follow the instructions at <http://www.fsrs.gov> to report the data.)

- (i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.
- (ii) Name of the subcontractor.
- (iii) Amount of the subcontract award.
- (iv) Date of the subcontract award.

- (v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
- (vi) Subcontract number (the subcontract number assigned by the Contractor).
- (vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (ix) The prime contract number, and order number if applicable.
- (x) Awarding agency name and code.
- (xi) Funding agency name and code.
- (xii) Government contracting office code.
- (xiii) Treasury account symbol (TAS) as reported in FPDS.
- (xiv) The applicable North American Industry Classification System code (NAICS).

(3) *Executive compensation of the first-tier subcontractor.* Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at <http://www.fhrs.gov>, if—

(i) In the subcontractor's preceding fiscal year, the subcontractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(e) The Contractor shall not split or break down first-tier subcontract awards to a value less than \$25,000 to avoid the reporting requirements in paragraph (d).

(f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.

(g) (1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards for that subcontractor.

(h) The FSRS database at <http://www.fsrs.gov> will be prepopulated with some information from SAM and FPDS databases. If FPDS information is incorrect, the contractor should notify the contracting officer. If the SAM database information is incorrect, the contractor is responsible for correcting this information.

ADDENDUM to the System for Award Management (SAM) REPRESENTATIONS AND CERTIFICATIONS (Acquisitions of Leasehold Interests in Real Property)	Request for Lease Proposals Number	Dated
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EXHIBIT D
REPRESENTATIONS AND CERTIFICATIONS – FORM 3518-SAM

Complete appropriate boxes, sign the form, and attach to offer.

The Offeror makes the following additional Representations. NOTE: The "Offeror," as used on this form, is the owner of the property offered, not an individual or agent representing the owner.

**1. ANNUAL REPRESENTATIONS AND CERTIFICATIONS FOR LEASEHOLD ACQUISITIONS
(APR 2015)**

- (a) (1) The North American Industry Classification System (NAICS) code for this acquisition is 531120, unless the real property is self-storage (#531130), land (#531190), or residential (#531110).
 - (2) The small business size standard is 38.5 Million in annual average gross revenue of the concern for the last 3 fiscal years.
 - (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.
 - (b) The System for Award Management (SAM) is a centrally located, searchable database which assists in the development, maintenance, and provision of sources for future procurements. The Offeror, by signing this addendum, hereby certifies he is registered in SAM.
- [] Registration Active and Copy Attached**

**2. 552.203-72 REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID
DELINQUENT FEDERAL TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL
LAW (DEVIATION) (OCT 2013)**

- (a) In accordance with Sections 630 and 631 of Division of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), and Section 101 of the Continuing Appropriations Act, 2014 (Pub. L. 113-16) none of the funds made available by the Continuing Appropriations Act 2014 may be used to enter into a contract action with any corporation that---
- (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government, or
- (2) Was convicted, or had an officer or agent of such corporation acting on behalf of the corporation convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation or such officer

(b) The Contractor represents that—

- ### 3. OFFEROR'S DUNS NUMBER

(b) An offeror may obtain a DUNS number (i) via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or (ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

OFFEROR OR LEGALLY AUTHORIZED REPRESENTATIVE	NAME, ADDRESS (INCLUDING ZIP CODE)	TELEPHONE NUMBER
	Signature	Date



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-492

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

FLORIDA LOCAL GOVERNMENT CYBERSECURITY PROGRAM GRANT AGREEMENT
NO. DMS-24/25-071

RECOMMENDATION:

That City Council approve acceptance of Florida Local Government Cybersecurity Grant Contract No. DMS-24/25-071 to provide for the continued funding of Endpoint-Based Asset Discovery and Security Operations Platform, and that City Council authorize the Mayor to take the actions necessary relating to the acceptance and execution of this grant, 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:

The Florida Local Government Cybersecurity Grant is a competitive grant program set up to provide cybersecurity technical assistance and capabilities to the state's local governments to improve their cybersecurity posture and resiliency. This program is designed to be flexible with options to meet the unique needs of local governments from Pensacola to Key West, regardless of the local municipality's capabilities, resources, or challenges.

The grant award will provide the City of Pensacola's Innovation & Technology Department with the ability to continue its cybersecurity efforts for the City of Pensacola through the continued funding of Endpoint-Based Asset Discovery and Security Operations Platform products for one additional year. In addition to software access for the capabilities offered, the Florida Digital Service will provide incident response assistance, training, technical assistance, and support for the capabilities granted.

PRIOR ACTION:

May 23, 2023 - Council approved the original version of this agreement.

FUNDING:

Budget: \$69,141.38 State-funded software licensing for the term of June 30, 2023 through June 29, 2024.

 \$0 City match

Actual: \$56,093.80 Endpoint-Based Asset Discovery
 \$13,047.58 Security Operations Platform
 \$69,141.38 TOTAL

(The total award value is based on FY24 pricing and is subject to change based on adjustments to the number of licenses and changes to state-contracted pricing.)

FINANCIAL IMPACT:

No financial impact is expected on the City's part. This grant follows a "capabilities" model and awards the City licensing for the awarded products and platforms. The funding agency agrees to purchase all commodities or services awarded to the Grantee on behalf of the Grantee (City) for the duration of the grant award, or as long as funding exists. In the event funding no longer exists or the grant award is terminated, the City would then need to incur the cost of all services and providers or provide notice to the funding agency to cancel all services.

LEGAL REVIEW ONLY BY CITY ATTORNEY: No

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Lovoy, Finance Director
William Boyer, Grants and Special Projects Coordinator
Stephen Ringl, Director of Innovation & Technology

ATTACHMENTS:

1. 24-25 Round 1 Award Letter
2. 2024-05-13 Cybersecurity Grant Award Memo
3. Grant Agreement DMS 24/25-071
4. Grant Agreement DMS 22/23-436 - Approved on 5/25/23

PRESENTATION: No

Ron DeSantis, Florida Governor
Pedro Allende, Secretary

Attn: Kevin Boyer
Grants and Special Projects Coordinator
City of Pensacola
222 W Main St
Pensacola, FL 32502

May 10, 2024

Congratulations City of Pensacola!

Your application for the Florida Local Government Cybersecurity Grant administered by the Florida Digital Service has been awarded. Based on the requests and information included in your application, the following capabilities will be offered:

Capability	Awarded Round 1	Solution	Quantity	Unit
External-Facing Asset Discovery	No	N/A	N/A	N/A
Endpoint-Based Asset Discovery (Agent)	Yes	Redacted per FS 119.0725 (2)		
Network-Based Asset Discovery (Agentless)	No	N/A	N/A	N/A
Content Delivery Network	No	N/A	N/A	N/A
Endpoint Detection & Response (EDR)	No	N/A	N/A	N/A
Security Operations Platform	Yes	Redacted per FS 119.0725 (2)		
Email Security	No	N/A	N/A	N/A

In addition to software access for the capabilities awarded, the Florida Digital Service will provide the following:

- Incident response assistance when requested.
- Training, technical assistance, and support for the capabilities granted.

The Department of Management Services will email you the Grant Agreement via DocuSign by Monday, May 13. To accept the capabilities being offered, we need your help to execute the Grant Agreement by June 27, 2024. If you identify any discrepancies with the information above, please contact us immediately.

The Florida Digital Service remains committed to supporting you throughout this process as we deploy critical capabilities to mitigate cybersecurity threats to your local community. We look forward to working alongside you and your team.

Regards,
Florida's Local Government Cybersecurity Grant Team
FL[Digital Service]
Cybersecuritygrants@digital.fl.gov

From: Stephen Ringl
Director of Innovation & Technology
City of Pensacola

To: Mayor D.C. Reeves & the City Council of the City of Pensacola
222 W. Main St.
Pensacola, FL 32502

CC: Kevin Boyer
Grants and Special Projects Coordinator
City of Pensacola

May 31, 2024

Dear Mayor Reeves and members of the City Council of the City of Pensacola,

I am pleased to share that the City of Pensacola has been awarded a grant from Florida Digital Services, hereafter known as FL[DS], to acquire crucial software capabilities that will significantly enhance our cybersecurity posture. The grant is the first round of awards in a two-round process and includes the following software components as referenced in the cybersecurity grant award letter:

1. **Endpoint-Based Asset Discovery (Agent):** This software will enable us to identify and monitor assets connected to our network endpoints. It provides real-time visibility into devices, applications, and their associated vulnerabilities. The estimated annual value of this software capability is between \$40,000 and \$50,000.
2. **Security Operations Platform:** The security operations platform consolidates and streamlines our security operations by integrating various tools, automating processes, and providing a centralized view of our security landscape. It enhances incident response capabilities, threat intelligence management, and overall security monitoring. The estimated annual value of the Security Operations Platform is between \$20,000 and \$25,000.

It is important to note that FL[DS] will be procuring and providing the software and associated services as part of this grant. Therefore, no monetary funds will be allocated

directly to the City of Pensacola. The grant covers the costs of continuing the City's use of the software capabilities listed above.

In accordance with the City of Pensacola's ordinary procedures, I understand that a supplemental budget statement is usually required to accompany grant agreements. However, as this grant does not involve a monetary transfer to our organization, I recommend that we proceed without a supplemental budget statement.

This is an invaluable opportunity for the City of Pensacola to continue enhancing its cybersecurity infrastructure and protect our sensitive data from emerging threats. I kindly request your support and authorization to proceed with submitting the grant agreement to the next City Council meeting so we may execute the agreement ahead of the June 27, 2024 deadline requested by FL[DS].

Please do not hesitate to reach out to me if you have any questions or require further information.

Thank you for your attention and support to this matter,

Sincerely,
Stephen Ringl
Director of Innovation & Technology
City of Pensacola

CC: Kevin Boyer, Grants and Special Projects Coordinator, City of Pensacola

Ron DeSantis, Florida Governor
Pedro Allende, Secretary

GRANT AGREEMENT
FOR
LOCAL GOVERNMENT CYBERSECURITY GRANT PROGRAM
CONTRACT NO: DMS-24/25-071
CATALOG OF STATE FINANCIAL ASSISTANCE NUMBER: 72.016
BETWEEN
THE STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES
AND
CITY OF PENSACOLA

GRANT AGREEMENT

This Grant Agreement is made and entered into by and between the Department of Management Services (Department), an agency of the State of Florida (State), and City of Pensacola (Grantee). The Department and the Grantee are sometimes referred to herein individually as a “Party” or collectively as the “Parties.”

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

WHEREAS, the Department, through the Florida Digital Service (FL[DS]), has the authority, pursuant to Section 200, Fiscal Year 2024-2025 General Appropriations Act (GAA), to provide nonrecurring assistance to local governments for the development and enhancement of cybersecurity risk management programs; and

WHEREAS, the Grantee represents that it is fully qualified and eligible to receive the grant identified herein in accordance with the terms and conditions hereinafter set forth.

NOW THEREFORE, the Parties do mutually agree as follows:

A. Deliverables and Performance Requirements:

In accordance with the GAA, the Parties agree that the funds will be utilized as described in Attachment A – Solution Statement of Work. The Grantee shall provide the deliverables specified herein in accordance with the terms and conditions of this Agreement, including its attachments and exhibits.

B. Agreement Period:

The performance period for this Agreement begins upon execution and ends upon the expiration of the applicable cybersecurity technical assistance services or commodities awarded or purchased pursuant to the Agreement, or in accordance with the final implementation plan(s), unless terminated earlier in accordance with the Agreement. No renewals or extensions of this Agreement are permitted.

C. Agreement Documents and Amendments Thereto.

1. Agreement Documents. “Agreement” means this Grant Agreement and all incorporated attachments, exhibits, and schedules, which set forth the entire understanding of the Parties. There are no other provisions, terms, conditions, or obligations. This Agreement supersedes all previous oral or written communications, representations, or agreements on this subject.

All attachments, exhibits, and schedules listed below are incorporated in their entirety into, and will form part of, this Agreement. In the event of a conflict, the following order of precedence shall apply:

- a. This Grant Agreement
- b. Attachment A – Solution Statement of Work
- c. Attachment B – Audit Requirements for Awards of State and Federal Financial Assistance, including its Exhibit 1
- d. Attachment C – Grantee Data Sharing Agreement(s) (“DSA”), if applicable

- e. Final Implementation Plan, if applicable(s)
- 2. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one (1) single agreement between the Parties.
- 3. Survivability. This Agreement and any and all promises, covenants, and representations made herein are binding upon the Parties hereto and any and all respective heirs, assigns, and successors in interest. The respective obligations of the Parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination or expiration of this Agreement.
- 4. Severability. If a court of competent jurisdiction deems any term or condition of this Agreement void or unenforceable, the other provisions are severable to that void provision, and will remain in full force and effect. However, to the fullest extent permitted by law, this Agreement shall be construed as if the scope or duration of such provision had been more narrowly drafted so as not to be invalid or unenforceable.
- 5. Amendments. With the exception of changes to the Primary Contacts, DSA/IT Coordinators, and the provisions of the applicable vendor terms and conditions, this Agreement may only be modified or amended by a written agreement duly executed by the Parties.

D. Notices and Primary Contacts:

- 1. Notices. The Parties shall use the contact information provided in Section D.2., Primary Contacts, below, for all communications and notices under this Agreement. Where the term “written notice” is used to specify a notice requirement herein, said notice will be deemed to have been given (i) when personally delivered; (ii) when transmitted via facsimile (with confirmation of receipt) or email (with confirmation of receipt), provided the sender on the same day sends a confirming copy of such notice by a recognized delivery service (charges prepaid); (iii) the Business Day immediately following the next Business Day on which the notice or communication has been provided prepaid by the sender to a recognized overnight delivery service; or (iv) on the date actually received except where there is a date of the certification of receipt. For purposes of this Agreement, “Business Day” means any day of the week, excluding weekends and holidays, observed by State agencies pursuant to section 110.117(1)(a)-(j), Florida Statutes (F.S.).
- 2. Primary Contacts.
 - a. **Department’s Grant Manager** (see section 215.971, F.S.).

Lacy Perkins, Procurement & Grants Administrator
 Florida Digital Service
 Department of Management Services
 2555 Shumard Oaks Blvd
 Tallahassee, Florida 32399

Telephone: (850) 413-0604
Email: CybersecurityGrants@digital.fl.gov

2. Grantee's Grant Manager

Kevin Boyer, Grants and Special Projects Coordinator
City of Pensacola
222 W Main St
Pensacola, Florida 32502
Telephone: +1 (850) 435-1822
Email: kboyer@cityofpensacola.com

3. Changes in Primary Contacts. Either Party may provide notice to the other Party by email identifying a change of a designated primary contact and providing the new contact information for the newly designated primary contact. Such notices must be sent to the other Party's Grant Manager and is sufficient to effectuate this change without requiring a written amendment to this Agreement.

E. Payment, Funding, and Award Considerations:

1. Fiscal Year. The funds utilized for this Agreement are from the State's 2024-2025 Fiscal Year, which begins July 1, 2024, and expires on June 30, 2025.
2. Services, Licenses or Commodities Awards. The Grantee agrees to implement services, licenses, or commodities described in Attachment A – Solution Statement of Work, according to the Final Implementation Plan(s), if applicable. All uses of the items described in Attachment A – Solution Statement of Work are subject to the terms and conditions of the DSA and applicable riders attached thereto.
3. Procurement. The Department agrees to purchase all commodities or services awarded to the Grantee on behalf of the Grantee as described in Attachment A – Solution Statement of Work.

F. Compliance with Law:

1. Applicable Law. The Parties shall comply with the applicable state and federal laws, rules, regulations, and policies, including, but not limited to, those identified in this Agreement.
2. Governing Law. The Grantee agrees that this Agreement is entered into in the State of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws, rules, and regulations of the State. Each Party shall perform its obligations herein in accordance with the terms and conditions of this Agreement. Without limiting the provisions of Section P, Dispute Resolution, the exclusive venue of any legal or equitable action that arises out of or relates to this Agreement shall be the appropriate State court in Leon County, Florida; in any such action, the Parties waive any right to jury trial. Except as otherwise

provided by law, the Parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

3. Ethics. The Grantee shall comply with the requirements of sections 11.062 and 216.347, F.S. The Grantee shall not, in connection with this or any other agreement with the State, directly or indirectly:
 - a. Offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or
 - b. Offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of this subsection b, "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

Upon request of the Department's Inspector General, or other authorized State official, the Grantee shall provide any type of information the Inspector General deems relevant to the Grantee's integrity or responsibility. Such information may include, but shall not be limited to, the Grantee's business or financial records, documents, or files of any type or form that refer to or relate to this Agreement. The Grantee shall retain such records in accordance with the record retention requirements of Part V of Attachment B, Audit Requirements for Awards of State and Federal Financial Assistance.

4. Advertising. Subject to Chapter 119, F.S., the Grantee shall not publicly disseminate any information concerning this Agreement under any promotional activity, such as advertisements or press releases, without prior written approval from the Department.
5. Conflict of Interest. This Agreement is subject to Chapter 112, F.S. The Grantee shall disclose the name of any officer, director, employee, or other agent who has or potentially has a conflict of interest relating to this Agreement or funds received hereunder.
6. Records Retention. The Grantee shall retain all records made or received in conjunction with this Agreement for the longer of five (5) years after the end of this Agreement period and all pending matters or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <https://dos.myflorida.com/media/703328/gsl-sl-2020.pdf>). If the Grantee's record retention requirements terminate prior to the requirements stated herein, the Grantee may meet the Department's record retention requirements for this Agreement by transferring its records to the Department at that time, and by destroying duplicate records in accordance with section 501.171, F.S., and, if applicable, section 119.0701, F.S. The Grantee shall adhere to established information destruction standards such as those established by the National Institute of Standards and Technology Special Publication 800-88, "Guidelines for Media Sanitization" (2014). See <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-88r1.pdf>.

G. Recoupment of Funds:

1. Notwithstanding the damages limitations of Section R, Limitation of Liability, if the Grantee's non-compliance with any provision of this Agreement results in additional costs or monetary loss to the Department or the State, the Department can recoup the costs or losses from monies owed to the Grantee under this Agreement or any other agreement between the Grantee and any State entity. In the event that the discovery of additional costs or losses arises when no monies are available under this Agreement or any other agreement between the Grantee and any State entity, the Grantee shall repay such costs or losses to the Department in full within thirty (30) days from the date of discovery or notification, unless the Department agrees, in writing, to an alternative timeframe. The Department shall not be liable for any penalties or costs associated with the Grantee's misuse of any purchases made pursuant to this Agreement.
2. If the Grantee or its independent auditor discovers that an overpayment has been made, the Grantee shall repay said overpayment within forty (40) calendar days without prior notification from the Department. In the event that the Department first discovers an overpayment has been made, the Department will notify the Grantee in writing. Should repayment not be made in a timely manner, the Department shall be entitled to charge interest at the lawful rate of interest on the outstanding balance beginning forty (40) calendar days after the date of notification or discovery. Refunds should be sent to the Department's Agreement Manager and made payable to the "Department of Management Services." If this Agreement is terminated for cause, the Department, at its discretion, may require that the Grantee return to the Department any funds that were used for purposes that are considered ineligible under this Agreement.

H. Audits and Records:

1. Representatives of the Department, the State's Chief Financial Officer, the State's Auditor General, and representatives of the federal government, shall have access to any of the Grantee's books, documents, papers, and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.
2. The Grantee shall maintain books, records, and documents in accordance with the generally accepted accounting principles to sufficiently and properly reflect all purchases made under this Agreement.

The Grantee shall comply with all applicable requirements of section 215.97, F.S., and Attachment B, Audit Requirements for Awards of State and Federal Financial Assistance. If the Grantee is required to undergo an audit, the Grantee shall disclose all related party transactions to the auditor.

3. The Grantee shall retain all its records, financial records, supporting documents, statistical records, and any other documents, including electronic storage media, pertinent to this

Agreement in accordance with the record retention requirements of Part V of Attachment B, Audit Requirements for Awards of State and Federal Financial Assistance. The Grantee shall cooperate with the Department to facilitate the duplication and transfer of such records or documents upon the Department's request.

4. If awarded services, licenses, or commodities described in Attachment A – Solution Statement of Work, the Grantee shall include records of the start and end dates for all tasks in the Final Implementation Plan(s), if applicable. Additional requirements may be incorporated in the Final Implementation Plan(s).
5. The Grantee shall include the aforementioned audit and recordkeeping requirements in all approved subrecipient contracts and assignments.

I. Public Records and Records Production:

1. Identification and Protection of Confidential Information. Article 1, section 24, Florida Constitution, guarantees every person access to all public records, and section 119.011, F.S., provides a broad definition of "public record." As such, records submitted to the Department (or any other State agency) are public records and are subject to disclosure unless exempt from disclosure by law. The following records for agencies, as "agency" is defined in section 119.011(2), F.S., are confidential and exempt pursuant to section 119.0725, F.S.:
 - a. Cybersecurity insurance limits and deductibles;
 - b. Information relating to critical infrastructure;
 - c. Incident reporting information pursuant to sections 282.318 and 282.3185, F.S.;
 - d. Network schematics;
 - e. Hardware and software configurations; and
 - f. Encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches.

If the Grantee considers any portion of other records it provides to the Department (or any other State agency) to be trade secret or otherwise confidential or exempt from disclosure under Florida or federal law, the Grantee shall mark the document as "confidential" and simultaneously provide the Department (or other State agency) with a separate, redacted copy of the record. Such records and those records made confidential and exempt pursuant to section 119.0725, F.S., shall be considered "Confidential Information." For each portion redacted, the Grantee shall describe in writing the grounds for claiming the exemption, including the specific statutory citation for such exemption. The Grantee shall only redact portions of records that it claims are Confidential Information.

In the event of a request for public records pursuant to Chapter 119, F.S., the Florida Constitution, or other authority, to which records that are marked as "confidential" are responsive, the Department will provide the Grantee-redacted copy to the requestor. If a requestor asserts a right to the redacted Confidential Information, the Department will notify

the Grantee such an assertion has been made. It is the Grantee's responsibility to take the appropriate legal action to assert that the information in question is exempt from disclosure under Chapter 119, F.S., or other applicable law.

If the Department becomes subject to a demand for discovery or disclosure of documents that are marked as "confidential" in a legal proceeding, the Department will give the Grantee notice of the demand or request. The Grantee shall take the appropriate legal action in response to the demand and to defend its claims of confidentiality. If the Grantee fails to take appropriate and timely action to protect the records it has designated as Confidential Information, the Grantee agrees that the Department is permitted to treat those records as not confidential and the Department is permitted to provide the unredacted records to the requester and the Grantee agrees not to pursue any suit, action, or claim, including for damages, against the Department or its employees, attorneys, agents or volunteers.

The Grantee shall protect, defend, and indemnify the Department from all suits, claims, actions, demands, liability, costs, fines, and attorneys' fees arising from or relating to the Grantee's determination that the redacted portions of its records are Confidential Information, including all costs, including attorney's fees, incurred regarding the entitlement or amount of such attorney's fees. If the Grantee fails to submit a redacted copy in accordance with this section, of information it claims is Confidential Information, the Department is authorized to produce the entire record submitted to the Department, including those records marked "confidential," in response to a public records request for, or demand for discovery or disclosure of, these records and the Grantee agrees not to pursue any suit, action, or claim, including for damages, against the Department or its employees, attorneys, agents, or volunteers.

2. Inspection of Records. In accordance with section 216.1366, F.S., the Department is authorized to inspect the: (a) financial records, papers, and documents of the Grantee that are directly related to the performance of this Agreement or the expenditure of State funds; and (b) programmatic records, papers, and documents of the Grantee which the Department determines are necessary to monitor the performance of this Agreement or to ensure that the terms of this Agreement are being met. The Grantee shall provide such records, papers, and documents requested by the Department within ten (10) Business Days after the request is made.

J. Non-Discrimination:

The Grantee shall not unlawfully discriminate against any individual employed in the performance of this Agreement due to race, religion, color, sex, physical handicap unrelated to such person's ability to engage in this work, national origin, ancestry, or age. The Grantee shall provide a harassment-free workplace, and any allegation of harassment shall be given priority attention and action.

K. Duty of Continuing Disclosure of Legal Proceedings and Instances of Fraud:

1. The Grantee shall provide written notice to the Department disclosing any criminal litigation, investigation, or proceeding that arises during the Agreement period involving the Grantee except where the Grantee is involved in a prosecutorial or administrative capacity, or, to the extent the Grantee is aware, any of the Grantee's subrecipients or contractors (or any of the foregoing entities' current officers or directors). The Grantee shall also provide written notice to the Department disclosing any civil litigation, arbitration, or proceeding that arises during the Agreement period that is related to or involves funds provided under this Agreement, to which the Grantee (or, to the extent the Grantee is aware, any subrecipient or contractor hereunder) is a party, and which:
 - a. Might reasonably be expected to adversely affect the viability or financial stability of the Grantee or any subrecipient or contractor hereunder; or
 - b. Involves a claim or written allegation of fraud against the Grantee, or any subrecipient or contractor hereunder, by a governmental or public entity arising out of business dealings with governmental or public entities.

All notices under this section must be provided to the Department within thirty (30) Business Days following the date that the Grantee first becomes aware of any such litigation, investigation, arbitration, or other proceeding (collectively, a "Proceeding"). Details of settlements that are prevented from disclosure by the terms of the settlement must be annotated as such.

2. This duty of disclosure applies to each officer and director of the Grantee, subrecipients, or contractors when any Proceeding relates to the officer's or director's business or financial activities.
3. Instances of Grantee operational fraud or criminal activities, regardless of whether a legal Proceeding has been initiated, shall be reported to the Department's Grant Manager within twenty-four (24) hours of the Grantee being made aware of the incident.
4. The Grantee shall promptly notify the Department's Grant Manager of any Proceeding relating to or affecting the Grantee's, subrecipient's, or contractor's business. If the existence of such Proceeding causes the State to conclude that the Grantee's ability or willingness to perform this Agreement is jeopardized, the Grantee shall be required to provide the Department's Grant Manager all reasonable assurances requested by the Department to demonstrate that:
 - a. The Grantee will be able to perform this Agreement in accordance with its terms and conditions; and
 - b. The Grantee and/or its employees, agents, subrecipients, or contractor(s) have not and will not engage in conduct in performance under this Agreement that is similar in nature to the conduct alleged in such Proceeding.

L. Assignments, Subgrants, and Contracts:

1. Unless otherwise specified in Attachment A – Solution Statement of Work, or through prior written approval of the Department, the Grantee may not: 1) subgrant any funds awarded under this Agreement; 2) contract its duties or responsibilities under this Agreement out to a third party; or 3) assign, transfer, or sell any of the Grantee's rights or responsibilities, unless specifically permitted by law to do so. Any such subgrant, contract, or assignment occurring without the prior approval of the Department shall be null and void. In the event the Department approves transfer of the Grantee's obligations, the Grantee remains responsible for all work performed and all expenses incurred in connection with this Agreement. In addition, this Agreement shall bind the successors, assigns, and legal representatives of the Grantee, and of any legal entity that succeeds the Grantee, to the Grantee's obligations to the Department.
2. The Grantee agrees to be responsible for all work performed in fulfilling the obligations of this Agreement.
3. The Grantee agrees that the Department may assign or transfer its rights, duties, or obligations under this Agreement to another governmental entity upon giving prior written notice to the Grantee.

M. Intellectual Property Rights:

Where activities supported by this Agreement result in the creation of intellectual property rights, the Grantee shall notify the Department, and the Department will determine whether the Grantee will be required to grant the Department a perpetual, irrevocable, royalty-free, nonexclusive license to use, and to authorize others to use for State government purposes, any resulting patented, copyrighted, or trademarked work products developed under this Agreement.

N. Independent Contractor Status:

It is mutually understood and agreed to that at all times during the Grantee's performance of its duties and responsibilities under this Agreement that Grantee is acting and performing as an independent contractor. The Department shall neither have nor exercise any control or direction over the methods by which the Grantee shall perform its work and functions other than as provided herein. Nothing in this Agreement is intended to or shall be deemed to constitute a partnership or joint venture between the Parties.

1. The Grantee (and its officers, agents, employees, subrecipients, contractors, or assignees), in performance of this Agreement, shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the State. Further, unless specifically authorized to do so, the Grantee shall not represent to others that, as the Grantee, it has the authority to bind the Department or the State.

2. Neither the Grantee nor its officers, agents, employees, subrecipients, contractors, or assignees, are entitled to State retirement or State leave benefits, or to any other compensation of State employment as a result of performing the duties and obligations of this Agreement.
3. The Grantee agrees to take such actions as may be necessary to ensure that each subrecipient or contractor will also be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State.
4. Unless agreed to by the Department in Attachment A – Solution Statement of Work, the Department will not furnish services of support (e.g., office space, office supplies, telephone service, secretarial, clerical support, etc.) to the Grantee or its subrecipient, contractor, or assignee.
5. The Department shall not be responsible for withholding taxes with respect to the Grantee's compensation hereunder. The Grantee shall have no claim against the Department for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, reemployment assistance benefits, or employee benefits of any kind. The Grantee shall ensure that its employees, subrecipients, contractors, and other agents, receive benefits and necessary insurance (health, workers' compensation, reemployment assistance benefits) from an employer other than the State.
6. At all times during the Agreement period, the Grantee must comply with the reporting and Reemployment Assistance contribution payment requirements of chapter 443, F.S.

O. Termination:

1. Termination for Failure to Implement. For awarded services, licenses, or commodities under Attachment A – Solution Statement of Work, if the Grantee does not approve a Final Implementation Plan within 15 calendar days of purchase order issuance for the awarded solutions, this Agreement may be terminated by the Department, at its sole discretion.
2. Termination Due to the Lack of Funds. The funds utilized for this Agreement are from the State's 2024-2025 Fiscal Year, which begins July 1, 2024, and expires on June 30, 2025. If funds become unavailable for this Agreement's purpose, such event will not constitute a default by the Department or the State. The Department agrees to notify the Grantee in writing at the earliest possible time if funds are no longer available. In the event that any State funds upon which this Agreement depends are withdrawn or redirected, the Department may terminate this Agreement by providing written notice to the Grantee. The Department will be the final authority as to the availability of funds.
3. Termination for Cause. The Department may terminate this Agreement if the Grantee fails to:
 - a. Satisfactorily complete the deliverables within the time specified in this Agreement;
 - b. Maintain adequate progress, thus endangering performance of this Agreement;
 - c. Honor any term of this Agreement; or

- d. Abide by any statutory, regulatory, or licensing requirement.

The Grantee shall continue to perform any work not terminated. The Department's rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this Agreement. The Grantee shall not be entitled to recover any cancellation charges or lost profits.

4. Termination for Convenience. The Department may terminate this Agreement, in whole or in part, by providing written notice to the Grantee that the Department determined, in its sole discretion, it is in the State's interest to do so. The Grantee shall not furnish any product or continue services after the specified termination date in the Department's notice of termination, except as necessary to complete the continued portion of this Agreement, if any. The Grantee will not be entitled to recover any cancellation charges or lost profits.
5. Grantee's Responsibilities upon Termination. If the Department provides a notice of termination to the Grantee, except as otherwise specified by the Department in that notice, the Grantee shall:
 - a. Stop work under this Agreement on the date and to the extent specified in the notice.
 - b. Complete performance of such part of the work that has not been terminated by the Department, if any.
 - c. Take such action as may be necessary, or as the Department may specify, to protect and preserve any property which is in the possession and custody of the Grantee, and in which the Department has or may acquire an interest.
 - d. Transfer, assign, and make available to the Department all property and materials belonging to the Department upon the effective date of termination of this Agreement. No extra compensation will be paid to the Grantee for its services in connection with such transfer or assignment.

P. Dispute Resolution:

Disputes concerning performance under this Agreement will be decided by the Department, who shall reduce the decision to writing and serve a copy to the Grantee.

Q. Unauthorized Use:

1. The Grantee shall fully defend and hold harmless the State and the Department from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret, or intellectual property right provided, however, that the foregoing obligation shall not apply to the Department's misuse or modification of the Grantee's products or the Department's operation or use of the Grantee's products in a manner not contemplated by the Agreement. The Department will not be liable for any royalties.
2. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by the State or the Department in any legal action without the Grantee's prior written consent, which

shall not be unreasonably withheld. The State and the Department shall have the right, at its own cost and expense, to participate in all actions under this Section Q.

3. For the avoidance of doubt, as the Grantee is a subdivision, as defined in section 768.28(2), F.S., pursuant to section 768.28(19), F.S., neither Party indemnifies nor insures or assumes any liability to the other Party for the other Party's negligence. Notwithstanding anything to the contrary in this Section Q., liability of either Party for tort claims is limited to the amounts prescribed in section 768.28, F.S., plus the Party's reasonable attorneys' fees.

R. Limitation of Liability:

1. Unless otherwise specifically enumerated in this Agreement, no Party shall be liable to the other Party for special, indirect, punitive, or consequential damages, including lost data or records (unless this Agreement requires the Grantee to back-up data or records), even if the Party has been advised that such damages are possible. No Party shall be liable to the other Party for lost profits, lost revenue, or lost institutional operating savings. The State and the Department may, in addition to other remedies available to them at law or in equity and upon notice to the Grantee, retain such monies from amounts due the Grantee as may be necessary to satisfy any claim for damages, penalties, costs, and the like asserted by or against them. Except as otherwise provided in this Agreement or the Data Sharing Agreement or its attachments or Riders, the Department is not liable for unauthorized access to information except as directly attributable to the actions of the Department. For all claims against Grantee under this Agreement, and regardless of the basis on which the claim is made, Grantee's liability under this Agreement for direct damages shall be limited to the dollar value of this Agreement. This limitation shall not apply to claims arising under Section Q. of this Agreement.
2. Pursuant to Section 200 of the 2024-2025 General Appropriations Act, the State is hereby released from all liability related to cybersecurity incidents impacting the Grantee.

S. Force Majeure and Notice of Delay from Force Majeure:

Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor caused by the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subrecipients, contractors, or suppliers if no alternate source of supply is available. However, in the event a delay arises from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting damages, costs, delays, or disruptions to the project in accordance with the Party's performance requirements under this Agreement.

In the case of any delay the Grantee believes is excusable under this section, the Grantee shall provide written notice to the Department describing the delay or potential delay and the cause of the delay within: ten (10) calendar days after the cause that creates or will create the delay first arose (if the Grantee could reasonably foresee that a delay could occur as a result); or five (5) calendar days after the date the Grantee first had reason to believe that a delay could result (if the delay is not reasonably foreseeable). **THE FOREGOING SHALL CONSTITUTE THE**

GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. Providing notice in strict accordance with this section is a condition precedent to such remedy.

The Department, in its sole discretion, will determine if the delay is excusable under this section and will notify the Grantee of its decision in writing. The Grantee shall not assert a claim for damages, other than for an extension of time, against the Department. The Grantee will not be entitled to an increase in the Agreement price or payment of any kind from the Department for any reason. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this section, after the causes have ceased to exist, the Grantee shall resume performance, unless the Department determines, in its sole discretion, that the delay will significantly impair the ability of the Grantee to timely complete its obligations under this Agreement, in which case, the Department may terminate this Agreement in whole or in part.

T. Mandatory Disclosure Requirements:

1. Convicted Vendor List. The Grantee has a continuous duty to disclose to the Department if the Grantee or any of its affiliates, as defined by section 287.133(1)(a), F.S., are placed on the convicted vendor list. Pursuant to section 287.133(2)(a), F.S.: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list."
2. Discriminatory Vendor List. The Grantee has a continuous duty to disclose to the Department if the Grantee or any of its affiliates, as defined by section 287.134(1)(a), F.S., are placed on the discriminatory vendor list. Pursuant to section 287.134(2)(a), F.S.: "An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity."
3. Antitrust Violator Vendor List. The Grantee has a continuous duty to disclose to the Department if the Grantee or any of its affiliates, as defined by section 287.137(1)(a), F.S., are placed on the antitrust violator vendor list. Pursuant to section 287.137(2)(a), F.S.: "A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new

leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity.”

4. Foreign Gifts and Contracts. The Grantee shall comply with any applicable disclosure requirements in section 286.101, F.S. Pursuant to section 268.101(7), F.S.: “In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”

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IN WITNESS WHEREOF, the Parties agree to the terms and conditions of this Agreement and have duly authorized their respective representatives to sign it on the dates indicated below.

City of Pensacola:

Department of Management Services:

By: _____

By: _____

Name: Kerrith Fiddler

Name: _____

Title: City Administrator

Title: _____

Date: _____

Date: _____

ATTACHMENT A
SOLUTION STATEMENT OF WORK

1. Scope of Work.

Pursuant to Section 200, FY 24-25 General Appropriations Act (GAA), the Parties agree that the Department shall, on behalf of the Grantee, expend funds for the provision of services, licenses, or commodities awarded to the Grantee to be utilized for the development and enhancement of cybersecurity risk management programs. The Grantee is being granted assistance in the form of services, licenses, or commodities to enhance its cybersecurity framework, to identify and mitigate risks, and to protect its infrastructure from threats through Florida’s Local Government Cybersecurity Grant Program (the “Project”).

2. Awarded Capabilities.

The Department shall offer the following capabilities/solutions to the Grantee:

Redacted per FS 119.0725 (2)
Redacted per FS 119.0725 (2)

Note: The Department will make its best effort to award the Grantee’s preferred solution per capability. However, the Department can only contract for a limited number of solutions based on best value, technical acceptability, and operational volume.

3. Grantee Responsibilities.

The Grantee shall complete the Project in accordance with the requirements set forth in this Agreement and any applicable local, State, and federal laws and regulations. The Grantee is solely responsible for ensuring that any provided solutions are compliant with applicable state and federal laws and regulations based on Grantee’s intended use, including, but not limited to, Health Insurance Portability and Accountability Act, Family Educational Rights and Privacy Act, Driver Privacy Protection Act, and General Data Protection Regulation.

4. Department Responsibilities.

The Department shall review Grantee reports and other records and reconcile them to ensure that the requirements of section 215.971, F.S., pertaining to agreements funded with State financial assistance are fulfilled.

5. Deliverables.

The Grantee shall complete the following deliverable(s):

Deliverables		
No.	Tasks	Performance Measures and Due Dates
1	Execute this Grant Agreement.	The Grantee must execute the Grant Agreement within 45 calendar days of award.
2	Participate in a kick-off meeting with FL[DS] and the solution provider, if implementation is required.	The Grantee shall participate in the kick-off meeting with FL[DS] and the solution provider within five (5) calendar days of Purchase Order (PO) issuance.

3	Approve Final Implementation Plan(s) for solutions awarded, if implementation is required.	The Grantee must coordinate with the solution provider(s) to review the Implementation Plan(s). If the Grantee chooses to proceed with a solution, the Grantee must approve the Final Implementation Plan within 15 calendar days of PO issuance.
4	Complete all tasks in accordance with the Final Implementation Plan(s), if implementation is required.	The Grantee shall provide all necessary resources to execute tasks assigned to the Grantee in the Final Implementation Plan(s).
5	Notify the Department's Grant Manager of implementation completion per the Final Implementation Plan, if implementation is required.	The Grantee shall notify the Department's Grant Manager in writing within 10 calendar days of implementation completion.
6	Provide FL[DS] with any information related to this Agreement as requested by FL[DS].	The Grantee shall respond within seven (7) calendar days of any request from FL[DS].

6. Reporting Requirements.

The Department may request status meetings for the Grantee to report on the implementation, service, training, or support status, as necessary, with the Grantee's Grant Manager.

The Department may, at its sole discretion, develop a format and deadlines the Grantee must comply with when reporting the information above. The Grantee's failure to confirm completion of the Final Implementation Plan(s) or comply with the reporting format and schedule may result in termination of the awarded solutions.

7. Performance Standards.

The Grantee shall timely perform all tasks and provide deliverables as set forth in this Agreement. The Department is entitled at all times, upon request, to be advised as to the status of work being done by the Grantee, on behalf of the grantee, and the details thereof.

If the Department determines that there is a performance deficiency that requires correction by the Grantee, then the Department shall notify the Grantee. The Grantee shall make the correction within a timeframe specified by the Department. The Grantee shall provide the Department with a corrective action plan describing how the Grantee will address all performance deficiencies identified by the Department. If the corrective action plan is unacceptable to, or implementation of the plan fails to remedy the performance deficiencies, the Grantee shall work cooperatively with the Department to modify the corrective action plan or to remedy the deficiencies. Additionally, if a performance deficiency is attributable to the performance of a contractor or subcontractor of the Grantee, the Grantee shall take all actions available to it to enforce financial consequences in its contract with the contractor or subcontractor or to pursue damages.

8. Financial Consequences for Failure to Timely and Satisfactorily Perform.

Violations of this Agreement or applicable licenses, or failure to provide the deliverables, may result, except as detailed above, in termination of access to awarded solutions and require immediate

removal of all software, hardware, or related services. Grantee may be subject to financial assessments related to such violations.

This provision for financial consequences shall not affect the Department's right to terminate the Agreement as provided elsewhere in the Agreement.

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ATTACHMENT B**AUDIT REQUIREMENTS FOR AWARDS OF STATE AND FEDERAL FINANCIAL ASSISTANCE**

Department of Financial Services

Division of Accounting and Auditing – Bureau of Auditing

**AUDIT REQUIREMENTS FOR AWARDS OF
STATE AND FEDERAL FINANCIAL ASSISTANCE**

The administration of resources awarded by the Department of Management Services (Department) to the Grantee may be subject to audits and/or monitoring by the Department, as described in this section.

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 staff, limited scope audits as defined by 2 CFR §200.425, or other procedures. By entering into this agreement, the Grantee agrees to comply and cooperate with any monitoring procedures or processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Grantee is appropriate, the Grantee agrees to comply with any additional instructions provided by Department staff to the Grantee regarding such audit. The Grantee 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 Grantee is a state or local government or a nonprofit organization as defined in 2 CFR §200.90, §200.64, and §200.70.

1. A Grantee 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 form lists the federal resources awarded through the Department by this agreement. In determining the federal awards expended in its fiscal year, the Grantee shall consider all sources of federal awards, including federal resources received from the Department. 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 Grantee 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 Grantee shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR §§200.508-512.
3. A Grantee 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 Grantee 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 Grantee resources obtained from other than federal entities).

Part II: State Funded

1. In the event that the Grantee expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such Grantee (for fiscal years ending June 30,

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**AUDIT REQUIREMENTS FOR AWARDS OF
STATE AND FEDERAL FINANCIAL ASSISTANCE**

2017, and thereafter), the Grantee 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 form lists the state financial assistance awarded through the Department this agreement. In determining the state financial assistance expended in its fiscal year, the Grantee shall consider all sources of state financial assistance, including state financial assistance received from the Department, 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 Grantee 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 Grantee 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 Grantee 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 Grantee's resources obtained from other than state entities).

Part III: Other Audit Requirements

N/A

Part IV: 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 form shall be submitted, when required by 2 CFR §200.512, by or on behalf of the Grantee directly to 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 form shall be submitted by or on behalf of the Grantee directly to each of the following:

- a. The Department at each of the following addresses:

Electronic copies (preferred): Cybersecuritygrants@digital.fl.gov

or

AUDIT REQUIREMENTS FOR AWARDS OF
STATE AND FEDERAL FINANCIAL ASSISTANCE

Paper copies:
Procurement & Grants Administrator
Florida Digital Service
Department of Management Services
2555 Shumard Oaks Blvd, Suite 200
Tallahassee, Florida 32399

- 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 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. Grantees, when submitting financial reporting packages to the Department 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 Grantee in correspondence accompanying the reporting package.

Part V: Record Retention

The Grantee shall retain sufficient records demonstrating its compliance with the terms of the award(s) and this agreement for a period of five (5) years from the date the audit report is issued, and shall allow the Department, or its designee, the CFO, or Auditor General access to such records upon request. The Grantee shall ensure that audit working papers are made available to the Department, or its designee, the CFO, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by the Department.

AUDIT REQUIREMENTS FOR AWARDS OF
STATE AND FEDERAL FINANCIAL ASSISTANCE

EXHIBIT 1

**Federal Resources Awarded to the Grantee
Pursuant to this Agreement Consist of the Following:**

1. Federal Program A:
N/A
2. Federal Program B:
N/A

**Compliance Requirements Applicable to the Federal Resources
Awarded Pursuant to this Agreement are as Follows:**

1. Federal Program A:
N/A
2. Federal Program B:
N/A

**State Resources Awarded to the Grantee
Pursuant to this Agreement Consist of the Following:**

Matching Resources for Federal Programs:

1. Federal Program A:
N/A
2. Federal Program B:
N/A

Subject to Section 215.97, F.S.:

1. State Project A: Local Government Cybersecurity Grant
State Awarding Agency: Florida Department of Management Services
Catalog of State Financial Assistance Title and Number: 72.016
Amount: \$ _____
2. State Project B:
N/A

**Compliance Requirements Applicable to State Resources Awarded
Pursuant to this Agreement Are as Follows:**

The compliance requirements are as stated in Grant Agreement No. DMS-24/25-071 between the Grantee and the Department, entered in State Fiscal Year 2024-25.

ATTACHMENT C GRANTEE DATA SHARING AGREEMENT

Purposes

Grantee desires to utilize software licenses, applications, and solutions, as applicable, in connection with the attached Exhibit A – Cybersecurity Incident Response Rider and Exhibit B – Solution Rider, incorporated herein. This DSA describes the terms and conditions for the use of software licenses, applications, and solutions and protection of Covered Data, including requirements to safeguard the availability, confidentiality, and integrity of Covered Data in furtherance of the security objectives of Chapter 282, F.S.

I. Definitions

- A. Access – The authorization to inspect, review, transmit, duplicate, communicate with, retrieve data from, or otherwise make use of any Covered Data, regardless of type, form, or nature of storage. "Access" to a computer system or network includes local and remote access, as applicable.
- B. Authorized Purpose – The purpose(s) for which an Authorized Third Party may access, use, or disclose the Covered Data.
- C. Authorized Third Party – An individual, state agency, other Florida state or local governmental entity, or a private sector contractor or service provider of the Grantee which receives Covered Data.
- D. Authorized User – An individual granted Access or to use Software Entitlement by either FL[DS] or Grantee.
- E. County and Municipality Cybersecurity Technical Assistance Program ("the Program") – refers to the grant program established by the 2024-2025 General Appropriations Act to enhance county and municipal cybersecurity and protect the infrastructure of local governments from threats.
- F. Covered Data – The limited subset of security data that is derived from Grantee's use of any Software Entitlements as defined in the attached Rider(s); a Grantee's confidential or proprietary information; and personal information as defined under section 501.171, F.S., and any other applicable privacy or data breach notification laws as may exist.
- G. Data Breach – Either (1) any unauthorized access to, or use or disclosure of, Covered Data for any purpose other than as expressly permitted by this DSA or required by law; or (2) a breach of privacy or of the security of the Covered Data. Good faith access of data by an employee or agent of the Grantee does not constitute a breach of security, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use.
- H. DSA Coordinators – The individuals appointed by the signatories to this DSA as the point of contact for this DSA, who are responsible for ensuring that the Authorized Users comply with the activities identified herein.
- I. HIPAA - Health Insurance Portability and Accountability Act of 1996.
- J. Information Technology (IT) Coordinators – The individuals appointed by the signatories to this DSA as responsible for data flow and other technology-related considerations under this DSA.
- K. Information Technology Resources – As defined in section 282.0041, Florida Statutes, the data processing hardware and software and services, communications, supplies, personnel, facility

resources, maintenance, and training. As used in this DSA, the term also includes the definition for "Information Technology," as defined in section 282.0041, Florida Statutes, to add equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form.

- L. **Software Entitlement** – Proprietary software provided to the Grantee under the Agreement to satisfy provision of the solution(s) awarded to the Grantee, as identified in Attachment A – Solution Statement of Work.

II. Responsibilities of the Parties

- A. **Data Transmission.** Covered Data shall only be transmitted through secure file transfer protocol or other secure transmission methods utilizing a National Institute of Standards and Technology approved means of electronic encryption as well as password protection and in a file format and layout determined by FL[DS]. Covered Data shall not be transmitted via any other means, including electronic mail. If applicable to any transmission of the Covered Data, both transmitting and receiving Grantee shall completely and permanently remove Covered Data from any temporary transfer location within twenty-four (24) hours of receipt of the Covered Data.
- B. **Compliance with Applicable Laws.** Each Party covenants and agrees that, in the performance of this DSA, it shall comply with all applicable federal, state, and local laws, statutes, and regulations including, but not limited to, such laws set forth in Article VI as applicable to a Project and such other data privacy or security laws, all as they exist now and as they may be amended from time to time ("Applicable Laws"). In the event of any notice of a material violation of Applicable Laws, or an investigation into an alleged material violation, the affected Party shall promptly notify the other in writing of such notice.

The Parties further agree to follow and be bound by the terms and conditions of any policy decisions or directives from the federal and state agencies with jurisdiction over the use of the data described herein upon receipt of written notice directing that such rules, policy decisions, or directives apply to this DSA.

- C. **HIPAA Business Associate Agreement.** To the extent that a Party is acting as a Business Associate (as defined by HIPAA) of the other Party, the Parties further agree to enter into a Business Associate Agreement as necessary, in the form of a mutually agreed-upon appendix to the DSA.
- D. **Incorporation and Compliance with Exhibits, Appendices and Riders, if Applicable.** The Project Riders, and any exhibits or appendices to this DSA are hereby incorporated and made a part hereof and are an integral part of this DSA. Each Rider, Exhibit, and Appendix attached hereto or referred to herein are hereby incorporated in and made a part of this DSA as if set forth in full herein.

III. FL[DS] Role and Responsibilities

- A. FL[DS] is responsible for:
 1. Processing Covered Data in accordance with the State Cybersecurity Act;

2. Facilitating data sharing with the Grantee and/or an Authorized Third Party in accordance with this DSA;
 3. Providing the Grantee with the option to utilize Software Entitlements; and
 4. Protecting the integrity of Covered Data obtained by FL[DS] through Grantee's use of any of the Software Entitlements. FL[DS] will not disclose this Covered Data to any third party unless required by law or as otherwise authorized by Grantee.
- B. FL[DS] will only access, use, or disclose Covered Data, as permitted by Grantee, as required by Applicable Law, or as necessary for completion of its responsibilities under this DSA, including any Project Riders. FL[DS] will ensure that its Authorized Users only access, use, or disclose Covered Data, as permitted by Grantee, as required by Applicable Law, or as necessary for completion of its responsibilities for any Projects, as assigned by FL[DS].
- C. FL[DS] will exercise reasonable care and no less than the same degree of care FL[DS] uses to protect its own confidential information to prevent confidential information from being used in a manner that is not expressly a purpose authorized in this DSA or as required by Applicable Law.

IV. Grantee's Role and Responsibilities

- A. Covered Data is and shall remain the property of Grantee.
- B. Grantee is solely responsible for its Access to and use of Software Entitlements and Covered Data, including:
1. Ensuring a level of security appropriate to the risk in respect of Covered Data;
 2. Securing Grantee's and its Authorized Users' systems and devices that can Access FL[DS] systems and Software Entitlements and complying with the Security Standards;
 3. Selecting and/or ensuring that Grantee has selected its Authorized Users; activating and deactivating the Access, credentials, and privileges of its Authorized Users; and managing access controls to the FL[DS] system and Software Entitlements in a timely manner in accordance with the Security Standards;
 4. Securing the account authentication credentials, systems, and devices of Grantee personnel who the Grantee designates to be Authorized Users;
 5. Managing the compliance of its Authorized Users with the Grantee's established security measures and as required by Applicable Law;
 6. Maintaining audit logs, as deemed necessary by the Grantee to demonstrate compliance with its obligations under this DSA;
 7. Backing up Covered Data, if required by law or Grantee policy; and
 8. Ensuring that it and its Authorized Users remain in compliance with the terms and conditions of any Software Entitlements.
- C. FL[DS] is not responsible for, and has no obligation for:

1. Selecting or verifying Grantee's Authorized Users, activating or deactivating the Access or credentials of Authorized Users; or
2. Protecting Covered Data that Grantee elects to store or transfer outside of FL[DS]'s and its sub-processors' systems (for example, offline or on-premises storage).

V. Unauthorized Disclosure/Data Breach

- A. In the event of a Data Breach of the Covered Data while in Grantee's (or an Authorized Third Party's) custody or control or as a result of Grantee's (or an Authorized Third Party's) access to or use of the Covered Data, which requires the provision of notice in accordance with section 501.171, F.S., or other Applicable Law (including, but not limited to, HIPAA), the Parties agree as follows:
 1. Grantee shall notify FL[DS] of the Data Breach not more than 24 hours after discovery that a Data Breach has occurred or is reasonably likely to have occurred.
 2. Grantee (or its Authorized Third Party) shall be responsible for all costs related to the Data Breach including FL[DS]' and/or Grantee's (or an Authorized Third Party's) costs of complying with all legal requirements, including the requirements for Data Breach notification under Applicable Law, as well as defending any claims, actions, or lawsuits related thereto.
 3. If a Data Breach is subject to the notice provisions of section 501.171, F.S., or Applicable Law, the Parties agree to cooperate and work together to ensure full legal compliance and to provide breach notification to the extent required by Applicable Law. Grantee shall use its best and diligent efforts to identify the individuals entitled to receive notice of the Data Breach and obtain the names and mailing information of such individuals, so that FL[DS] and/or Grantee are able to distribute the notices within the legally required time periods. FL[DS] and/or Grantee, as applicable, shall bear its internal administrative and other costs incurred in identifying the affected individuals and their mailing information.
 4. In the event of a Data Breach, including the privacy or security of the Covered Data, while in the custody or control of the Grantee, if the Grantee must provide notice as a result of the requirements contained in section 501.171, F.S., or other Applicable Law, the Grantee shall submit a draft of the notice to FL[DS] for prior review and approval of the contents of the notice, prior to disseminating the notice. Such approval shall not be unreasonably delayed or withheld.
- B. If Grantee experiences a breach of the security of its systems that results in a breach of the security of FL[DS]'s systems ("FL[DS] Breach"), Grantee shall be responsible for all costs related to the FL[DS] Breach including FL[DS]'s costs of complying with all legal requirements, including any costs for data breach notification under section 501.171, F.S., or Applicable Law, as well as defending any claims, actions, or lawsuits against the FL[DS] related thereto. Grantee, at its own expense, shall cooperate fully with FL[DS] in the investigation, eradication, remediation, and recovery from the FL[DS] Breach.
- C. If FL[DS] experiences a breach of the security of its systems that results in a breach of the security of Grantee's systems ("Grantee Breach"), FL[DS] shall be responsible for all costs related to the Grantee Breach including Grantee's costs of complying with all legal requirements, including the requirements for data breach notification under section 501.171, F.S., or Applicable Law, as well as defending any claims, actions or lawsuits related thereto. FL[DS], at its own expense, shall

cooperate fully with Grantee in the investigation, eradication, remediation, and recovery from the Grantee Breach.

- D. If either FL[DS] or Grantee is obligated under this Section to pay costs incurred by the other Party, the Party required to pay such costs shall submit a draft of the legal notifications and other public communications to the other Party for prompt review and approval of the contents prior to disseminating the notification or communication. Such approval shall not be unreasonably delayed or withheld.
- E. The Parties understand and agree the provisions of this DSA relating to the protection and security of the Covered Data constitute a material condition of this DSA. This Article V. Unauthorized Disclosure/Data Breach is subject to Sections Q. and R. of the Agreement.

VI. Additional Terms Applicable to Certain Circumstances.

- A. Grantee is responsible for their Covered Data and entering into any required additional agreements related thereto. Grantee shall provide the FL[DS] DSA Coordinator with written notice prior to granting Access to any of the data types listed in subsections B-E, below, to FL[DS] or Software Entitlements. In the event of a conflict between the terms and conditions of this Article VI and the remainder of the DSA, the terms and conditions of Article VI shall control. Moreover, a Project may include the use of information described in more than one (1) of the provisions set forth in this Article VI, or it may include the use of information not described in this Article VI. In the event of a conflict between or among the terms and conditions of Subsections B, C, D or E of this Article VI, the more restrictive terms and conditions shall apply unless otherwise provided by Applicable Law or guidance by the applicable regulatory enforcement agencies or bodies.
- B. **CJIS.** The terms and conditions of this Article VI.B. apply when Covered Data involved in a Project includes criminal justice information.
 - 1. CJIS Covered Data. Covered Data may also include, but shall not be limited to, CJIS Covered Data. For purposes of this DSA, CJIS Covered Data shall mean criminal justice information that is provided by the Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) system and that is necessary for law enforcement and civil agencies to perform their missions, including, but not limited to, biometric, identity history, biographic, property, and case/incident history data.
 - 2. Disclosure of CJIS Covered Data. The disclosure of CJIS Covered Data under the DSA, as modified by this section, is governed by the CJIS Security Policy, available at <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>. In accordance with the CJIS Security Policy and 28 CFR Part 20, use of the CJIS system under the DSA is restricted to: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, rehabilitation of accused persons or criminal offenders, and other legally authorized purposes.
 - 3. Training. The Parties agree to work together to provide Authorized Users with confidentiality, privacy, and security training regarding access, use, and disclosure requirements for the CJIS Covered Data under the CJIS Security Policy.
 - 4. Access Requirements. Unique authorization is required for Access to the CJIS Covered Data and must be properly authenticated and recorded for audit purposes, including CJIS security and other applicable audit requirements.

C. **HIPAA and State Protected Health Information.** The terms and conditions of this Article VI.C. apply when Covered Data involved in a Project includes protected health information (PHI) and such other sensitive health information, the disclosure of which may be limited or restricted by law, including, but not limited to, mental health and drug and alcohol related information.

1. PHI Covered Data. Covered Data may also include, but shall not be limited to, PHI Covered Data. For purposes of this DSA, "PHI Covered Data" shall mean "protected health information" or "PHI," as such term is defined by HIPAA. PHI shall include, but shall not be limited to, any other medical or health-related information that is afforded greater protection under more restrictive federal or state law, including, but not limited to, the Substance Abuse and Mental Health Services Act (SAMSHA), located at 42 C.F.R. Part 2, the Florida Mental Health Act (the Baker Act), located at Fla. Stat. § 394.451 – 394.47892, and the Hal S. Marchman Alcohol and Other Drug Services Act, located at Fla. Stat. § 397.301 et seq.
2. Disclosure of PHI Covered Data. The disclosure of PHI Covered Data under the DSA, as modified by this Article C, is governed by HIPAA and more restrictive federal or state law, as applicable. Accordingly, the disclosure of PHI Covered Data under the DSA is permitted only with the consent of the individual who is the subject of the PHI Covered Data, by court order that meets the requirements of applicable law, and for other purposes as permitted by Applicable Law.
3. Business Associate Agreement. To the extent that FL[DS] is a "Business Associate" of Grantee, as such term is defined under HIPAA, the Parties agree to enter into a mutually agreeable Business Associate Agreement.
4. Training. The Parties agree to work together to provide Authorized Users with confidentiality, privacy, and security training regarding access, use, and disclosure requirements for the PHI Covered Data under HIPAA and more restrictive federal or state law, to the extent applicable.
5. Access Requirements. Unique authorization is required for Access and must be properly authenticated and recorded for audit purposes, including HIPAA audit requirements and other audit requirements under more restrictive federal or state law, to the extent applicable.

D. **FERPA.** The terms and conditions of this Article VI.D. apply when Covered Data includes student education records as defined by the Family Educational Rights and Privacy Act, 20 USC §1232g, and its implementing regulations set forth at 34 CFR Part 99 (collectively, "FERPA").

1. FERPA Covered Data. Covered Data may also include, but shall not be limited to, FERPA Covered Data. For purposes of this DSA, "FERPA Covered Data" shall mean student education records as defined by FERPA.
2. Disclosure of FERPA Covered Data. The disclosure of FERPA Covered Data under the DSA, as modified by this section, is governed by FERPA. Accordingly, the disclosure of FERPA Covered Data under the DSA is permitted with parent or eligible student consent and, without such consent, in the following circumstances: (i) to school officials with legitimate educational interest; (ii) to other schools to which a student is transferring; (iii) to specified officials for audit or evaluation purposes; (iv) to appropriate parties in connection with financial aid to a student; (v) to organizations conducting certain studies for or on behalf of the school; (vi) to accrediting organizations; (vii) to comply with a judicial order or lawfully issued subpoena; (viii) to appropriate officials in cases of health and safety emergencies; (ix) to state and local authorities, within a juvenile justice system, pursuant to specific state law; and (x) as otherwise provided by FERPA.

3. Training. The Parties agree to work together to provide Authorized Users with confidentiality, privacy, and security training regarding access, use, and disclosure requirements for the FERPA Covered Data under FERPA.
 4. Access Requirements. Unique authorization is required for Access and must be properly authenticated and recorded for audit purposes, including FERPA and any other applicable audit requirements.
- E. **DPPA**. The terms and conditions of this Article VI.E. apply when Covered Data includes motor vehicle record information.
1. DPPA Covered Data. For purposes of the DSA, Covered Data may include, but shall not be limited to, DPPA Covered Data. For purposes of this DSA, "DPPA Covered Data" shall mean motor vehicle information as set forth in the Driver Privacy Protection Act, 18 U.S.C. § 2721 ("DPPA").
 2. Disclosure of DPPA Covered Data. The disclosure of DPPA Covered Data under the DSA, as modified by this section, is governed by DPPA. DPPA prohibits the disclosure of personal information, as defined in 18 U.S.C. § 2725(3), that is contained in motor vehicle records, but such information may be used by any government agency, such as FL[DS] and Grantee, in carrying out its functions. Such personal information may not be re-disclosed by FL[DS] or Grantee, however, except in accordance with the permissible uses set forth at 18 U.S.C. § 2721(b). With certain limited exceptions, DPPA further prohibits the disclosure of highly restricted personal information, as defined in 18 U.S.C. § 2725(4), without the express consent of the individual who is the subject of such information. In accordance with section 119.0712(2)(d)(2), F.S., the emergency contact information contained in a motor vehicle record, without the express consent of the person to whom such emergency contact information applies, may be released only to: (a) law enforcement agencies for purposes of contacting those listed in the event of an emergency; or (b) a receiving facility, hospital, or licensed detoxification or addictions receiving facility pursuant to sections 394.463(2)(a) or 397.6772(1)(a), F.S., for the sole purpose of informing a patient's emergency contacts of the patient's whereabouts. E-mail addresses that are collected by the Florida Department of Highway Safety and Motor Vehicles also may not be disclosed pursuant to Section 119.0712(2)(c), F.S.
 3. Training. The Parties agree to work together to provide Authorized Users with confidentiality, privacy, and security training regarding access, use, and disclosure requirements for the DPPA Covered Data under DPPA and the Florida Statutes referenced above.
 4. Access Requirements. Unique authorization is required for Access and must be properly authenticated and recorded for audit purposes, including, but not limited to, compliance with these terms and conditions.

VII. Designation of DSA Coordinators

- A. The Coordinators for this DSA are:

FL[DS] DSA Coordinator:

Policy Manager
2555 Shumard Oak Boulevard
Tallahassee, FL 32399

Telephone: 850-413-0604
Email: Policy@digital.fl.gov

FL[DS] IT Coordinator:

State Cybersecurity Information Security Officer
2555 Shumard Oak Boulevard
Tallahassee, FL 32399
Telephone: 850-413-0604
Email: Cyber@digital.fl.gov

Grantee's DSA Coordinator:

Kevin Boyer
City of Pensacola
222 W Main St
Pensacola, Florida 32502
Telephone: +1 (850) 435-1822
Email: kboyer@cityofpensacola.com

Grantee's IT Coordinator:

Stephen Ringl
City of Pensacola
222 W Main St
Pensacola, Florida 32502
Telephone: +1 (850) 435-5637
Email: sringl@cityofpensacola.com

- B. Changes to the DSA and/or IT Coordinator designations may be accomplished by providing email change notification that is acknowledged by both Parties.

VIII. Inspection of Records

Each Party shall permit the other Party and any other applicable state and federal representatives with regulatory oversight over the other Party, or their designees, to conduct inspections described in this paragraph, or to make on-site inspections of records relevant to this DSA to ensure compliance with any state and federal law, regulation, or rule. Such inspections may take place with notice during normal business hours wherever the records are maintained. Each Party shall ensure a system is maintained that is sufficient to permit an audit of such Party's compliance with this DSA and the requirements specified above. Failure to allow such inspections constitutes a material breach of this DSA. This DSA may be terminated in accordance with Article VII.C. for a material breach.

IX. Grantee Additional Terms

- A. Contractors. Grantee shall ensure all contractors that have Access to Covered Data or Software Entitlements comply with all requirements of this DSA. The Software Entitlements shall not be Accessible by, or deployed on, Information Technology Resources not owned, employed, or controlled by Grantee.

RELEVANT FLORIDA STATUTES (2022)

Section 282.3185, Florida Statutes (F.S.), the “Local Government Cybersecurity Act,” directs the Florida Digital Service (FL[DS]) to provide training in cybersecurity to local governments, oversee their compliance in adopting cybersecurity standards, and to receive cybersecurity incident and ransomware event notifications through the State Cybersecurity Operations Center. Such incident reporting must also include “[a] statement requesting or declining assistance from the Cybersecurity Operations Center, the Cybercrime Office of the Department of Law Enforcement, or the sheriff who has jurisdiction over the local government.” per section 282.3185, F.S.

Under Section 200 of the 2024-2025 General Appropriations Act, FL[DS] has been directed to provide nonrecurring assistance to local governments for the development and enhancement of cybersecurity risk management programs.

Section 119.0725, F.S., establishes that coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of information technology systems, operational technology systems, or data of entities subject to the requirements of section 119.07(1), F.S., and section 24(a), Article I of the State Constitution; information relating to existing or proposed information technology and operational technology systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health, or public safety; cybersecurity incident information reported under section 282.3185, F.S.; network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, if the disclosure of such information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information, whether physical or virtual, or information technology resources, which include an agency’s existing or proposed information technology systems; and the recordings and transcripts of public meetings where such information may be revealed are confidential and exempt, and such public meetings are exempt from section 286.011, F.S., and section 24(b), Article I of the State Constitution.

Exhibit A
Cybersecurity Incident Response Rider

I. Definitions

In addition to the defined terms in the DSA, capitalized terms used herein have the meanings provided below:

- A. Cloud Console – The global administrative accounts for Software Entitlements directly managed and licensed by FL[DS].
- B. Customer Account – The accounts for Software Entitlements directly utilized by Grantee.
- C. Information Technology Resources – As defined in section 282.0041, Florida Statutes, data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training. As used in this IR Rider, the term also includes the definition for “Information Technology,” as defined in section 282.0041, Florida Statutes, to add equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form.
- D. Managing Organization – The entity managing the use of the Software Entitlements and their Cloud Consoles. As used in this IR Rider, the Managing Organization is FL[DS].
- E. Protected Grantee Data – Data, not including Telemetry Data, maintained and generated by Grantee, which shall not be Accessed or Accessible by, or sent to, Software Entitlements.
- F. Solution Data – Data, reports, or other information generated by Software Entitlements. This may be derived from, but does not include, Telemetry Data.
- G. Telemetry Data – Data generated by Grantee through automated communication processes from multiple data sources and processed by Software Entitlements.
- H. View - The permissions Grantee grants to FL[DS] to see Telemetry and Solutions Data provided to the Managing Organization by Customer Accounts. A View does not permit FL[DS] Access to Protected Grantee Data.

II. Purpose

FL[DS] and Grantee enter into this IR Rider to establish the terms and conditions for FL[DS] Access to assist Grantee with responding to incidents.

III. Incident Response

- A. **Incident Response Support.** As specified in section 282.3185(5), F.S., if applicable, upon discovery of an incident, Grantee may request, or FL[DS] may offer to provide, incident response support. Access to Grantee Information Technology Resources shall be limited to the extent expressly agreed to by Grantee. Such Access and support are unilaterally terminable at any time by either Party. FL[DS] may establish, and Grantee shall comply with, protocols or procedures for reporting and requesting support for incidents under this IR Rider, responding to incidents, and the types of support available to be provided for an incident. Grantee shall mitigate the impact of the incident and

preserve all relevant documents, records, and data. Grantee shall cooperate and coordinate with FL[DS] in responding to incidents where incident response support is received, including, but not limited to:

1. Assisting with any incident response related investigation by FL[DS];
2. Providing FL[DS] with physical access to the affected facilities and operations;
3. Facilitating interviews with Grantee personnel; and
4. Making all relevant records, logs, files, data reporting, and other materials available to FL[DS] or Grantee-authorized third parties.

FL[DS] shall only Access Covered Data, other Grantee data, and Grantee Information Technology Resources as permitted by Grantee. Any specific limitations on such Access shall be documented.

Upon termination of each instance of incident response support, regardless of the reason for such termination, Grantee shall assist FL[DS] with any close-out or post-incident documentation upon request.

- B. Covered Data and Personally Identifiable Information.** FL[DS] will not disclose Covered Data or other data made Accessible during incident response support to any third party unless required by law or as authorized by Grantee. In the event such data is required by law to be disclosed, FL[DS] shall make best efforts to notify Grantee prior to such disclosure.

IV. FL[DS] Role and Responsibilities

FL[DS] shall provide Grantee with the option to utilize the Software Entitlements to enhance the Grantee's cybersecurity and protect the Grantee's infrastructure from threats.

FL[DS] will Access a View of the Telemetry Data and Solution Data. FL[DS] will only use Telemetry and Solutions Data for the purpose of developing and implementing the Program; identifying and responding to risks and incidents; and in furtherance of meeting FL[DS]' and Grantee's statutory and regulatory obligations. FL[DS] will not disclose the Telemetry Data and Solutions Data to any third party unless required by law or as otherwise authorized by Grantee. FL[DS] will provide incident response services and resources as allowed and agreed to by FL[DS] and Grantee in responding to risks and incident.

V. Grantee Roles and Responsibilities

Grantee shall cooperate with and provide all assistance necessary to FL[DS]' incident response support.

VI. Indemnification

For the avoidance of doubt, the Grantee agrees to indemnify FL[DS] and the Department for any claims related to this rider pursuant to the terms provided in Section Q., Unauthorized Use, of the Grant Agreement.

VII. Conflict

In the event of a conflict between this IR Rider, the DSA, and any other rider, the terms of this IR Rider shall control.

VIII. Liability and Termination of Incident Response Support

Except as described in the DSA or other riders, incident response services and resources of FL[DS] or Grantee-authorized third parties shall be provided by FL[DS] without warranty by, and without liability to, FL[DS] or such Grantee-authorized third parties. Upon request, FL[DS] or Grantee-authorized third parties shall provide reasonable assistance to return Grantee Information Technology Resources to the operational status prior to the involvement of FL[DS] incident response support.

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Exhibit B **Solution Rider**

I. Definitions

In addition to the defined terms in the DSA, capitalized terms used herein have the meanings provided below:

- A. Protected Grantee Data – Data, not including Telemetry Data, maintained, and generated by Grantee, which shall not be Accessed or Accessible by, or sent to, the Licensed Software Solution.
- B. Customer Account – The Licensed Software Solution account directly utilized by Grantee.
- C. Local Government Cybersecurity Grant Program (“the Program”) –The Program established by the 2024-2025 General Appropriations Act to provide nonrecurring assistance to local governments for the development and enhancement of cybersecurity risk management programs.
- D. Licensed Software Solutions – Proprietary software provided to the Grantee under the Agreement to satisfy provision of the solution(s) awarded to the Grantee, as identified in Attachment A of the Grant Agreement.
- E. Managing Organization – The entity managing the use of the Licensed Software Solution and its implementation. As used in this Rider, the Managing Organization is FL[DS].
- F. Protected Grantee Data – Data, not including Telemetry Data, maintained, and generated by Grantee, which shall not be Accessed or Accessible by, or sent to, the Licensed Software Solution.
- G. Solution Console – The global administrative account(s) directly managed and licensed by FL[DS] to provide the Grantee with the Software Entitlement.
- H. Solution Data – Data, reports, or other information generated by the Licensed Software Solution. May be derived from but shall not include Telemetry Data.
- I. Telemetry Data –The data generated by Grantee through automated communication processes from multiple data sources and processed by the Licensed Software Solution.
- J. View – The permissions granted for FL[DS] to see Telemetry Data provided to the Managing Organization’s Solution Console by the Customer Account. A View does not permit FL[DS] Access to Protected Grantee Data.

II. Statement of Work

- A. **Purpose/Scope:** FL[DS] and Grantee enter into this Rider to establish the terms and conditions for Grantee Access to the Licensed Software Solution provided by FL[DS]; to establish the maintenance, use, and disclosure of the Telemetry Data generated by Grantee and uploaded to the Solution Console; and to provide terms and conditions for the use of the Licensed Software Solution.
- B. **FL[DS] Role and Responsibilities:** FL[DS] is responsible for providing Grantee with the option to utilize the Licensed Software Solution.

FL[DS] shall be permitted to Access a View of the Telemetry Data provided within the Solution Console via permissions to the Customer Account.

FL[DS] will only use Telemetry Data for the express purpose of developing and implementing the Program and in furtherance of FL[DS]' and Grantee's statutory and regulatory obligations. FL[DS] will not disclose the Telemetry Data to any third party unless required by law or as otherwise authorized by Grantee.

C. Grantee's Role and Responsibilities: Grantee is responsible for:

- a. Grantee Access to and use of the Licensed Software Solution in compliance with all terms and conditions related thereto, including the Agreement terms and the vendor terms and conditions to be provided to the Grantee by FL[DS] without need for an amendment hereto by the Parties and which, after provision thereof, will be deemed incorporated herein and a material component hereof;
- b. Activating and deactivating the Access, credentials, and privileges of its authorized users;
- c. Ensuring no Protected Grantee Data is submitted to the Licensed Software Solution;
- d. Entering into any additional agreement with FL[DS], the Licensed Software Solution provider, or other third-parties as may be required by law regarding Protected Grantee Data, as applicable; and
- e. Managing access controls to allow View by FL[DS] and Access by the Licensed Software Solution.
- f. Telemetry Data, even as it may be housed, maintained, or processed by the Licensed Software Solution, is and shall remain the property of Grantee.

D. Indemnification: For the avoidance of doubt, the Grantee agrees to indemnify FL[DS] and the Department for any costs related to Grantee's use of the Licensed Software Solution pursuant to the terms provided in Section Q., Unauthorized Use, of the Grant Agreement.

E. Conflict: In the event of a conflict between this Rider and the DSA, the terms of this Rider shall control.

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Ron DeSantis, Florida Governor
Pedro Allende, Secretary
James Grant, Florida State Chief Information Officer

GRANT AGREEMENT
FOR
LOCAL GOVERNMENT CYBERSECURITY GRANT PROGRAM
CONTRACT NO: DMS-22/23-436
CATALOG OF STATE FINANCIAL ASSISTANCE NUMBER: 72.009
BETWEEN
THE STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES
AND
City of Pensacola

GRANT AGREEMENT

This Grant Agreement (Agreement) is made and entered into by and between the Department of Management Services (Department), an agency of the State of Florida (State), and the City of Pensacola (Grantee) and is effective as of the date last signed. The Department and the Grantee are sometimes referred to herein individually as a “Party” or collectively as the “Parties.”

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

WHEREAS, the Department, through the Florida Digital Service (FL[DS]), has the authority, pursuant to Chapter 2022-156, Laws of Florida, Specific Appropriation 2944A, to award grants to the Grantee for cybersecurity technical assistance; and

WHEREAS, the Grantee represents that it is fully qualified and eligible to receive the grant identified herein in accordance with the terms and conditions hereinafter set forth.

NOW THEREFORE, the Parties do mutually agree as follows:

A. Deliverables and Performance Requirements:

In accordance with Chapter 2022-156, Laws of Florida, Specific Appropriation 2944A, the Parties agree that the funds will be utilized as described in Attachment A.1 – Solution Statement of Work and/or Attachment A.2 – Funding Statement of Work, as applicable. The Grantee shall provide the deliverables specified herein in accordance with the terms and conditions of this Agreement, including its attachments and exhibits.

B. Agreement Period:

The performance period for this Agreement begins upon execution and ends upon the expiration of the applicable cybersecurity technical assistance services or commodities awarded or purchased pursuant to the Agreement, or in accordance with the final implementation plan(s), unless terminated earlier in accordance with the terms of this Agreement. No renewals or extensions of the Agreement are permitted.

C. Agreement Documents and Amendments Thereto.

1. Agreement Documents. “Agreement” means this Grant Agreement and all incorporated attachments, exhibits, and schedules, which set forth the entire understanding of the Parties and supersede any and all prior agreements and understandings related to the subject matter thereof.

All attachments, exhibits, and schedules listed below are incorporated in their entirety into, and will form part of, this Agreement. In the event of a conflict, the following order of precedence shall apply:

- a. This Grant Agreement
- b. The Statement(s) of Work:
 - Attachment A.1 – Solution Statement of Work
 - Attachment A.2 – Funding Statement of Work (applicable if added by Amendment)
- c. Attachment B – Audit Requirements for Awards of State and Federal Financial Assistance, including its Exhibit 1
- d. Attachment C, Grantee Data Sharing Agreement(s) (“DSA”), if applicable

- e. Final Implementation Plan(s), if awarded solutions under Attachment A.1.
2. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one (1) single agreement between the Parties.
3. Survivability. This Agreement and any and all promises, covenants, and representations made herein are binding upon the Parties hereto and any and all respective heirs, assigns, and successors in interest. The respective obligations of the Parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination or expiration of this Agreement.
4. Severability. If a court of competent jurisdiction deems any term or condition of this Agreement void or unenforceable, the other provisions are severable to that void provision, and will remain in full force and effect. However, to the fullest extent permitted by law, this Agreement shall be construed as if the scope or duration of such provision had been more narrowly drafted so as not to be invalid or unenforceable.
5. Amendments. With the exception of changes to the Primary Contacts, DSA/IT Coordinators, and the Department's/FL[DS]'s provision of the applicable vendor terms and conditions, this Agreement may only be modified or amended by a written agreement duly executed by the Parties.

D. Notices and Primary Contacts:

1. Notices. The Parties shall use the contact information provided in Section D.2., Primary Contacts, below, for all communications and notices under this Agreement. Where the term "written notice" is used to specify a notice requirement herein, said notice will be deemed to have been given (i) when personally delivered; (ii) when transmitted via facsimile (with confirmation of receipt) or email (with confirmation of receipt), provided the sender on the same day sends a confirming copy of such notice by a recognized delivery service (charges prepaid); (iii) the day immediately following the day (except if not a Business Day then the next Business Day) on which the notice or communication has been provided prepaid by the sender to a recognized overnight delivery service; or (iv) on the date actually received except where there is a date of the certification of receipt.
2. Primary Contacts.
 - a. **Department's Grant Manager** (see section 215.971, F.S.).
Lacy Perkins
Florida Digital Service
Department of Management Services
2555 Shumard Oaks Blvd
Tallahassee, Florida 32399
Telephone: (850) 413-0604
Email: CybersecurityGrants@digital.fl.gov
 - b. **Grantee's Grant Manager**
Name: Kevin Boyer
Organization: City of Pensacola
Mailing Address: 222 W Main St
City, Zip Code: Pensacola, 32502
Telephone: (850) 435-1822
Email: kboyer@cityofpensacola.com

3. Changes in Primary Contacts. Either Party may provide notice to the other Party by email identifying a change of a designated primary contact and providing the new contact information for the newly designated primary contact. Such notice must be sent to the other Party's Grant Manager and is sufficient to effectuate this change without requiring a written amendment to this Agreement.

E. Payment, Funding, and Award Considerations:

1. Fiscal Year. The funds utilized for this Agreement are from the State's 2022-2023 Fiscal Year, which begins July 1, 2022, and expires on June 30, 2023.
2. Funding Awards. Pursuant to section 215.971, F.S., if funding is provided to the Grantee under this Agreement pursuant to Attachment A.2 – Funding Statement of Work, the following applies:
 - a. The Grantee may only expend funding under this Agreement for allowable costs resulting from obligations incurred during the performance period.
 - b. The Grantee shall refund to the Department any balance of unobligated funds that was advanced or paid to the Grantee.
 - c. The Grantee shall refund to the Department all funds paid in excess of the amount to which the Grantee or its subrecipients are entitled under the terms and conditions of the Agreement.
3. Services, Licenses, or Commodities Awards. If applicable, the Grantee agrees to implement services, licenses, or commodities described in Attachment A.1 – Solution Statement of Work, according to the Final Implementation Plan(s) as executed by the Parties.

All use of the items described in Attachment A.1 – Solution Statement of Work are subject to the terms and conditions of the DSA and applicable riders attached thereto. If awarded funding and the Grantee desires to integrate purchased services, licenses, or commodities with the State Cybersecurity Operations Center, a DSA shall be separately executed for such.

As this Agreement will need to be entered prior to the procurement of the awarded services, licenses, or commodities, the availability of such awarded services, licenses, or commodities may be affected and are subject to change. If such changes are required, the Department will work with the Grantee to amend this Agreement. Such limitations do not apply for funding awards.

4. State Financial Assistance. In accordance with section 215.971(1), Florida Statutes (F.S.), the Grantee may utilize any provided commodities or services only in accordance with this Agreement.
5. Payment Process. The Department agrees to purchase all commodities or services awarded to the Grantee on behalf of the Grantee as described in Attachment A.1 – Solution Statement of Work. For funding awards, please see Attachment A.2 –Funding Statement of Work.

F. Compliance with Law:

1. Applicable Law. The Parties shall comply with the applicable state and federal laws, rules, regulations, and policies, including, but not limited to, those identified in this Agreement.
2. Governing Law. The Grantee agrees that this Agreement is entered into in the State of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws, rules, and regulations of the State. Each Party shall perform its obligations herein in accordance with the terms and conditions of this Agreement. Without limiting the provisions of Section Q, Dispute Resolution, the exclusive venue of any legal or equitable action that arises out of or relates to the Agreement shall be the appropriate State court in Leon County, Florida; in any such action, the Parties waive any right to jury trial.
3. Ethics. The Grantee shall comply with the requirements of sections 11.062 and 216.347, F.S. The Grantee shall not, in connection with this or any other agreement with the State, directly or indirectly:
 - a. offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or
 - b. offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of this subsection b, "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

Upon request of the Department's Inspector General, or other authorized State official, the Grantee shall provide any type of information the Inspector General deems relevant to the Grantee's integrity or responsibility. Such information may include, but shall not be limited to, the Grantee's business or financial records, documents, or files of any type or form that refer to or relate to this Agreement. The Grantee shall retain such records in accordance with the record retention requirements of Part V of Attachment B, Audit Requirements for Awards of State and Federal Financial Assistance.

4. Advertising. Subject to Chapter 119, F.S., the Grantee shall not publicly disseminate any information concerning this Agreement without prior written approval from the Department, including, but not limited to, mentioning this Agreement in a press release or other promotional material, identifying the Department or the State as a reference, or otherwise linking the Grantee's name and either a description of the Agreement or the name of the Department or the State in any material published, either in print or electronically, to any entity that is not a Party to this Agreement, except potential or actual authorized distributors, dealers, resellers, or service representatives.
5. Conflict of Interest. This Agreement is subject to Chapter 112, F.S. The Grantee shall disclose the name of any officer, director, employee, or other agent who is also an employee of the State. The Grantee shall also disclose the name of any State employee who owns, directly or indirectly, more than a five percent (5%) interest in the Grantee or its affiliates.
6. Records Retention. The Grantee shall retain all records made or received in conjunction with the Agreement for the longer of five (5) years after the end of the Agreement period and all pending matters or the period required by the General Records Schedules

maintained by the Florida Department of State (available at: <https://dos.myflorida.com/media/703328/gsl-sl-2020.pdf>). If the Grantee's record retention requirements terminate prior to the requirements stated herein, the Grantee may meet the Department's record retention requirements for this Agreement by transferring its records to the Department at that time, and by destroying duplicate records in accordance with section 501.171, F.S., and, if applicable, section 119.0701, F.S. The Grantee shall adhere to established information destruction standards such as those established by the National Institute of Standards and Technology Special Publication 800-88, "Guidelines for Media Sanitization" (2014). See <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-88r1.pdf>.

7. MyFloridaMarketPlace (MFMP). Disbursements under this Agreement are disbursements of State financial assistance to a recipient as defined in section 215.97, F.S., and are exempt from the MFMP Transaction Fee pursuant to Rule 60A-1.031(6)(d), F.A.C. The Department, on behalf of the Grantee, will process payments for commodities or services awarded through MFMP.

G. Recoupment of Funds:

1. Notwithstanding the damages limitations of Section S, Limitation of Liability, if the Grantee's non-compliance with any provision of the Agreement results in additional costs or monetary loss to the Department or the State, the Department can recoup the costs or losses from monies owed to the Grantee under this Agreement or any other agreement between the Grantee and any State entity. In the event that the discovery of additional costs or losses arises when no monies are available under this Agreement or any other agreement between the Grantee and any State entity, the Grantee shall repay such costs or losses to the Department in full within thirty (30) days from the date of discovery or notification, unless the Department agrees, in writing, to an alternative timeframe. The Department shall not be liable for any penalties or costs associated with the Grantee's misuse of the awarded services, licenses, or commodities.
2. If the Grantee or its independent auditor discovers that an overpayment has been made, the Grantee shall repay said overpayment within forty (40) calendar days without prior notification from the Department. In the event that the Department first discovers an overpayment has been made, the Department will notify the Grantee in writing. Should repayment not be made in a timely manner, the Department shall be entitled to charge interest at the lawful rate of interest on the outstanding balance beginning forty (40) calendar days after the date of notification or discovery. Refunds should be sent to the Department's Agreement Manager and made payable to the "Department of Management Services." If this Agreement is terminated for cause, the Department, at its discretion, may require that the Grantee return to the Department any funds that were used for purposes that are considered ineligible under this Agreement.

H. Audits and Records:

1. Representatives of the Department, including the State's Chief Financial Officer, the State's Auditor General, and representatives of the federal government, shall have access to any of the Grantee's books, documents, papers, and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.
2. The Grantee shall maintain books, records, and documents in accordance with the generally accepted accounting principles to sufficiently and properly reflect all services, licenses, or commodities received by the Department under this Agreement.

3. The Grantee shall comply with all applicable requirements of section 215.97, F.S., and Attachment B, Audit Requirements for Awards of State and Federal Financial Assistance. If the Grantee is required to undergo an audit, the Grantee shall disclose all related party transactions to the auditor.
4. The Grantee shall retain all its records, financial records, supporting documents, statistical records, and any other documents, including electronic storage media, pertinent to this Agreement in accordance with the record retention requirements of Part V of Attachment B, Audit Requirements for Awards of State and Federal Financial Assistance. The Grantee shall cooperate with the Department to facilitate the duplication and transfer of such records or documents upon the Department's request.
5. If awarded services, licenses, or commodities described in Attachment A.1, Solution Statement of Work, the Grantee shall include records of the start and end dates for all tasks in the Final Implementation Plan(s). Additional requirements may be incorporated in the Final Implementation Plan(s).
6. The Grantee shall include the aforementioned audit and recordkeeping requirements in all approved subrecipient contracts and assignments.

I. Public Records and Records Production:

1. Identification and Protection of Confidential Information. Article 1, section 24, Florida Constitution, guarantees every person access to all public records, and section 119.011, F.S., provides a broad definition of "public record." As such, records submitted to the Department (or any other State agency) are public records and are subject to disclosure unless exempt from disclosure by law. The following records for agencies, as "agency" is defined in section 119.011(2), F.S., are confidential and exempt pursuant to section 119.0725, F.S.:
 - a. cybersecurity insurance limits and deductibles;
 - b. information relating to critical infrastructure;
 - c. incident reporting information pursuant to sections 282.318 and 282.3185, F.S.;
 - d. network schematics;
 - e. hardware and software configurations; and
 - f. encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches.

If the Grantee considers any portion of other records it provides to the Department (or any other State agency) to be trade secret or otherwise confidential or exempt from disclosure under Florida or federal law, the Grantee shall mark the document as "confidential" and simultaneously provide the Department (or other State agency) with a separate, redacted copy of the record. Such records and those records made confidential and exempt pursuant to section 119.0725, F.S., shall be considered "Confidential Information." For each portion redacted, the Grantee shall describe in writing the grounds for claiming the exemption, including the specific statutory citation for such exemption. The Grantee shall only redact portions of records that it claims are Confidential Information.

In the event of a request for public records pursuant to Chapter 119, F.S., the Florida Constitution, or other authority, to which records that are marked as "confidential" are responsive, the Department will provide the Grantee-redacted copy to the requestor. If a requestor asserts a right to the redacted Confidential Information, the Department will notify the Grantee such an assertion has been made. It is the Grantee's responsibility to

take the appropriate legal action to assert that the information in question is exempt from disclosure under Chapter 119, F.S., or other applicable law.

If the Department becomes subject to a demand for discovery or disclosure of documents that are marked as "confidential" in a legal proceeding, the Department will give the Grantee notice of the demand or request. The Grantee shall take the appropriate legal action in response to the demand and to defend its claims of confidentiality. If the Grantee fails to take appropriate and timely action to protect the records it has designated as Confidential Information, the Grantee agrees that the Department is permitted to treat those records as not confidential and the Department is permitted to provide the unredacted records to the requester and the Grantee agrees not to pursue any suit, action, or claim, including for damages, against the Department or its employees, attorneys, agents or volunteers.

The Grantee shall protect, defend, and indemnify the Department from all suits, claims, actions, demands, liability, costs, fines, and attorneys' fees arising from or relating to the Grantee's determination that the redacted portions of its records are Confidential Information, including all costs, including attorney's fees, incurred regarding the entitlement or amount of such attorney's fees. If the Grantee fails to submit a redacted copy in accordance with this section, of information it claims is Confidential Information, the Department is authorized to produce the entire record submitted to the Department, including those records marked "confidential," in response to a public records request for, or demand for discovery or disclosure of, these records and the Grantee agrees not to pursue any suit, action, or claim, including for damages, against the Department or its employees, attorneys, agents, or volunteers.

2. Inspection of Records. In accordance with section 216.1366, F.S., the Department is authorized to inspect the: (a) financial records, papers, and documents of the Grantee that are directly related to the performance of this Agreement or the expenditure of State funds; and (b) programmatic records, papers, and documents of the Grantee which the Department determines are necessary to monitor the performance of this Agreement or to ensure that the terms of this Agreement are being met. The Grantee shall provide such records, papers, and documents requested by the Department within ten (10) Business Days after the request is made.

J. Non-Discrimination:

The Grantee shall not unlawfully discriminate against any individual employed in the performance of this Agreement due to race, religion, color, sex, physical handicap unrelated to such person's ability to engage in this work, national origin, ancestry, or age. The Grantee shall provide a harassment-free workplace, and any allegation of harassment shall be given priority attention and action.

K. Duty of Continuing Disclosure of Legal Proceedings and Instances of Fraud:

1. The Grantee shall provide written notice to the Department disclosing any criminal litigation, investigation, or proceeding that arises during the Agreement period involving the Grantee except where the Grantee is involved in a prosecutorial or administrative capacity, or, to the extent the Grantee is aware, any of the Grantee's subrecipients or contractors (or any of the foregoing entities' current officers or directors). The Grantee shall also provide written notice to the Department disclosing any civil litigation, arbitration, or proceeding that arises during the Agreement period that is related to or involves any services, licenses, or commodities under the Agreement, to which the Grantee (or, to the

extent the Grantee is aware, any subrecipient or contractor hereunder) is a party, and which:

- a. might reasonably be expected to adversely affect the viability or financial stability of the Grantee or any subrecipient or contractor hereunder; or
- b. involves a claim or written allegation of fraud against the Grantee, or any subrecipient or contractor hereunder, by a governmental or public entity arising out of business dealings with governmental or public entities.

All notices under this section must be provided to the Department within thirty (30) business days following the date that the Grantee first becomes aware of any such litigation, investigation, arbitration, or other proceeding (collectively, a "Proceeding"). Details of settlements that are prevented from disclosure by the terms of the settlement must be annotated as such.

2. This duty of disclosure applies to each officer and director of the Grantee, subrecipients, or contractors when any proceeding relates to the officer's or director's business or financial activities.
3. Instances of Grantee operational fraud or criminal activities, regardless of whether a legal proceeding has been initiated, shall be reported to the Department's Agreement Manager within twenty-four (24) hours of the Grantee being made aware of the incident.
4. The Grantee shall promptly notify the Department's Grant Manager of any Proceeding relating to or affecting the Grantee's, subrecipient's, or contractor's business. If the existence of such Proceeding causes the State to conclude that the Grantee's ability or willingness to perform the Agreement is jeopardized, the Grantee shall be required to provide the Department's Grant Manager all reasonable assurances requested by the Department to demonstrate that:
 - a. the Grantee will be able to perform the Agreement in accordance with its terms and conditions; and
 - b. the Grantee and/or its employees, agents, subrecipients, or contractor(s) have not and will not engage in conduct in performance under the Agreement that is similar in nature to the conduct alleged in such Proceeding.

L. Assignments, Subgrants, and Contracts:

1. Unless otherwise specified in either version of Attachment A, Statement of Work, or through prior written approval of the Department, the Grantee may not: 1) subgrant any of the services, licenses, or commodities provided to the Grantee by the Department under this Agreement; 2) contract its duties or responsibilities under this Agreement out to a third party; or 3) assign, transfer, or sell any of the Grantee's rights or responsibilities or granted commodities and services hereunder, unless specifically permitted by law to do so. Any such subgrant, contract, or assignment occurring without the prior approval of the Department shall be null and void. In the event the Department approves transfer of the Grantee's obligations, the Grantee remains responsible for all work performed and all expenses incurred in connection with the Agreement. In addition, this Agreement shall bind the successors, assigns, and legal representatives of the Grantee, and of any legal entity that succeeds the Grantee, to the Grantee's obligations to the Department.
2. The Grantee agrees to be responsible for all work performed in fulfilling the obligations of this Agreement.

3. The Grantee agrees that the Department may assign or transfer its rights, duties, or obligations under this Agreement to another governmental entity upon giving prior written notice to the Grantee.

M. Intellectual Property Rights:

Where activities supported by this Agreement result in the creation of intellectual property rights, the Grantee shall notify the Department, and the Department will determine whether the Grantee will be required to grant the Department a perpetual, irrevocable, royalty-free, nonexclusive license to use, and to authorize others to use for State government purposes, any resulting patented, copyrighted, or trademarked work products developed under this Agreement.

N. Independent Contractor Status:

It is mutually understood and agreed to that at all times during the Grantee's performance of its duties and responsibilities under this Agreement that Grantee is acting and performing as an independent contractor. The Department shall neither have nor exercise any control or direction over the methods by which the Grantee shall perform its work and functions other than as provided herein. Nothing in this Agreement is intended to or shall be deemed to constitute a partnership or joint venture between the Parties.

1. The Grantee (and its officers, agents, employees, subrecipients, contractors, or assignees), in performance of this Agreement, shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the State. Further, unless specifically authorized to do so, the Grantee shall not represent to others that, as the Grantee, it has the authority to bind the Department or the State.
2. Unless the Grantee is a State agency, neither the Grantee nor its officers, agents, employees, subrecipients, contractors, or assignees, are entitled to State retirement or State leave benefits, or to any other compensation of State employment as a result of performing the duties and obligations of this Agreement.
3. The Grantee agrees to take such actions as may be necessary to ensure that each subrecipient or contractor will also be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State.
4. Unless agreed to by the Department in either versions of Attachment A, Statement of Work, the Department will not furnish services of support (e.g., office space, office supplies, telephone service, secretarial, clerical support, etc.) to the Grantee or its subrecipient, contractor, or assignee.
5. The Department shall not be responsible for withholding taxes with respect to the Grantee's compensation hereunder. The Grantee shall have no claim against the Department for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, reemployment assistance benefits, or employee benefits of any kind. The Grantee shall ensure that its employees, subrecipients, contractors, and other agents, receive benefits and necessary insurance (health, workers' compensation, reemployment assistance benefits) from an employer other than the State.
6. At all times during the Agreement period, the Grantee must comply with the reporting and Reemployment Assistance contribution payment requirements of chapter 443, F.S.

O. Entire Agreement:

This Agreement, including all referenced attachments and exhibits, embodies the entire agreement of the Parties. There are no other provisions, terms, conditions, or obligations. This

Agreement supersedes all previous oral or written communications, representations, or agreements on this subject.

P. Termination:

1. Termination for Failure to Implement. For awarded services, licenses or commodities under Attachment A.1 – Statement of Work, if the Grantee does not approve a Final Implementation Plan within 15 calendar days of purchase order issuance for the awarded solutions, this Agreement may be terminated by the Department, at its sole discretion.
2. Termination Due to the Lack of Funds. The funds utilized for this Agreement are from the State's 2022-2023 Fiscal Year, which begins July 1, 2022, and expires on June 30, 2023. If funds become unavailable for the Agreement's purpose, such event will not constitute a default by the Department or the State. The Department agrees to notify the Grantee in writing at the earliest possible time if funds are no longer available. In the event that any funding identified by the Grantee as funds to be provided for completion of the project as described herein becomes unavailable, including if any State funds upon which this Agreement depends are withdrawn or redirected, the Department may terminate this Agreement by providing written notice to the Grantee. The Department will be the final authority as to the availability of funds.
3. Termination for Cause. The Department may terminate the Agreement if the Grantee fails to:
 - a. satisfactorily complete the deliverables within the time specified in the Agreement;
 - b. maintain adequate progress, thus endangering performance of the Agreement;
 - c. honor any term of the Agreement; or
 - d. abide by any statutory, regulatory, or licensing requirement.

The Grantee shall continue to perform any work not terminated. The Department's rights and remedies in this clause are in addition to any other rights and remedies provided by law or under the Agreement. The Grantee shall not be entitled to recover any cancellation charges or lost profits.

4. Termination for Convenience. The Department may terminate this Agreement, in whole or in part, by providing written notice to the Grantee that the Department determined, in its sole discretion, it is in the State's interest to do so. The Grantee shall not furnish any product or continue services after the specified termination date in the Department's notice of termination, except as necessary to complete the continued portion of the Agreement, if any. The Grantee will not be entitled to recover any cancellation charges or lost profits.
5. Grantee's Responsibilities upon Termination. If the Department provides a notice of termination to the Grantee, except as otherwise specified by the Department in that notice, the Grantee shall:
 - a. Stop work under this Agreement on the date and to the extent specified in the notice.
 - b. Complete performance of such part of the work that has not been terminated by the Department, if any.
 - c. Take such action as may be necessary, or as the Department may specify, to protect and preserve any property which is in the possession and custody of the Grantee, and in which the Department has or may acquire an interest.
 - d. Transfer, assign, and make available to the Department all property and materials belonging to the Department upon the effective date of termination of this Agreement.

No extra compensation will be paid to the Grantee for its services in connection with such transfer or assignment.

Q. Dispute Resolution:

Disputes concerning performance under the Agreement will be decided by the Department, who shall reduce the decision to writing and serve a copy to the Grantee. In the event a Party is dissatisfied with the dispute resolution decision, jurisdiction for any dispute arising under the terms of the Agreement will be in State courts, and the venue will be in the Second Judicial Circuit, in and for Leon County.

Except as otherwise provided by law, the Parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

R. Indemnification:

1. The Grantee shall be fully liable for the actions of its agents, employees, partners, subrecipients, or contractors and shall fully indemnify, defend, and hold harmless the State and the Department, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by the Grantee, its agents, employees, partners, subrecipients, or contractors provided, however, that the Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or the Department.
2. Further, the Grantee shall fully indemnify, defend, and hold harmless the State and the Department from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret, or intellectual property right provided, however, that the foregoing obligation shall not apply to the Department's misuse or modification of the Grantee's products or the Department's operation or use of the Grantee's products in a manner not contemplated by the Agreement. The Department will not be liable for any royalties.
3. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by the State or the Department in any legal action without the Grantee's prior written consent, which shall not be unreasonably withheld.
4. For the avoidance of doubt, as the Grantee is a subdivision, as defined in section 768.28(2), F.S., pursuant to section 768.28(19), F.S., neither Party indemnifies nor insures or assumes any liability to the other Party for the other Party's negligence. Notwithstanding anything to the contrary in this section R., indemnification by either Party for tort claims is limited to the amounts prescribed in section 768.28, F.S., plus the Party's reasonable attorneys' fees.

S. Limitation of Liability:

Unless otherwise specifically enumerated in this Agreement, no Party shall be liable to the other Party for special, indirect, punitive, or consequential damages, including lost data or records (unless the Agreement requires the Grantee to back-up data or records), even if the Party has been advised that such damages are possible. No Party shall be liable to the other Party for lost profits, lost revenue, or lost institutional operating savings. The State and the Department may, in addition to other remedies available to them at law or in equity and upon notice to the Grantee,

retain such monies from amounts due the Grantee as may be necessary to satisfy any claim for damages, penalties, costs, and the like asserted by or against them. Except as otherwise provided in this Agreement or the Data Sharing Agreement or its attachments or Riders, the Department is not liable for unauthorized access to information except as directly attributable to the actions of the Department. For all claims against Grantee under this Agreement, and regardless of the basis on which the claim is made, Grantee's liability under this Agreement for direct damages shall be limited to the dollar value of this Agreement. This limitation shall not apply to claims arising under the Indemnity paragraphs contained in this Agreement.

T. Force Majeure and Notice of Delay from Force Majeure:

Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor caused by the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subrecipients, contractors, or suppliers if no alternate source of supply is available. However, in the event a delay arises from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting damages, costs, delays, or disruptions to the project in accordance with the Party's performance requirements under this Agreement.

In the case of any delay the Grantee believes is excusable under this section, the Grantee shall provide written notice to the Department describing the delay or potential delay and the cause of the delay within: ten (10) calendar days after the cause that creates or will create the delay first arose (if the Grantee could reasonably foresee that a delay could occur as a result); or five (5) calendar days after the date the Grantee first had reason to believe that a delay could result (if the delay is not reasonably foreseeable). **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this section is a condition precedent to such remedy.

The Department, in its sole discretion, will determine if the delay is excusable under this section and will notify the Grantee of its decision in writing. The Grantee shall not assert a claim for damages, other than for an extension of time, against the Department. The Grantee will not be entitled to an increase in the Agreement price or payment of any kind from the Department for any reason. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this section, after the causes have ceased to exist, the Grantee shall resume performance, unless the Department determines, in its sole discretion, that the delay will significantly impair the ability of the Grantee to timely complete its obligations under this Agreement, in which case, the Department may terminate the Agreement in whole or in part.

U. Mandatory Disclosure Requirements:

1. Convicted Vendor List. The Grantee has a continuous duty to disclose to the Department if the Grantee or any of its affiliates, as defined by section 287.133(1)(a), F.S., are placed on the convicted vendor list. Pursuant to section 287.133(2)(a), F.S.: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list."

2. Discriminatory Vendor List. The Grantee has a continuous duty to disclose to the Department if the Grantee or any of its affiliates, as defined by section 287.134(1)(a), F.S., are placed on the discriminatory vendor list. Pursuant to section 287.134(2)(a), F.S.: "An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity."
3. Antitrust Violator Vendor List. The Grantee has a continuous duty to disclose to the Department if the Grantee or any of its affiliates, as defined by section 287.137(1)(a), F.S., are placed on the antitrust violator vendor list. Pursuant to section 287.137(2)(a), F.S.: "A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity."
4. Foreign Gifts and Contracts. The Grantee shall comply with any applicable disclosure requirements in section 286.101, F.S. Pursuant to section 268.101(7), F.S.: "In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

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IN WITNESS WHEREOF, the Parties agree to the terms and conditions of this Agreement and have duly authorized their respective representatives to sign it on the dates indicated below.

Grantee:

Department of Management Services:

City of Pensacola

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT A.1 SOLUTION STATEMENT OF WORK

1. Scope of Work.

Pursuant to Chapter 2022-156, Laws of Florida, Specific Appropriation 2944A, the Parties agree that the Department shall, on behalf of the Grantee, expend funds for the provision of services, licenses, or commodities awarded to the Grantee to be utilized for cybersecurity technical assistance purposes. The Grantee is being granted assistance in the form of services, licenses, or commodities to enhance its cybersecurity framework, to identify and mitigate risks, and to protect its infrastructure from threats through Florida's Local Government Cybersecurity Grant Program (the "Project"). The Florida Local Government Cybersecurity Grant is a competitive grant program to provide funding for cybersecurity technical assistance to local Florida governments to enhance their cybersecurity capabilities.

2. Awarded Capabilities.

The Department shall offer one (1) or more solutions to the Grantee for the following capabilities:

Endpoint-Based Asset Discovery (Agent); Network-Based Asset Discovery (Agentless);
Security Operations Platform

Note: The Department will make its best effort to award the Grantee's preferred solution per capability. However, the Department can only contract for a limited number of solutions based on best value, technical acceptability, and operational volume.

3. Grantee Responsibilities.

The Grantee shall complete the Project in accordance with the requirements set forth in this Agreement and any applicable local, State, and federal laws and regulations. The Grantee is solely responsible for ensuring that any provided solutions are compliant with applicable state and federal laws and regulations based on Grantee's intended use, including, but not limited to, Health Insurance Portability and Accountability Act, Family Educational Rights and Privacy Act, Driver Privacy Protection Act, and General Data Protection Regulation.

4. Department Responsibilities.

The Department shall review Grantee reports and other records and reconcile them to ensure that the requirements of section 215.971, F.S., pertaining to agreements funded with State financial assistance are fulfilled.

5. Deliverables.

The Grantee shall complete the following deliverable(s) on the dates specified, but Deliverables 1-3 shall be completed by June 30, 2023:

Deliverables		
No.	Tasks	Performance Measures and Due Dates
1	Execute this Grant Agreement.	The Grantee must execute the Grant Agreement within 15 calendar days of award.
2	Participate in a kick-off meeting with FL[DS] and the solution provider.	The Grantee shall participate in the kick-off meeting with FL[DS] and the solution provider within five (5) calendar days of Purchase Order (PO) issuance.
3	Approve Final Implementation Plan(s) for solutions awarded.	The Grantee must coordinate with the solution provider(s) to review the Implementation Plan(s). If the Grantee chooses to proceed with a solution, the Grantee must approve the Final Implementation Plan within five (5) calendar days of the vendor providing the draft Implementation Plan.
4	Complete all tasks in accordance with the Final Implementation Plan(s).	The Grantee shall provide all necessary resources to execute tasks assigned to the Grantee in the Final Implementation Plan(s).
5	Notify the Department's Grant Manager of implementation completion per the Final Implementation Plan.	The Grantee shall notify the Department's Grant Manager in writing within 10 calendar days of implementation completion.

6. Reporting Requirements.

The Department may request status meetings for the Grantee to report on the implementation status, as necessary, with the Grantee's Grant Manager.

The Department may, at its sole discretion, develop a format and deadlines the Grantee must comply with when reporting the information above. The Grantee's failure to confirm completion of the Final Implementation Plan(s) or comply with the reporting format and schedule may result in termination of the awarded solutions.

7. Performance Standards.

The Grantee shall timely perform all tasks and provide deliverables as set forth in this Agreement. The Department is entitled at all times, upon request, to be advised as to the status of work being done by the Grantee, on behalf of the grantee, and the details thereof.

If the Department determines that there is a performance deficiency that requires correction by the Grantee, then the Department shall notify the Grantee. The Grantee shall make the correction within a timeframe specified by the Department. The Grantee shall provide the Department with a corrective action plan describing how the Grantee will address all performance deficiencies identified by the Department. If the corrective action plan is unacceptable to, or implementation of the plan fails to remedy the performance deficiencies, the Grantee shall work cooperatively with the Department to modify the corrective action plan or to remedy the deficiencies. Additionally, if a performance deficiency is attributable to the

performance of a contractor or subcontractor of the Grantee, the Grantee shall take all actions available to it to enforce financial consequences in its contract with the contractor or subcontractor or to pursue damages.

8. Financial Consequences for Failure to Timely and Satisfactorily Perform.

Violations of this Agreement or applicable licenses, or failure to provide the deliverables, may result, except as detailed above, in termination of access to awarded solutions and require immediate removal of all software, hardware, or related services. Grantee may be subject to financial assessments related to such violations.

This provision for financial consequences shall not affect the Department's right to terminate the Agreement as provided elsewhere in the Agreement.

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Department of Financial Services

Division of Accounting and Auditing – Bureau of Auditing

Attachment B: AUDIT REQUIREMENTS FOR AWARDS OF STATE AND FEDERAL FINANCIAL ASSISTANCE

The administration of resources awarded by the Department of Management Services (Department) to the Grantee may be subject to audits and/or monitoring by the Department, as described in this section.

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 staff, limited scope audits as defined by 2 CFR §200.425, or other procedures. By entering into this agreement, the Grantee agrees to comply and cooperate with any monitoring procedures or processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Grantee is appropriate, the Grantee agrees to comply with any additional instructions provided by Department staff to the Grantee regarding such audit. The Grantee 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 Grantee is a state or local government or a nonprofit organization as defined in 2 CFR §200.90, §200.64, and §200.70.

1. A Grantee 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 form lists the federal resources awarded through the Department by this agreement. In determining the federal awards expended in its fiscal year, the Grantee shall consider all sources of federal awards, including federal resources received from the Department. 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 Grantee 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 Grantee shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR §§200.508-512.
3. A Grantee 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 Grantee 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 Grantee resources obtained from other than federal entities).

Part II: State Funded

1. In the event that the Grantee expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such Grantee (for fiscal years ending June 30,

AUDIT REQUIREMENTS FOR AWARDS OF
STATE AND FEDERAL FINANCIAL ASSISTANCE

2017, and thereafter), the Grantee 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 form lists the state financial assistance awarded through the Department this agreement. In determining the state financial assistance expended in its fiscal year, the Grantee shall consider all sources of state financial assistance, including state financial assistance received from the Department, 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 Grantee 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 Grantee 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 Grantee 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 Grantee's resources obtained from other than state entities).

Part III: Other Audit Requirements

N/A

Part IV: 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 form shall be submitted, when required by 2 CFR §200.512, by or on behalf of the Grantee directly to 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 form shall be submitted by or on behalf of the Grantee directly to each of the following:

- a. The Department at each of the following addresses:

Electronic copies (preferred): Cybersecuritygrants@digital.fl.gov

or

Paper copies:

Grant Manager

Florida Digital Service

Department of Management Services

AUDIT REQUIREMENTS FOR AWARDS OF
STATE AND FEDERAL FINANCIAL ASSISTANCE

2555 Shumard Oaks Blvd, Suite 200
Tallahassee, Florida 32399
Email: Cybersecuritygrants@digital.fl.gov

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 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. Grantees, when submitting financial reporting packages to the Department 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 Grantee in correspondence accompanying the reporting package.

Part V: Record Retention

The Grantee shall retain sufficient records demonstrating its compliance with the terms of the award(s) and this agreement for a period of five (5) years from the date the audit report is issued, and shall allow the Department, or its designee, the CFO, or Auditor General access to such records upon request. The Grantee shall ensure that audit working papers are made available to the Department, or its designee, the CFO, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by the Department.

AUDIT REQUIREMENTS FOR AWARDS OF
STATE AND FEDERAL FINANCIAL ASSISTANCE

EXHIBIT 1

**Federal Resources Awarded to the Grantee
Pursuant to this Agreement Consist of the Following:**

1. Federal Program A:

N/A

2. Federal Program B:

N/A

**Compliance Requirements Applicable to the Federal Resources
Awarded Pursuant to this Agreement are as Follows:**

1. Federal Program A:

N/A

2. Federal Program B:

N/A

**State Resources Awarded to the Grantee
Pursuant to this Agreement Consist of the Following:**

Matching Resources for Federal Programs:

1. Federal Program A:

N/A

2. Federal Program B:

N/A

Subject to Section 215.97, F.S.:

1. State Project A: Cybersecurity Technical Assistance Grants

State Awarding Agency: Florida Department of Management Services

Catalog of State Financial Assistance Title and Number: 72.009

Amount: \$_____

2. State Project B:

N/A

**Compliance Requirements Applicable to State Resources Awarded
Pursuant to this Agreement Are as Follows:**

The compliance requirements are as stated in Grant Agreement No. DMS-22/23-436 between the Grantee and the Department, entered in State fiscal year 2022-23.

Attachment C

Grantee Data Sharing Agreement

Purposes

Grantee desires to utilize software licenses, applications, and solutions, as applicable, in connection with the attached Exhibit A – Cybersecurity Incident Response Rider and Exhibit B – Solution Rider, incorporated herein. This DSA describes the terms and conditions for the use of software licenses, applications, and solutions and protection of Covered Data, including requirements to safeguard the availability, confidentiality, and integrity of Covered Data in furtherance of the security objectives of Chapter 282, F.S.

I. Definitions

- A. Access – The authorization to inspect, review, transmit, duplicate, communicate with, retrieve data from, or otherwise make use of any Covered Data, regardless of type, form, or nature of storage. "Access" to a computer system or network includes local and remote access, as applicable.
- B. Authorized Purpose – The purpose(s) for which an Authorized Third Party may access, use, or disclose the Covered Data.
- C. Authorized Third Party – An individual, state agency, other Florida state or local governmental entity, or a private sector contractor or service provider of the Grantee which receives Covered Data.
- D. Authorized User – An individual granted Access or to use Software Entitlement by either FL[DS] or Grantee.
- E. County and Municipality Cybersecurity Technical Assistance Program ("the Program") – refers to the grant program established by the 2022-2023 General Appropriations Act to enhance county and municipal cybersecurity and protect the infrastructure of local governments from threats.
- F. Covered Data – The limited subset of security data that is derived from Grantee's use of any Software Entitlements as defined in the attached Rider(s); a Grantee's confidential or proprietary information; and personal information as defined under section 501.171, F.S., and any other applicable privacy or data breach notification laws as may exist.
- G. Data Breach – Either (1) any unauthorized access to, or use or disclosure of, Covered Data for any purpose other than as expressly permitted by this DSA or required by law; or (2) a breach of privacy or of the security of the Covered Data. Good faith access of data by an employee or agent of the Grantee does not constitute a breach of security, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use.
- H. DSA Coordinators – The individuals appointed by the signatories to this DSA as the point of contact for this DSA, who are responsible for ensuring that the Authorized Users comply with the activities identified herein.
- I. HIPAA - Health Insurance Portability and Accountability Act of 1996.

- J. Information Technology (IT) Coordinators – The individuals appointed by the signatories to this DSA as responsible for data flow and other technology-related considerations under this DSA.
- K. Information Technology Resources – As defined in section 282.0041, Florida Statutes, the data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training. As used in this DSA, the term also includes the definition for “Information Technology,” as defined in section 282.0041, Florida Statutes, to add equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form.
- L. Software Entitlement – Proprietary software provided to the Grantee under the Agreement to satisfy provision of the solution(s) awarded to the Grantee, as identified in Attachment A.1.

II. Responsibilities of the Parties

- A. **Data Transmission.** Covered Data shall only be transmitted through secure file transfer protocol or other secure transmission methods utilizing a National Institute of Standards and Technology approved means of electronic encryption as well as password protection and in a file format and layout determined by FL[DS]. Covered Data shall not be transmitted via any other means, including electronic mail. If applicable to any transmission of the Covered Data, both transmitting and receiving Grantee shall completely and permanently remove Covered Data from any temporary transfer location within twenty-four (24) hours of receipt of the Covered Data.
- B. **Compliance with Applicable Laws.** Each Party covenants and agrees that, in the performance of this DSA, it shall comply with all applicable federal, state, and local laws, statutes, and regulations including, but not limited to, such laws set forth in Article VI as applicable to a Project and such other data privacy or security laws, all as they exist now and as they may be amended from time to time (“Applicable Laws”). In the event of any notice of a material violation of Applicable Laws, or an investigation into an alleged material violation, the affected Party shall promptly notify the other in writing of such notice.

The Parties further agree to follow and be bound by the terms and conditions of any policy decisions or directives from the federal and state agencies with jurisdiction over the use of the data described herein upon receipt of written notice directing that such rules, policy decisions, or directives apply to this DSA.

- C. **Compliance with Information Security Standards.** Each Party covenants and agrees to comply with Rule Chapter 60GG-2, Florida Administrative Code (“Security Standards”), with respect to its obligations under this DSA. Grantee shall implement the Security Standards with respect to its obligations under this DSA as an “Agency,” regardless of whether they meet the definition of “Agency” in Rule Chapter 60GG-2, Florida Administrative Code.

FL[DS], Grantee, and Authorized Third Parties shall implement reasonable and appropriate administrative, technical, and physical safeguards to maintain the security and protect the confidentiality, integrity, and availability of Access.

Grantee shall instruct all its Authorized Users with the opportunity for Access on the safeguards and requirements of the DSA and all applicable federal and state requirements.

- D. **HIPAA Business Associate Agreement.** To the extent that a Party is acting as a Business Associate (as defined by HIPAA) of the other Party, the Parties further agree to enter into a Business Associate Agreement as necessary, in the form of a mutually agreed-upon appendix to the DSA.
- E. **Incorporation and Compliance with Exhibits, Appendices and Riders, if Applicable.** The Project Riders, and any exhibits or appendices to this DSA are hereby incorporated and made a part hereof and are an integral part of this DSA. Each Rider, Exhibit, and Appendix attached hereto or referred to herein are hereby incorporated in and made a part of this DSA as if set forth in full herein.

III. **FL[DS] Role and Responsibilities**

- A. FL[DS] is responsible for:
 - 1. Processing Covered Data in accordance with the State Cybersecurity Act;
 - 2. Facilitating data sharing with the Grantee and/or an Authorized Third Party in accordance with this DSA;
 - 3. Providing the Grantee with the option to utilize Software Entitlements; and
 - 4. Protecting the integrity of Covered Data obtained by FL[DS] through Grantee's use of any of the Software Entitlements. FL[DS] will not disclose this Covered Data to any third party unless required by law or as otherwise authorized by Grantee.
- B. FL[DS] will only access, use, or disclose Covered Data, as permitted by Grantee, as required by Applicable Law, or as necessary for completion of its responsibilities under this DSA, including any Project Riders. FL[DS] will ensure that its Authorized Users only access, use, or disclose Covered Data, as permitted by Grantee, as required by Applicable Law, or as necessary for completion of its responsibilities for any Projects, as assigned by FL[DS].
- C. FL[DS] will exercise reasonable care and no less than the same degree of care FL[DS] uses to protect its own confidential information to prevent confidential information from being used in a manner that is not expressly a purpose authorized in this DSA or as required by Applicable Law.

IV. **Grantee's Role and Responsibilities**

- A. Covered Data is and shall remain the property of Grantee.

- B. Grantee is solely responsible for its Access to and use of Software Entitlements and Covered Data, including:
1. Ensuring a level of security appropriate to the risk in respect of Covered Data;
 2. Securing Grantee's and its Authorized Users' systems and devices that can Access FL[DS] systems and Software Entitlements and complying with the Security Standards;
 3. Selecting and/or ensuring that Grantee has selected its Authorized Users; activating and deactivating the Access, credentials, and privileges of its Authorized Users; and managing access controls to the FL[DS] system and Software Entitlements in a timely manner in accordance with the Security Standards;
 4. Securing the account authentication credentials, systems, and devices of Grantee personnel who the Grantee designates to be Authorized Users;
 5. Managing the compliance of its Authorized Users with the Grantee's established security measures and as required by Applicable Law;
 6. Maintaining audit logs, as deemed necessary by the Grantee to demonstrate compliance with its obligations under this DSA;
 7. Backing up Covered Data, if required by law or Grantee policy; and
 8. Ensuring that it and its Authorized Users remain in compliance with the terms and conditions of any Software Entitlements.
- C. FL[DS] is not responsible for, and has no obligation for:
1. Selecting or verifying Grantee's Authorized Users, activating or deactivating the Access or credentials of Authorized Users; or
 2. Protecting Covered Data that Grantee elects to store or transfer outside of FL[DS]'s and its sub-processors' systems (for example, offline or on-premises storage).

V. Unauthorized Disclosure/Data Breach

- A. In the event of a Data Breach of the Covered Data while in Grantee's (or an Authorized Third Party's) custody or control or as a result of Grantee's (or an Authorized Third Party's) access to or use of the Covered Data, which requires the provision of notice in accordance with section 501.171, F.S., or other Applicable Law (including, but not limited to, HIPAA), the Parties agree as follows:
1. Grantee shall notify FL[DS] of the Data Breach not more than 24 hours after discovery that a Data Breach has occurred or is reasonably likely to have occurred.
 2. Grantee (or its Authorized Third Party) shall be responsible for all costs related to the Data Breach including FL[DS]' and/or Grantee's (or an Authorized Third Party's) costs of complying with all legal requirements, including the requirements for Data Breach

notification under Applicable Law, as well as defending any claims, actions, or lawsuits related thereto.

3. If a Data Breach is subject to the notice provisions of section 501.171, F.S., or Applicable Law, the Parties agree to cooperate and work together to ensure full legal compliance and to provide breach notification to the extent required by Applicable Law. Grantee shall use its best and diligent efforts to identify the individuals entitled to receive notice of the Data Breach and obtain the names and mailing information of such individuals, so that FL[DS] and/or Grantee are able to distribute the notices within the legally required time periods. FL[DS] and/or Grantee, as applicable, shall bear its internal administrative and other costs incurred in identifying the affected individuals and their mailing information.
 4. In the event of a Data Breach, including the privacy or security of the Covered Data, while in the custody or control of the Grantee, if the Grantee must provide notice as a result of the requirements contained in section 501.171, F.S., or other Applicable Law, the Grantee shall submit a draft of the notice to FL[DS] for prior review and approval of the contents of the notice, prior to disseminating the notice. Such approval shall not be unreasonably delayed or withheld.
- B. If Grantee experiences a breach of the security of its systems that results in a breach of the security of FL[DS]'s systems ("FL[DS] Breach"), Grantee shall be responsible for all costs related to the FL[DS] Breach including FL[DS]'s costs of complying with all legal requirements, including any costs for data breach notification under section 501.171, F.S., or Applicable Law, as well as defending any claims, actions, or lawsuits against the FL[DS] related thereto. Grantee, at its own expense, shall cooperate fully with FL[DS] in the investigation, eradication, remediation, and recovery from the FL[DS] Breach.
- C. If FL[DS] experiences a breach of the security of its systems that results in a breach of the security of Grantee's systems ("Grantee Breach"), FL[DS] shall be responsible for all costs related to the Grantee Breach including Grantee's costs of complying with all legal requirements, including the requirements for data breach notification under section 501.171, F.S., or Applicable Law, as well as defending any claims, actions or lawsuits related thereto. FL[DS], at its own expense, shall cooperate fully with Grantee in the investigation, eradication, remediation, and recovery from the Grantee Breach.
- D. If either FL[DS] or Grantee is obligated under this Section to pay costs incurred by the other Party, the Party required to pay such costs shall submit a draft of the legal notifications and other public communications to the other Party for prompt review and approval of the contents prior to disseminating the notification or communication. Such approval shall not be unreasonably delayed or withheld.
- E. The Parties understand and agree the provisions of this DSA relating to the protection and security of the Covered Data constitute a material condition of this DSA.

VI. Additional Terms Applicable to Certain Circumstances.

- A. Grantee is responsible for their Covered Data and entering into any required additional agreements related thereto. Grantee shall provide the FL[DS] DSA Coordinator with written notice prior to granting Access to any of the data types listed in subsections B-E,

below, to FL[DS] or Software Entitlements. In the event of a conflict between the terms and conditions of this Article VI and the remainder of the DSA, the terms and conditions of Article VI shall control. Moreover, a Project may include the use of information described in more than one (1) of the provisions set forth in this Article VI, or it may include the use of information not described in this Article VI. In the event of a conflict between or among the terms and conditions of Subsections B, C, D or E of this Article VI, the more restrictive terms and conditions shall apply unless otherwise provided by Applicable Law or guidance by the applicable regulatory enforcement agencies or bodies.

- B. **CJIS.** The terms and conditions of this Section VI.B. apply when Covered Data involved in a Project includes criminal justice information.
1. CJIS Covered Data. Covered Data may also include, but shall not be limited to, CJIS Covered Data. For purposes of this DSA, CJIS Covered Data shall mean criminal justice information that is provided by the Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) system and that is necessary for law enforcement and civil agencies to perform their missions, including, but not limited to, biometric, identity history, biographic, property, and case/incident history data.
 2. Disclosure of CJIS Covered Data. The disclosure of CJIS Covered Data under the DSA, as modified by this section, is governed by the CJIS Security Policy, available at <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>. In accordance with the CJIS Security Policy and 28 CFR Part 20, use of the CJIS system under the DSA is restricted to: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, rehabilitation of accused persons or criminal offenders, and other legally authorized purposes.
 3. Training. The Parties agree to work together to provide Authorized Users with confidentiality, privacy, and security training regarding access, use, and disclosure requirements for the CJIS Covered Data under the CJIS Security Policy.
 4. Access Requirements. Unique authorization is required for Access to the CJIS Covered Data and must be properly authenticated and recorded for audit purposes, including CJIS security and other applicable audit requirements.
- C. **HIPAA and State Protected Health Information.** The terms and conditions of this Section VI.C. apply when Covered Data involved in a Project includes protected health information (PHI) and such other sensitive health information, the disclosure of which may be limited or restricted by law, including, but not limited to, mental health and drug and alcohol related information.
1. PHI Covered Data. Covered Data may also include, but shall not be limited to, PHI Covered Data. For purposes of this DSA, “PHI Covered Data” shall mean “protected health information” or “PHI,” as such term is defined by HIPAA. PHI shall include, but shall not be limited to, any other medical or health-related information that is afforded greater protection under more restrictive federal or state law, including, but not limited to, the Substance Abuse and Mental Health Services Act (SAMSHA), located at 42 C.F.R. Part 2, the Florida Mental Health Act (the Baker Act), located at Fla. Stat. § 394.451 – 394.47892, and the Hal S. Marchman Alcohol and Other Drug Services Act, located at Fla. Stat. § 397.301 et seq.

2. Disclosure of PHI Covered Data. The disclosure of PHI Covered Data under the DSA, as modified by this section, is governed by HIPAA and more restrictive federal or state law, as applicable. Accordingly, the disclosure of PHI Covered Data under the DSA is permitted only with the consent of the individual who is the subject of the PHI Covered Data, by court order that meets the requirements of applicable law, and for other purposes as permitted by Applicable Law.
 3. Business Associate Agreement. To the extent that FL[DS] is a “Business Associate” of Grantee, as such term is defined under HIPAA, the Parties agree to enter into a mutually agreeable Business Associate Agreement.
 4. Training. The Parties agree to work together to provide Authorized Users with confidentiality, privacy, and security training regarding access, use, and disclosure requirements for the PHI Covered Data under HIPAA and more restrictive federal or state law, to the extent applicable.
 5. Access Requirements. Unique authorization is required for Access and must be properly authenticated and recorded for audit purposes, including HIPAA audit requirements and other audit requirements under more restrictive federal or state law, to the extent applicable.
- D. **FERPA.** The terms and conditions of this Section VI.D. apply when Covered Data includes student education records as defined by the Family Educational Rights and Privacy Act, 20 USC §1232g, and its implementing regulations set forth at 34 CFR Part 99 (collectively, “FERPA”).
1. FERPA Covered Data. Covered Data may also include, but shall not be limited to, FERPA Covered Data. For purposes of this DSA, “FERPA Covered Data” shall mean student education records as defined by FERPA).
 2. Disclosure of FERPA Covered Data. The disclosure of FERPA Covered Data under the DSA, as modified by this section, is governed by FERPA. Accordingly, the disclosure of FERPA Covered Data under the DSA is permitted with parent or eligible student consent and, without such consent, in the following circumstances: (i) to school officials with legitimate educational interest; (ii) to other schools to which a student is transferring; (iii) to specified officials for audit or evaluation purposes; (iv) to appropriate parties in connection with financial aid to a student; (v) to organizations conducting certain studies for or on behalf of the school; (vi) to accrediting organizations; (vii) to comply with a judicial order or lawfully issued subpoena; (viii) to appropriate officials in cases of health and safety emergencies; (ix) to state and local authorities, within a juvenile justice system, pursuant to specific state law; and (x) as otherwise provided by FERPA.
 3. Training. The Parties agree to work together to provide Authorized Users with confidentiality, privacy, and security training regarding access, use, and disclosure requirements for the FERPA Covered Data under FERPA.
 4. Access Requirements. Unique authorization is required for Access and must be properly authenticated and recorded for audit purposes, including FERPA and any other applicable audit requirements.

E. **DPPA.** The terms and conditions of this Section VI.E. apply when Covered Data includes motor vehicle record information.

1. DPPA Covered Data. For purposes of the DSA, Covered Data may include, but shall not be limited to, DPPA Covered Data. For purposes of this DSA, "DPPA Covered Data" shall mean motor vehicle information as set forth in the Driver Privacy Protection Act, 18 U.S.C. § 2721 ("DPPA").
2. Disclosure of DPPA Covered Data. The disclosure of DPPA Covered Data under the DSA, as modified by this section, is governed by DPPA. DPPA prohibits the disclosure of personal information, as defined in 18 U.S.C. § 2725(3), that is contained in motor vehicle records, but such information may be used by any government agency, such as FL[DS] and Grantee, in carrying out its functions. Such personal information may not be re-disclosed by FL[DS] or Grantee, however, except in accordance with the permissible uses set forth at 18 U.S.C. § 2721(b). With certain limited exceptions, DPPA further prohibits the disclosure of highly restricted personal information, as defined in 18 U.S.C. § 2725(4), without the express consent of the individual who is the subject of such information. In accordance with section 119.0712(2)(d)(2), F.S., the emergency contact information contained in a motor vehicle record, without the express consent of the person to whom such emergency contact information applies, may be released only to: (a) law enforcement agencies for purposes of contacting those listed in the event of an emergency; or (b) a receiving facility, hospital, or licensed detoxification or addictions receiving facility pursuant to sections 394.463(2)(a) or 397.6772(1)(a), F.S., for the sole purpose of informing a patient's emergency contacts of the patient's whereabouts. E-mail addresses that are collected by the Florida Department of Highway Safety and Motor Vehicles also may not be disclosed pursuant to Section 119.0712(2)(c), F.S.
3. Training. The Parties agree to work together to provide Authorized Users with confidentiality, privacy, and security training regarding access, use, and disclosure requirements for the DPPA Covered Data under DPPA and the Florida Statutes referenced above.
4. Access Requirements. Unique authorization is required for Access and must be properly authenticated and recorded for audit purposes, including, but not limited to, compliance with these terms and conditions.

VII. Designation of DSA Coordinators

A. The Coordinators for this DSA are:

FL[DS] DSA Coordinator:

Policy Manager
2555 Shumard Oak Boulevard
Tallahassee, FL 32399
Telephone: 850-413-0604
Email: <mailto:Policy@digital.fl.gov>

FL[DS] IT Coordinator:

State Cybersecurity Information Security Officer
2555 Shumard Oak Boulevard
Tallahassee, FL 32399
Telephone: 850-413-0604
Email: Cyber@digital.fl.gov

Grantee's DSA Coordinator:

Name: Kevin Boyer
Organization: City of Pensacola
Mailing Address: 222 W Main St
City, Zip Code: Pensacola, 32502
Telephone: (850) 435-1822
Email: kboyer@cityofpensacola.com

Grantee's IT Coordinator:

Name: Stephen Ringl
Organization: City of Pensacola
Mailing Address: 222 W Main St
City, Zip Code: Pensacola, 32502
Telephone: (850) 436-5637
Email: sringl@cityofpensacola.com

B. Changes to the DSA and/or IT Coordinator designations may be accomplished by providing email change notification that is acknowledged by both Parties.

VIII. Inspection of Records

Each Party shall permit the other Party and any other applicable state and federal representatives with regulatory oversight over the other Party, or their designees, to conduct inspections described in this paragraph, or to make on-site inspections of records relevant to this DSA to ensure compliance with any state and federal law, regulation, or rule. Such inspections may take place with notice during normal business hours wherever the records are maintained. Each Party shall ensure a system is maintained that is sufficient to permit an audit of such Party's compliance with this DSA and the requirements specified above. Failure to allow such inspections constitutes a material breach of this DSA. This DSA may be terminated in accordance with Section VII.C. for a material breach.

IX. Grantee Additional Terms

- A. Contractors. Grantee shall ensure all contractors that have Access to Covered Data or Software Entitlements comply with all requirements of this DSA. The Software Entitlements shall not be Accessible by, or deployed on, Information Technology Resources not owned, employed, or controlled by Grantee.

RELEVANT FLORIDA STATUTES (2022)

Section 282.3185, Florida Statutes (F.S.), the “Local Government Cybersecurity Act,” directs the Florida Digital Service (FL[DS]) to provide training in cybersecurity to local governments, oversee their compliance in adopting cybersecurity standards, and to receive cybersecurity incident and ransomware event notifications through the State Cybersecurity Operations Center. Such incident reporting must also include “[a] statement requesting or declining assistance from the Cybersecurity Operations Center, the Cybercrime Office of the Department of Law Enforcement, or the sheriff who has jurisdiction over the local government.” S. 282.3185, F.S.

Under Specific Appropriation 2944A of the 2022-2023 General Appropriations Act, FL[DS] was directed to establish a competitive cybersecurity technical assistance grant program for municipalities and counties.

Section 119.0725, F.S., establishes that coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of information technology systems, operational technology systems, or data of entities subject to the requirements of section 119.07(1), F.S., and section 24(a), Article I of the State Constitution; information relating to existing or proposed information technology and operational technology systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health, or public safety; cybersecurity incident information reported under section 282.3185, F.S.; network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, if the disclosure of such information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information, whether physical or virtual, or information technology resources, which include an agency’s existing or proposed information technology systems; and the recordings and transcripts of public meetings where such information may be revealed are confidential and exempt, and such public meetings are exempt from section 286.011, F.S., and section 24(b), Article I of the State Constitution.

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Exhibit A

Cybersecurity Incident Response Rider

I. Definitions

In addition to the defined terms in the DSA, capitalized terms used herein have the meanings provided below:

- A. Cloud Console – The global administrative accounts for Software Entitlements directly managed and licensed by FL[DS].
- B. Customer Account – The accounts for Software Entitlements directly utilized by Grantee.
- C. Information Technology Resources – As defined in section 282.0041, Florida Statutes, data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training. As used in this IR Rider, the term also includes the definition for “Information Technology,” as defined in section 282.0041, Florida Statutes, to add equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form.
- D. Managing Organization – The entity managing the use of the Software Entitlements and their Cloud Consoles. As used in this IR Rider, the Managing Organization is FL[DS].
- E. Protected Grantee Data – Data, not including Telemetry Data, maintained and generated by Grantee, which shall not be Accessed or Accessible by, or sent to, Software Entitlements.
- F. Solution Data – Data, reports, or other information generated by Software Entitlements. This may be derived from, but does not include, Telemetry Data.
- G. Telemetry Data – Data generated by Grantee through automated communication processes from multiple data sources and processed by Software Entitlements.
- H. View - The permissions Grantee grants to FL[DS] to see Telemetry and Solutions Data provided to the Managing Organization by Customer Accounts. A View does not permit FL[DS] Access to Protected Grantee Data.

II. Purpose

FL[DS] and Grantee enter into this IR Rider to establish the terms and conditions for FL[DS] access to assist Grantee with responding to incidents.

III. Incident Response

A. **Incident Response Support.** As specified in section 282.3185(5), F.S., upon discovery of an incident, Grantee may request, or FL[DS] may offer to provide, incident response support. Access to Grantee Information Technology Resources shall be limited to the extent expressly agreed to by Grantee. Such Access and support are unilaterally terminable at any time by either Party. FL[DS] may establish, and Grantee shall comply with, protocols or procedures for reporting and requesting support for incidents under this IR Rider, responding to incidents, and the types of support available to be provided for an incident. Grantee shall mitigate the impact of the incident and preserve all relevant documents, records, and data. Grantee shall cooperate and coordinate with FL[DS] in responding to incidents where incident response support is received, including, but not limited to:

1. Assisting with any incident response related investigation by FL[DS];
2. Providing FL[DS] with physical access to the affected facilities and operations;
3. Facilitating interviews with Grantee personnel; and
4. Making all relevant records, logs, files, data reporting, and other materials available to FL[DS] or Grantee-authorized third parties.

FL[DS] shall only Access Covered Data, other Grantee data, and Grantee Information Technology Resources as permitted by Grantee. Any specific limitations on such Access shall be documented.

Upon termination of each instance of incident response support, regardless of the reason for such termination, Grantee shall assist FL[DS] with any close-out or post-incident documentation upon request.

B. **Covered Data and Personally Identifiable Information.** FL[DS] will not disclose Covered Data or other data made Accessible during incident response support to any third party unless required by law or as authorized by Grantee. In the event such data is required by law to be disclosed, FL[DS] shall make best efforts to notify Grantee prior to such disclosure.

IV. FL[DS] Role and Responsibilities

FL[DS] shall provide Grantee with the option to utilize the Software Entitlements to enhance the Grantee's cybersecurity and protect the Grantee's infrastructure from threats.

FL[DS] will Access a View of the Telemetry Data and Solution Data. FL[DS] will only use Telemetry and Solutions Data for the purpose of developing and implementing the Program; identifying and responding to risks and incidents; and in furtherance of meeting FL[DS]' and Grantee's statutory and regulatory obligations. FL[DS] will not disclose the Telemetry Data and Solutions Data to any third party unless required by law or as otherwise authorized by Grantee. FL[DS] will provide incident response services and resources as allowed and agreed to by FL[DS] and Grantee in responding to risks and incident.

V. Grantee Roles and Responsibilities

Grantee shall cooperate with and provide all assistance necessary to FL[DS]' incident response support.

VI. Indemnification

For the avoidance of doubt, the Grantee agrees to indemnify FL[DS] and the Department for any claims related to this rider pursuant to the terms provided in section R., Indemnification, of the Grant Agreement.

VII. Conflict

In the event of a conflict between this IR Rider, the DSA, and any other rider, the terms of this IR Rider shall control.

VIII. Liability and Termination of Incident Response Support

Except as described in the DSA or other riders, incident response services and resources of FL[DS] or Grantee-authorized third parties shall be provided by FL[DS] without warranty by, and without liability to, FL[DS] or such Grantee-authorized third parties. Upon request, FL[DS] or Grantee-authorized third parties shall provide reasonable assistance to return Grantee Information Technology Resources to the operational status prior to the involvement of FL[DS] incident response support.

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Exhibit B
Solution Rider

I. Definitions

In addition to the defined terms in the DSA, capitalized terms used herein have the meanings provided below:

- A. Protected Grantee Data – Data, not including Telemetry Data, maintained, and generated by Grantee, which shall not be Accessed or Accessible by, or sent to, the Licensed Software Solution.
- B. Customer Account – The Licensed Software Solution account directly utilized by Grantee.
- C. Local Government Cybersecurity Grant Program (“the Program”) –The Program established by the 2022-2023 General Appropriations Act to improve county and municipal cybersecurity posture and resiliency.
- D. Licensed Software Solutions – Proprietary software provided to the Grantee under the Agreement to satisfy provision of the solution(s) awarded to the Grantee, as identified in Attachment A.1 of the Grant Agreement.
- E. Managing Organization – The entity managing the use of the Licensed Software Solution and its implementation. As used in this Rider, the Managing Organization is FL[DS].
- F. Protected Grantee Data – Data, not including Telemetry Data, maintained, and generated by Grantee, which shall not be Accessed or Accessible by, or sent to, the Licensed Software Solution.
- G. Solution Console – The global administrative account(s) directly managed and licensed by FL[DS] to provide the Grantee with the Software Entitlement.
- H. Solution Data – Data, reports, or other information generated by the Licensed Software Solution. May be derived from but shall not include Telemetry Data.
- I. Telemetry Data –The data generated by Grantee through automated communication processes from multiple data sources and processed by the Licensed Software Solution.
- J. View – The permissions granted for FL[DS] to see Telemetry Data provided to the Managing Organization’s Solution Console by the Customer Account. A View does not permit FL[DS] Access to Protected Grantee Data.

II. Statement of Work

- A. **Purpose/Scope:** FL[DS] and Grantee enter into this Rider to establish the terms and conditions for Grantee Access to the Licensed Software Solution provided by FL[DS]; to establish the maintenance, use, and disclosure of the Telemetry Data generated by

Grantee and uploaded to the Solution Console; and to provide terms and conditions for the use of the Licensed Software Solution.

- B. **FL[DS] Role and Responsibilities:** FL[DS] is responsible for providing Grantee with the option to utilize the Licensed Software Solution.

FL[DS] shall be permitted to Access a View of the Telemetry Data provided within the Solution Console via permissions to the Customer Account.

FL[DS] will only use Telemetry Data for the express purpose of developing and implementing the Program and in furtherance of FL[DS]' and Grantee's statutory and regulatory obligations. FL[DS] will not disclose the Telemetry Data to any third party unless required by law or as otherwise authorized by Grantee.

- C. **Grantee's Role and Responsibilities:** Grantee is responsible for:

- a. Grantee Access to and use of the Licensed Software Solution in compliance with all terms and conditions related thereto, including the Agreement terms and the vendor terms and conditions to be provided to the Grantee by FL[DS] without need for an amendment hereto by the Parties and which, after provision thereof, will be deemed incorporated herein and a material component hereof;
- b. Activating and deactivating the Access, credentials, and privileges of its authorized users;
- c. Ensuring no Protected Grantee Data is submitted to the Licensed Software Solution;
- d. Entering into any additional agreement with FL[DS], the Licensed Software Solution provider, or other third-parties as may be required by law regarding Protected Grantee Data, as applicable; and
- e. Managing access controls to allow View by FL[DS] and Access by the Licensed Software Solution.

Telemetry Data, even as it may be housed, maintained, or processed by the Licensed Software Solution, is and shall remain the property of Grantee.

- D. **Indemnification:** For the avoidance of doubt, the Grantee agrees to indemnify FL[DS] and the Department for any costs related to Grantee's use of the Licensed Software Solution pursuant to the terms provided in section R., Indemnification, of the Grant Agreement.
- E. **Conflict:** In the event of a conflict between this Rider and the DSA, the terms of this Rider shall control.

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City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-508

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

COMMUNITY DEVELOPMENT BLOCK GRANT-CV AGREEMENT FOR SERVICES WITH
OPENING DOORS NORTHWEST FLORIDA, INC.

RECOMMENDATION:

That City Council approve the Community Development Block Grant-CV Agreement for Services with Opening Doors Northwest Florida, Inc. to provide direct financial assistance for Emergency Housing Voucher program clients. Further, that City Council authorize the Mayor to take the action necessary to execute and administer 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:

In 2021, the City of Pensacola was awarded 35 Emergency Housing Vouchers (EHV) as part of the American Rescue Plan Act (ARPA). These new special purpose vouchers are targeted to households that are homeless or at risk of homelessness; fleeing or attempting to flee domestic violence; or have a high risk of housing instability. HUD required the EHV grant recipients to enter into a partnership with the local Continuum of Care (COC) to administer the program, with the EHV program also providing one-time case management and support service funding in order to help participants overcome housing barriers and successfully use their vouchers.

The EHV program and partnership has been very successful in housing these homeless participants, with part of the program's success lying in the ability to provide funds for deposits, housing search assistance, application fees, and other items necessary to help the household lease a unit. EHV case management and support service funding has been exhausted, but funding is still needed to provide similar financial assistance for participants that may be moving to new units. This agreement will provide existing CDBG-CV funds for security or utility deposits, arrears, application fees, or assistance with the client's portion of the first month's rent, if needed. No additional funding is being provided to Opening Doors for case management services, these funds are budgeted. CDBG-CV funding is still available as approved by City Council for subsistence payment for income-eligible households.

PRIOR ACTION:

September 24, 2020-City Council approved an amendment to the 2019-20 CDBG Annual Action Plan to receive CDBG-CV funding, to include subsistence payments for income eligible households.

July 15, 2021-City Council approval of Emergency Housing Voucher Program Service Agreement with Opening Doors Northwest Florida, Inc.

FUNDING:

Budget: \$5,000

Actual: \$5,000

FINANCIAL IMPACT:

No City general funds are required. Funds are available from CDBG-CV funding.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

5/21/2024

STAFF CONTACT:

David Forte, Deputy City Administrator
Meredith Reeves, Housing Administrator

ATTACHMENTS:

1. CDBG-CV Agreement for Services

PRESENTATION: No

**AGREEMENT FOR SERVICES
BETWEEN
CITY OF PENSACOLA AND
OPENING DOORS NORTHWEST FLORIDA, INC.**

THIS AGREEMENT is made and entered by and between the City of Pensacola ("City"), a municipal corporation of the State of Florida, located at 222 W. Main Street, Pensacola, Florida 32502, and Opening Doors Northwest Florida, Inc., ("Subrecipient") a non-profit corporation authorized to do business in the State of Florida (EIN # 59-2909065), located at 1020 West New Warrington Road, Pensacola, Florida 32505 for the purpose of implementing the Community Development Block Grant-CV Emergency Housing Voucher Stabilization Project, hereinafter referred to as the "Project."

W I T N E S S E T H:

WHEREAS, the City Housing Department currently administers the Housing Choice Voucher Program and has been awarded Emergency Housing Vouchers (EHV) tenant based rental assistance vouchers through the American Rescue Plan Act (ARPA) to provide rental assistance to qualifying homeless applicants to address the continued impact of the coronavirus;

WHEREAS, said vouchers will be used to house individuals and families who are homeless; at risk of homelessness; fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking; or recently homeless; and

WHEREAS, Opening Doors Northwest Florida, Inc., the local Continuum of Care lead agency, has provided case management and other supportive services to EHV clients; and

WHEREAS, the City and Opening Doors have identified an ongoing need to provide subsistence payments for EHV clients utilizing Community Development Block Grant-Coronavirus funds (CFDA #14.218).

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions, and promises herein contained, the appropriation and disbursement of funds by the City now or hereafter made, the parties agree as follows:

Section 1. Recitals

The Parties acknowledge and agree that the recitals above are true and correct and are hereby incorporated in this Agreement.

Section 2. Authority to Contract

Subrecipient acknowledges and agrees that pursuant to the Charter of the City of Pensacola, upon approval of appropriations by City Council, the Mayor is the public official with responsibility and authority to administer and enforce the provisions of this Agreement and that the Mayor may do so through such designees as he may deem appropriate. For the

purposes of making disbursements, reviewing performance, acquiring information, performing audits, and such other tasks as may be deemed appropriate, the Mayor hereby designates the Housing Administrator of the City and such members of the City's staff as he may appoint, to fulfill the responsibilities of administration of this Agreement.

Section 3. Term and Termination

This Agreement shall be effective for a period beginning the 1st day of May, 2024 and shall terminate on the 31st day of December, 2024 unless earlier terminated with or without cause by either party giving thirty (30) days prior written notice of such termination.

Notwithstanding anything herein to the contrary, if the Subrecipient should fail to satisfactorily perform its duties as herein set forth, or in the event that funds fail to be or cease to be provided to the City, the City may immediately terminate this Agreement and shall reimburse payments that were expended through the effective date of termination. Said termination shall be in accordance with provisions of 2 C.F.R. §§ 200.339-340, as applicable.

Section 4. Scope of Services

The Subrecipient will provide case management to current households participating in the EHV program to include the following:

1. Subrecipient will assist eligible households to obtain and complete documents for continued participation in the EHV Program.
2. Subrecipient will assist individuals and families with payment of security deposits, utility arrearages, utility deposits, application fees, and addressing other barriers encountered by the applicants to become or remain stably housed.

CDBG-CV subsistence funds may be used for the following: security and utility deposits, application fees, reconnection fees, up to three months of utility arrears, and/or assistance with client's portion of first month's rent, if needed. Funding is limited to EHV clients and subrecipient will have client certify COVID-19 impact as a condition of funds. No payments may be provided to Pensacola Energy.

Section 5. Compliance with Law

The Subrecipient shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations pertaining the performance of this Agreement.

Section 6. Funding

The City agrees to pay an amount not to exceed **\$5000** solely from available CDBG-CV subsistence payment funds to implement the eligible program activities in accordance with this Agreement. The Subrecipient shall expend the funds allocated to Subrecipient under this Agreement solely for the purposes contemplated herein. The City shall pay this amount over the term of the Agreement to the Subrecipient for services.

Section 7. Reimbursement

Payment will be made on reimbursement basis only and requests for reimbursement must be submitted in the form and with the content prescribed by the City. The City will pay to the Subrecipient funds available under this Agreement based upon information and documentation submitted by the Subrecipient to the City, so long as such information and documentation is consistent with an approved budget, U. S. Department of Housing and Urban Development regulations, and City policies concerning payments. Payments will be made only for eligible expenses actually incurred by the Subrecipient. Payments may be contingent upon certification of the Recipient's financial management system in accordance with the standards specified under generally accepted accounting principles approved by the City and outlined in 2 C.F.R. Part 200 known as the "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards," and successors thereto, all of which are hereby referred to and incorporated by reference.

Section 8. Reporting

The Subrecipient shall provide the City with a monthly Financial Statement of all Program activities and expenditures as described in Exhibit A, Scope of Services, of this Agreement. The Subrecipient shall use the report form that has been approved by the City and that appears as Exhibit A, Monthly Financial Report, of this Agreement. The Subrecipient will use this report as the document to request reimbursement for expenditures incurred in the implementation of the Program. Alternate reporting forms may be accepted to the extent the required data is clearly detailed. The financial statement shall be due monthly and shall continue until all information concerning the Program has been received by the City or its designated Agent. The statement is due on the 30th day of each subsequent month. The Subrecipient shall provide the City or its designated Agent with additional information as needed.

Section 9. Accountability

The Subrecipient agrees to maintain personnel, financial, and other records and accounts as are necessary to properly account for all funds expended in performance of this Agreement.

These records and accounts shall be subject at times to inspection, review, or audit for a period of five (5) years following the termination of this Agreement unless said records are the subject of audit or litigation, in which case they shall be retained indefinitely pending resolution of such review. Access to such records shall be provided to the City, the United States Department of Housing and Urban Development, or their representatives, or the Subrecipient shall transfer these records and accounts to the custody of the City.

Section 10. Indemnification

The Subrecipient shall act as an independent contractor, and not as an employee of the City or its designated agent, in operating the aforementioned service. The Subrecipient shall indemnify and hold harmless the City, its subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives, and agents from any and all claims, suits, actions, damages, liability, and expenses in connection with the loss of life, bodily or personal

injury, property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of, or occurring in connection with the performance of this Agreement. The Subrecipient's obligation shall not be limited by, or in any way to, any insurance coverage, or by any provision in or exclusion or omission from any policy of insurance.

Section 11. Nepotism

The Subrecipient agrees to abide by the provisions of §112.3135, Florida Statutes, pertaining to nepotism in the performance of this Agreement, which statute is hereby referred to and incorporated by reference herein.

Section 12. Conflict of Interest

In accordance with 24 C.F.R 982, the Subrecipient, or subcontractors to the Subrecipient who have formulated policy or influenced decisions with respect to the program, may not enter into any contract or arrangement in connection with the HCV program during their tenure with the Subrecipient or for one year thereafter.

Section 13. Civil Rights and Anti-Discrimination

The Subrecipient agrees to abide by the spirit and intent of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1968, as amended, in that its operation under this Agreement is free of discrimination against its employees, persons, or groups of persons on the basis of race, color, religion, sex, national origin, pregnancy, age, disability, or familial status, as applicable. Both of the said Civil Rights Acts are hereby referred to and incorporated by reference herein.

All services associated with this Program shall be made available to the public in a non-discriminatory manner. Services and access thereto shall be available without regard to race, color, sex, familial status, disability, religion, or national origin. The Sub recipient accepts sole responsibility for ensuring such non-discriminatory access to the services provided hereunder.

Subrecipient will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, pregnancy, age, or disability. Such action shall include, but not be limited to, the following: employment, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Subrecipient agrees to post in a conspicuous place notices setting forth the provision of this Equal Employment Opportunity clause.

Section 14. Administrative Requirements

The Subrecipient shall comply with applicable provisions of the administrative requirements described in 24 CFR Part 570.502 for CDBG eligible expenditures and shall comply with the requirements of 2 C.F.R. Part 200.

Section 15. Audit Inspections

The Subrecipient shall have an adequate financial system and internal fiscal controls in accordance with Federal requirements. Subrecipient agrees to maintain such property, personnel, all financial and accounting records, client and other records and documents, papers, maps, photographs, and other materials as are necessary to properly account for all funds expended in performance of this Agreement. Any funds expended in violation of the Agreement shall be refunded in full to the City from non-federal resources, or if this Agreement is still in force, shall be withheld by the City from any subsequent requests for payment.

The Subrecipient agrees to consent to such audits by United States Department of Housing and Urban Development or the City designated independent auditing firm(s) as may be required in relation to this Agreement; to produce all documents required upon request by the City, the United States Department of Housing and Urban Development, or their authorized representatives; and to provide the City (through its designated Agent) with the annual audit of the Program as carried out for the City of Pensacola Program by an independent Certified Public Account. Said audit shall comply with provisions of 2 C.F.R. Part 200, as applicable.

Section 16. Use of E-Verify

In compliance with the provisions of §448.095, Florida Statutes, 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.

Section 17. Public Records

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 shall comply with the requirements within Attachment A attached hereto and incorporated by reference.

Section 18. No Waiver

No waiver, alterations, consent or modification of any of the provisions of the Agreement Documents shall be binding unless in writing and signed by the Mayor.

Section 19. Notice

All notices required under this Agreement shall be in writing and shall be given by hand-delivery or by registered or certified U.S. Mail, return receipt requested, addressed to the party at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which

personally delivered, or if by mail, on the date of actual receipt or courier deposit (pickup) date. Notices shall be addressed to the following:

City of Pensacola	D.C Reeves, Mayor City of Pensacola 222 W. Main Street P.O. Box 12910 Pensacola, Florida 32502 Phone: 850-435-1604
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Subrecipient	Opening Doors Northwest Florida Inc. Serene Keiek, Interim Executive Director 1020 W. New Warrington Road Pensacola, Florida 32506 Phone: 850-439-3009
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Section 21. Entire Agreement

This instrument and its attachments constitute the sole and only agreement of the parties relating to the subject matter hereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. No other agreements, oral or otherwise, regarding the subject matter of the Agreement shall be deemed to exist or to bind either Party.

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

SUBRECIPIENT

Opening Doors Northwest Florida, Inc.,
a Florida non-profit corporation

CITY OF PENSACOLA

By: _____
Serene Keiek,
Interim Executive Director

Date: _____

By: _____
D.C. Reeves, Mayor

Date: _____

Attest: _____
City Clerk, Ericka L. Burnett

Approved as to Substance:

Attest: _____
Corporate Secretary

Housing Department

Legal in form and execution:

(CORPORATE SEAL)

City Attorney

Exhibit A: Monthly Financial Report

REPORT # _____

TO: CITY OF PENSACOLA HOUSING DEPARTMENT

FROM: OPENING DOORS NORTHWEST FLORIDA, INC.

PROJECT: EHV CDBG-CV Project CONTRACT # _____

REPORT PERIOD _____ TO _____

DATE SUBMITTED _____

Include all canceled checks/bank statements and paid receipts for verification of spending during the report period.

CONTRACT AMOUNT
\$5000.00

Expenditures: Month of _____, 20 ____

CLIENT NAME: ITEM

COST

Total expenditures this period \$ _____

Remaining contract amount \$ _____

Balance end of this reporting period \$ _____

Comments _____

I certify, that to the best of my knowledge, the data reported is correct.

Authorized Signature

Date: _____ Title: _____

Attachment "A"

PUBLIC RECORDS: Subrecipient shall comply with Chapter 119, Florida Statutes. Specifically, Subrecipient 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 Subrecipient 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 Subrecipient or keep and maintain public records required by the City to perform the service. If Subrecipient transfers all public records to City upon completion of the Agreement, Subrecipient shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Subrecipient keeps and maintains public records upon completion of the Agreement, Subrecipient 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 Subrecipient to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by City.

IF SUBRECIPIENT 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 PUBLIC RECORDS COORDINATOR AT: THE OFFICE OF THE CITY CLERK (850) 435-1715 PUBLICRECORDS@CITYOFPENSACOLA.COM, 222 WEST MAIN STREET, PENSACOLA, FL 32502.



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-538

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT - STATEWIDE MUTUAL AID AGREEMENT

RECOMMENDATION:

That City Council approve the State of Florida Division of Emergency Management Statewide Mutual Aid Agreement. Further, the City Council authorize the Mayor to take the actions necessary to execute and administer this Memorandum of 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:

The State of Florida is vulnerable to a wide range of emergencies and disasters that are likely to cause the disruption of essential services and the destruction of the infrastructure needed to deliver those services. Such emergencies and disasters often exceed the emergency response and recovery capabilities of any county or local government.

Such incidents may also give rise to unusual and unanticipated physical and technical needs which a local government cannot meet without resources, but that other local governments within the State of Florida may be able to provide. The Emergency Management Act, Chapter 252, Florida Statutes, provides each local government of the state the authority to develop and enter into mutual aid agreements within the state for reciprocal emergency aid in case of emergencies too extensive to be dealt with unassisted, and through such agreements ensure the timely reimbursement of costs incurred by the local governments which render such assistance.

Pursuant to Chapter 252.32, Florida Statutes, the Division renders mutual aid among the political subdivisions of the state to carry out emergency management functions and responsibilities. Also, pursuant to Chapter 252, Florida Statutes, the Division has the authority to coordinate and direct emergency management assistance between local governments and concentrate available resources where needed.

PRIOR ACTION:

None

FUNDING:

N/A

FINANCIAL IMPACT:

After the Period of Assistance has ended, the Assisting Party shall have 45 days to develop a full reimbursement package for services rendered and resources supplied during the Period of Assistance. All expenses claimed to the Requesting Party must have been incurred in direct response to the emergency as requested by the Requesting Party and must be supported by proof of work and proof of payment.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

5/31/2024

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Ginny Cranor, Fire Chief

ATTACHMENTS:

1. Statewide Mutual Aid Agreement 2023

PRESENTATION: No



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

STATEWIDE MUTUAL AID AGREEMENT - 2023

This Agreement is an acknowledgment of receipt by the Florida Division of Emergency Management ("the Division") and the local government ("Participating Party") signing this Agreement. Execution of this agreement replaces all previous iterations and is active until a new agreement is drafted and requested by The Division.

This Agreement is based on the existence of the following conditions:

- A. The State of Florida is vulnerable to a wide range of emergencies and disasters that are likely to cause the disruption of essential services and the destruction of the infrastructure needed to deliver those services.
- B. Such emergencies and disasters often exceed the emergency response and recovery capabilities of any one county or local government.
- C. Such incidents may also give rise to unusual and unanticipated physical and technical needs which a local government cannot meet with existing resources, but that other local governments within the State of Florida may be able to provide.
- D. The Emergency Management Act, chapter 252, *Florida Statutes*, provides each local government of the state the authority to develop and enter into mutual aid agreements within the state for reciprocal emergency aid in case of emergencies too extensive to be dealt with unassisted, and through such agreements ensure the timely reimbursement of costs incurred by the local governments which render such assistance.
- E. Pursuant to chapter 252.32, *Florida Statutes*, the Division renders mutual aid among the political subdivisions of the state to carry out emergency management functions and responsibilities.
- F. Pursuant to chapter 252, *Florida Statutes*, the Division has the authority to coordinate and direct emergency management assistance between local governments and concentrate available resources where needed.

Based on the existence of the foregoing conditions, the Parties agree to the following articles:

ARTICLE I: DEFINITIONS

As used in this Agreement, the following expressions shall have the following meanings:

- A. The "Agreement" is this Agreement, which shall be referred to as the Statewide Mutual Aid Agreement ("SMAA").



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

- B. The “Division” is the Florida Division of Emergency Management.
- C. A “Requesting Party” to this Agreement is a Participating Party who requests assistance under this agreement.
- D. An “Assisting Party” to this Agreement is a Participating Party who provides assistance to a Requesting Party under this agreement.
- E. The “Period of Assistance” is the time during which an Assisting Party renders assistance to a Requesting Party under this agreement and includes the time necessary for the resources and personnel of the Assisting Party to travel to the place specified by the Requesting Party and the time necessary to return to their place of origin.
- F. A “Mission” is a documented emergency response activity performed during a Period of Assistance, usually in reference to one operational function or activity.
- G. A “local government” is any educational district, special district, or any entity that is a “local governmental entity” within the meaning of section 11.45(1)(g), *Florida Statutes*.
- H. An “educational district” is any school district within the meaning of section 1001.30, *Florida Statutes*, and any Florida College System Institution or State University within the meaning of section 1000.21, *Florida Statutes*.
- I. A “special district” is any local or regional governmental entity which is an independent special district within the meaning of section 189.012(3), *Florida Statutes*, established by local, special, or general act, or by rule, ordinance, resolution, or interlocal agreement.
- J. A “tribal council” is the respective governing bodies of the Seminole Tribe of Florida and Miccosukee Tribe of Indians recognized as special improvement district by section 285.18(1), *Florida Statutes*.
- K. An “interlocal agreement” is any agreement between local governments within the meaning of section 163.01(3)(a), *Florida Statutes*.
- L. A “Resource Support Agreement” as used in this Agreement refers to a supplemental agreement of support between a Requesting Party and an Assisting Party.
- M. “Proof of work” as used in this Agreement refers to original and authentic documentation of a single individual or group of individuals’ emergency response activity at a tactical level.



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

- N. "Proof of payment" as used in this Agreement refers to original and authentic documentation of an emergency response expenditure made by an Assisting Party.
- O. A "Reimbursement Package" as used in this Agreement refers to a full account of mission response documentation supported by proof of work and proof of payment.
- P. Any expressions not assigned definitions elsewhere in this Agreement shall have the definitions assigned them by the Emergency Management Act, Chapter 252, *Florida Statutes*.

ARTICLE II: APPLICABILITY OF THE AGREEMENT

Any Participating Party, including the Division, may request assistance under this Agreement for a "major disaster" or "catastrophic disaster" as defined in section 252.34, *Florida Statutes*, minor disasters, and other such emergencies as lawfully determined by a Participating Party.

ARTICLE III: INVOCATION OF THE AGREEMENT

In the event of an emergency or anticipated emergency, a Participating Party may request assistance under this Agreement from any other Participating Party or the Division if, in the judgement of the Requesting Party, its own resources are inadequate to meet the needs of the emergency or disaster.

- A. Any request for assistance under this Agreement may be oral, but within five (5) calendar days must be confirmed in writing by the Requesting Party. All requests for assistance under this Agreement shall be transmitted by the Requesting Party to another Participating Party or the Division. If the Requesting Party transmits its request for Assistance directly to a Participating Party other than the Division, the Requesting Party and Assisting Party shall keep the Division advised of their activities.
- B. The Division shall relay any requests for assistance under this Agreement to such other Participating Parties as it may deem appropriate and coordinate the activities of the Assisting Parties to ensure timely assistance to the Requesting Party. All such activities shall be carried out in accordance with the State's Comprehensive Emergency Management Plan.

ARTICLE IV: RESPONSIBILITIES OF REQUESTING PARTIES

To the extent practicable, all Requesting Parties shall provide the following information to their respective county emergency management agency, the Division, and the intended Assisting Party or Parties. In providing such information, Requesting Parties should utilize Section I of the



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

Resource Support Agreement (RSA) Form, available via the [Division approved documents SharePoint site](#)¹.

- A. A description of the Mission to be performed by the Assisting Party;
- B. A description of the resources and capabilities needed to complete the Mission successfully;
- C. The location, date, and time personnel and resources from the Assisting Party should arrive at the incident site, staging area, facility, or other location designated by the Requesting Party;
- D. A description of the health, safety, and working conditions expected for deploying personnel;
- E. Lodging and meal availability;
- F. Any logistical requirements;
- G. A description of any location or facility outside the territorial jurisdiction of the Requesting Party needed to stage incoming resources and personnel;
- H. The location date, and time for personnel of the Requesting Party to meet and receive the personnel and equipment of the Assisting Party; and
- I. A technical description of any communications equipment needed to ensure effective information sharing between the Requesting Party, any Assisting Parties, and all relevant responding entities.

ARTICLE V: RESPONSIBILITIES OF ASSISTING PARTIES

Each Party shall render assistance under this Agreement to any Requesting Party to the extent practicable that its personnel, equipment, resources, and capabilities can render assistance. If upon receiving a request for assistance under this Agreement a Party determines that it has the capacity to render some or all of such assistance, it shall provide the following information without delay to the Requesting Party, the Division, and the Assisting Party's County emergency management agency. In providing such information, the Assisting Party should utilize the Section II of the Resource Support Agreement (RSA) Form, available via the [Division approved documents SharePoint site](#).

¹ FDEM approved documents such as activity logs and mutual aid forms can be found at:
https://portal.floridadisaster.org/projects/FROC/FROC_Documents/Forms/AllItems.aspx?View=%7B6F3CF7BD%2DC0A4%2D4BE2%2DB809%2DC8009D7D0686%7D



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

- A. A description of the personnel, equipment, supplies, services and capabilities it has available, together with a description of the qualifications of any skilled personnel;
- B. An estimate of the time such personnel, equipment, supplies, and services will continue to be available;
- C. An estimate of the time it will take to deliver such personnel, equipment, supplies, and services to the location(s) specified by the Requesting Party;
- D. A technical description of any communications and telecommunications equipment available for timely communications with the Requesting Party and other Assisting Parties;
- E. The names and contact information of all personnel whom the Assisting Party has designated as team leaders or supervisors; and
- F. An estimated cost for the provision of assistance.

ARTICLE VI: RENDITION OF ASSISTANCE

The Requesting Party shall afford the emergency response personnel of all Assisting Parties, while operating within the jurisdictional boundaries of the Requesting Party, the same powers, duties, rights, and privileges, except that of arrest unless specifically authorized by the Requesting Party, as are afforded the equivalent emergency response personnel of the Requesting Party. Emergency response personnel of the Assisting Party will remain under the command and control of the Assisting Party, but during the Period of Assistance, the resources and responding personnel of the Assisting Party will perform response activities under the operational and tactical control of the Requesting Party.

- A. Unless otherwise agreed upon between the Requesting and Assisting Party, the Requesting Party shall be responsible for providing food, water, and shelter to the personnel of the Assisting Party. For Missions performed in areas where there are insufficient resources to support responding personnel and equipment throughout the Period of Assistance, the Assisting Party shall, to the fullest extent practicable, provide their emergency response personnel with the equipment, fuel, supplies, and technical resources necessary to make them self-sufficient throughout the Period of Assistance. When requesting assistance, the Requesting Party may specify that Assisting Parties send only self-sufficient personnel and resources but must specify the length of time self-sufficiency should be maintained.



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

- B. Unless the Requesting Party has specified the contrary, it shall, to the fullest extent practicable, coordinate all communications between its personnel and the responding personnel of the Assisting Parties, and shall determine and share the frequencies and other technical specifications of all communications equipment to be used, as appropriate, with the deployed personnel of the Assisting Parties.
- C. Personnel of the Assisting Party who render assistance under this Agreement shall receive the usual wages, salaries, and other compensation as are normally afforded to personnel for emergency response activities within their home jurisdiction, and shall have all the immunities, rights, interests, and privileges applicable to their normal employment. If personnel of the Assisting Party hold local licenses or certifications limited to the jurisdiction of issue, then the Requesting Party shall recognize and honor those licenses or certifications for the duration of the Period of Assistance.

ARTICLE VII: REIMBURSEMENT

After the Period of Assistance has ended, the Assisting Party shall have 45 days to develop a full reimbursement package for services rendered and resources supplied during the Period of Assistance. All expenses claimed to the Requesting Party must have been incurred in direct response to the emergency as requested by the Requesting Party and must be supported by proof of work and proof of payment.

To guide the proper documentation and accountability of expenses, the Assisting Party should utilize the Claim Summary Form, available via the [Division approved documents SharePoint site](#) as a guide and summary of expense to collect information to then be formally submitted for review by the Requesting Party.

To receive reimbursement for assistance provided under this agreement, the Assisting Party shall provide, at a minimum, the following supporting documentation to the Requesting Party unless otherwise agreed upon between the Requesting and Assisting Parties:

- A. A complete and authentic description of expenses incurred by the Assisting Party during the Period of Assistance;
- B. Copy of a current and valid Internal Revenue Service W-9 Form;
- C. Copies of all relevant payment and travel policies in effect during the Period of Assistance;
- D. Daily personnel activity logs demonstrating emergency response activities performed for all time claimed (for FDEM reimbursement Division approved activity logs will be required for personnel activity claims);



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

- E. Official payroll and travel reimbursement records for all claimed personnel expenses;
- F. Neat and comprehensive fringe benefit calculations for each position class or category of claimed personnel;
- G. Written justification for all additional expenses/purchases incurred during the Period of Assistance;
- H. Proof of payment for additional/miscellaneous expenses incurred during the Period of Assistance
- I. Equipment activity logs demonstrating equipment use and operation in support of emergency response activities for all time claimed (for FDEM reimbursement Division approved forms will be required for equipment activity claims);
- J. Proof of reimbursement to all employees who incurred emergency response expenses with personal money;
- K. Justification for equipment repair expenses; and
- L. Copies of any applicable supporting agreements or contracts with justification.

If a dispute or disagreement regarding the eligibility of any expense arises, the Requesting Party, Assisting Party, or the Division may elect binding arbitration. If binding arbitration is elected, the Parties must select as an arbitrator any elected official of another Participating Party, or any other official of another Participating Party whose normal duties include emergency management, and the other Participating Party shall also select such an official as an arbitrator, and the arbitrators thus chosen shall select another such official as a third arbitrator.

The three (3) arbitrators shall convene by teleconference or videoconference within thirty (30) calendar days to consider any documents and any statements or arguments by the Division, the Requesting Party, or the Assisting Party concerning the protest, and shall render a decision in writing not later than ten (10) business days after the close of the hearing. The decision of a majority of the arbitrators shall bind the parties and shall be final.

If the Participating Parties do not elect binding arbitration, this agreement and any disputes arising thereunder shall be governed by the laws of the State of Florida and venue shall be in Leon County, Florida. Nothing in this Agreement shall be construed to create an employer-employee relationship or a partnership or joint venture between the participating parties. Furthermore, nothing contained herein shall constitute a waiver by either Party of its sovereign immunity or the provisions of section 768.28, Florida Statutes. Nothing herein shall be construed as consent by either Party to be sued by third parties.



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

ARTICLE VIII: COST ELIGIBLE FOR REIMBURSEMENT

The costs incurred by the Assisting Party under this Agreement shall be reimbursed as needed to make the Assisting Party whole to the fullest extent practicable.

- A. Employees of the Assisting Party who render assistance under this Agreement shall be entitled to receive from the Assisting Party all their usual wages, salaries, and any and all other compensation for mobilization, hours worked, and demobilization. Such compensation shall include any and all contributions for insurance and retirement, and such employees shall continue to accumulate seniority at the usual rate. As between the employees and the Assisting Party, the employees shall have all the duties, responsibilities, immunities, rights, interests, and privileges incident to their usual employment. The Requesting Party shall reimburse the Assisting Party for these costs of employment.
- B. The costs of equipment supplied by the Assisting Party shall be reimbursed at the rental rate established in FEMA' s Schedule of Equipment, or at any other rental rate agreed to by the Requesting Party. In order to be eligible for reimbursement, equipment must be in actual operation performing eligible work. The labor costs of the operator are not included in the rates and should be approved separately from equipment costs. The Assisting Party shall pay for fuels, other consumable supplies, and repairs to its equipment as needed to keep the equipment in a state of operational readiness. Rent for the equipment shall be deemed to include the cost of fuel and other consumable supplies, maintenance, service, repairs, and ordinary wear and tear. With the consent of the Assisting Party, the Requesting Party may provide fuels, consumable supplies, maintenance, and repair services for such equipment at the site. In that event, the Requesting Party may deduct the actual costs of such fuels, consumable supplies, maintenance, and services from the total costs otherwise payable to the Assisting Party. If the equipment is damaged while in use under this Agreement and the Assisting Party receives payment for such damage under any contract of insurance, the Requesting Party may deduct such payment from any item or items billed by the Assisting Party for any of the costs for such damage that may otherwise be payable.
- C. The Requesting Party shall pay the total costs for the use and consumption of any and all consumable supplies delivered by the Assisting Party for the Requesting Party under this Agreement. In the case of perishable supplies, consumption shall be deemed to include normal deterioration, spoilage, and damage notwithstanding the exercise of reasonable care in its storage and use. Supplies remaining unused shall be returned to the Assisting Party in usable condition upon the close of the Period of Assistance, and the Requesting Party may deduct the cost of such returned supplies from the total costs billed by the Assisting Party for such supplies. If the Assisting Party agrees, the Requesting Party may also replace any and all used consumable supplies with like



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

supplies in usable condition and of like grade, quality and quantity within the time allowed for reimbursement under this Agreement.

- D. The Assisting Party shall keep records to document all assistance rendered under this Agreement. Such records shall present information sufficient to meet the audit requirements specified in the regulations of FEMA and any applicable circulars issued by the State of Florida. Upon reasonable notice, the Assisting Party shall make its records available the Requesting Party for inspection or duplication between 8:00 a.m. and 5:00 p.m. on all weekdays, except for official holidays.

ARTICLE IX: INSURANCE

Each Participating Party shall determine for itself what insurance to procure, if any. With the exceptions in this Article, nothing in this Agreement shall be construed to require any Participating Party to procure insurance.

- A. Each Participating Party shall procure employers' insurance meeting the requirements of the Workers' Compensation Act, as amended, affording coverage for any of its employees who may be injured while performing any activities under the authority of this Agreement, and shall be provided to each Participating Party.
- B. Any Participating Party that elects additional insurance affording liability coverage for any activities that may be performed under the authority of this Agreement shall be provided to each Participating Party.
- C. Subject to the limits of such liability insurance as any Participating Party may elect to procure, nothing in this Agreement shall be construed to waive, in whole or in part, any immunity any Participating Party may have in any judicial or quasi-judicial proceeding.
- D. Each Participating Party which renders assistance under this Agreement shall be deemed to stand in the relation of an independent contractor to all other Participating Parties and shall not be deemed to be the agent of any other Participating Party.
- E. Nothing in this Agreement shall be construed to relieve any Participating Party of liability for its own conduct and that of its employees.
- F. Nothing in this Agreement shall be construed to obligate any Participating Party to indemnify any other Participating Party from liability to third parties.



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

ARTICLE X: GENERAL REQUIREMENTS

Notwithstanding anything to the contrary elsewhere in this Agreement, all Participating Parties shall be subject to the following requirements in the performance of this Agreement:

- A. All Participating Parties shall allow public access to all documents, papers, letters, or other materials subject to the requirements of the Public Records Act, as amended, and made or received by any Participating Party in conjunction with this Agreement.
- B. No Participating Party may hire employees in violation of the employment restrictions in the Immigration and Nationality Act, as amended.
- C. No costs reimbursed under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Legislature of the State of Florida or any of its agencies.
- D. Any communication to the Division under this Agreement shall be sent via either email, the Division of Emergency Managements Enterprise System (DEMES), or mail to the Response Bureau, Florida Division of Emergency Management, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.
- E. Any communication to a Participating Party shall be sent to the official or officials specified by that Participating Party. For the purpose of this section, any such communication may be sent by the U.S. Mail, e-mail, or other electronic platforms.

ARTICLE XI: EFFECTS OF AGREEMENT

Upon its execution by a Participating Party, this Agreement shall have the following effect with respect to that Participating Party:

- A. The execution of this Agreement by any Participating Party which is a signatory to the Statewide Mutual Aid Agreement of 1994 shall terminate the rights, interests, duties, responsibilities, and obligations of that Participating Party under the Statewide Mutual Aid Agreement of 1994, but such termination shall not affect the liability of the Participating Party for the reimbursement of any costs due under the Statewide Mutual Aid Agreement of 1994, regardless of whether such costs are billed or unbilled.
- B. The execution of this Agreement by any Participating Party which is a signatory to the Public Works Mutual Aid Agreement shall terminate the rights, interests, duties, responsibilities and obligations of that Participating Party under the Public Works Mutual Aid Agreement, but such termination shall not affect the liability of the Participating Party for the reimbursement of any costs due under the Public Works Mutual Aid Agreement,



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

regardless of whether such costs are billed or unbilled.

- C. Upon the activation of this Agreement by the Requesting Party, this Agreement shall supersede any other existing agreement between it and any Assisting Party to the extent that the former may be inconsistent with the latter.
- D. Upon its execution by any Participating Party, this Agreement will continue in effect for one (1) year from its date of execution by that Participating Party, and it shall automatically renew each year after its execution, unless within sixty (60) calendar days before the renewal date the Participating Party notifies the Division, in writing, of its intent to withdraw from the Agreement.
- E. The Division shall transmit any amendment to this Agreement by sending the amendment to all Participating Parties not later than five (5) business days after its execution by the Division. Such amendment shall take effect not later than sixty (60) calendar days after the date of its execution by the Division and shall then be binding on all Participating Parties. Notwithstanding the preceding sentence, any Participating Party who objects to the amendment may withdraw from the Agreement by notifying the Division in writing of its intent to do so within that time in accordance with section E of this Article.
- F. A Participating Party may rescind this Agreement at will after providing the other Participating Party a written SMAA withdrawal notice. Such notice shall be provided at least 30 days prior to the date of withdrawal. This 30-day withdrawal notice must be: written, signed by an appropriate authority, duly authorized on the official letterhead of the Participating Party, and must be sent via email, the Division of Emergency Managements Enterprise System (DEMES), or certified mail.

ARTICLE XII: INTERPRETATION AND APPLICATION OF AGREEMENT

The interpretation and application of this Agreement shall be governed by the following conditions:

- A. The obligations and conditions resting upon the Participating Parties under this Agreement are not independent, but dependent.
- B. Time shall be of the essence of this Agreement, and of the performance of all conditions, obligations, duties, responsibilities, and promises under it.
- C. This Agreement states all the conditions, obligations, duties, responsibilities, and promises of the Participating Parties with respect to the subject of this Agreement, and there are no conditions, obligations, duties, responsibilities, or promises other than those expressed in this Agreement.



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

- D. If any sentence, clause, phrase, or other portion of this Agreement is ruled unenforceable or invalid, every other sentence, clause, phrase, or other portion of the Agreement shall remain in full force and effect, it being the intent of the Division and the other Participating Parties that every portion of the Agreement shall be severable from every other portion to the fullest extent practicable. The Division reserves the right, at its sole and absolute discretion, to change, modify, add, or remove portions of any sentence, clause, phrase, or other portion of this Agreement that conflicts with state law, regulation, or policy. If the change is minor, the Division will notify the Participating Party of the change and such changes will become effective immediately; therefore, please check these terms periodically for changes. If the change is substantive, the Participating Parties may be required to execute the Agreement with the adopted changes. Any continued or subsequent use of this Agreement following the posting of minor changes to this Agreement shall signify implied acceptance of such changes.
- E. The waiver of any obligation or condition in this Agreement by a Participating Party shall not be construed as a waiver of any other obligation or condition in this Agreement.

NOTE: This iteration of the State of Florida Statewide Mutual Aid Agreement will replace all previous versions.

The Division shall provide reimbursement to Assisting Parties in accordance with the terms and conditions set forth in this Article for missions performed at the direct request of the Division. Division reimbursement eligible expenses must be in direct response to the emergency as requested by the State of Florida. All required cost estimations and claims must be executed through the DEMES Mutual Aid Portal and assisting agencies must use all required [FDEM forms](#) for documentation and cost verification. If a Requesting Party has not forwarded a request through the Division, or if an Assisting Party has rendered assistance without being requested to do so by the Division, the Division shall not be liable for the costs of any such assistance.

FDEM reserves the right to deny individual reimbursement requests if deemed to not be in direct response to the incident for which asset was requested.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the date specified below:



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

FOR ADOPTION BY A COUNTY

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

By: _____ Date: _____

Kevin Guthrie, Executive Director or
Ian Guidicelli, Authorized Designee

ATTEST:
CLERK OF THE CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS
OF _____ COUNTY,
STATE OF FLORIDA

By: _____

Clerk or Deputy Clerk

By: _____

Chairman

Date: _____

Approved as to Form:

By: _____

County Attorney



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

FOR ADOPTION BY A CITY

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

By: _____ Date: _____

Kevin Guthrie, Executive Director or
Ian Guidicelli, Authorized Designee

ATTEST:
CITY CLERK

CITY OF _____
STATE OF FLORIDA

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Approved as to Form:

By: _____

City Attorney



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

FOR ADOPTION BY AN EDUCATIONAL DISTRICT

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

By: _____ Date: _____

Kevin Guthrie, Executive Director or
Ian Guidicelli, Authorized Designee

_____ SCHOOL DISTRICT, STATE OF FLORIDA

By: _____ By: _____

Title: _____ Title: _____

Date: _____

Approved as to Form:

By: _____

Attorney for District



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

FOR ADOPTION BY COMMUNITY COLLEGE OR STATE UNIVERSITY

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

By: _____ Date: _____

Kevin Guthrie, Executive Director or
Ian Guidicelli, Authorized Designee

ATTEST:

BOARD OF TRUSTEES
OF _____
COMMUNITY COLLEGE,
STATE OF FLORIDA

BOARD OF TRUSTEES
OF _____
UNIVERSITY,
STATE OF FLORIDA

By: _____

Clerk

By: _____

Chairman

Date: _____

Approved as to Form:

By: _____

Attorney for Board



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

FOR ADOPTION BY A SPECIAL DISTRICT

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

By: _____ Date: _____

Kevin Guthrie, Executive Director or
Ian Guidicelli, Authorized Designee

_____ SPECIAL DISTRICT, STATE OF FLORIDA

By: _____ By: _____

Title: _____ Title: _____

Date: _____

Approved as to Form:

By: _____

Attorney for District



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

FOR ADOPTION BY AN AUTHORITY

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

By: _____ Date: _____

Kevin Guthrie, Executive Director or
Ian Guidicelli, Authorized Designee

ATTEST:

BOARD OF TRUSTEES
OF _____
AUTHORITY,
STATE OF FLORIDA

By: _____

Clerk

By: _____

Chairman

Date: _____

Approved as to Form:

By: _____

Attorney for Board



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

FOR ADOPTION BY A NATIVE AMERICAN TRIBE

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

By: _____ Date: _____

Kevin Guthrie, Executive Director or
Ian Guidicelli, Authorized Designee

ATTEST:

TRIBAL COUNCIL OF THE
_____ TRIBE OF FLORIDA

By: _____

Council Clerk

By: _____

Chairman

Date: _____

Approved as to Form:

By: _____

Attorney for Council



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

FOR ADOPTION BY A COMMUNITY DEVELOPMENT DISTRICT

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

By: _____ Date: _____

Kevin Guthrie, Executive Director or
Ian Guidicelli, Authorized Designee

COMMUNITY DEVELOPMENT DISTRICT, STATE OF FLORIDA

By: _____ By: _____

Title: _____ Title: _____

Date: _____

Approved as to Form:

By: _____

Attorney for District



STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT



Ron DeSantis, Governor

Kevin Guthrie, Executive Director

SAMPLE AUTHORIZING RESOLUTION FOR ADOPTION OF STATEWIDE MUTUAL AID AGREEMENT

RESOLUTION NO. _____

WHEREAS, the State of Florida Emergency Management Act, Chapter 252, authorizes the State and its political subdivisions to provide emergency aid and assistance in the event of a disaster or emergency; and

WHEREAS the statutes also authorize the State to coordinate the provision of any equipment, services, or facilities owned or organized by the State or its political subdivisions for use in the affected area upon the request of the duly constituted authority of the area; and

WHEREAS this Resolution authorizes the request, provision, and receipt of interjurisdictional mutual assistance in accordance with the Emergency Management Act, Chapter 252, among political subdivisions within the State; and

NOW, THEREFORE, be it resolved by _____

_____ that in order to maximize the prompt, full and effective use of resources of all participating governments in the event of an emergency or disaster we hereby adopt the Statewide Mutual Aid Agreement which is attached hereto and incorporated by reference.

ADOPTED BY: _____

DATE: _____

I certify that the foregoing is an accurate copy of the Resolution adopted by

_____ on _____.

BY: _____

TITLE: _____

DATE: _____



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-507

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Council Member Teniadè Broughton

SUBJECT:

REVISED - DISCRETIONARY FUNDING ALLOCATION - CITY COUNCIL MEMBER
TENIADE BROUGHTON - DISTRICT 5

RECOMMENDATION:

That City Council approve funding of \$500 to the Muscogee Nation of Northwest Florida, \$250 to Safe Women and Girls, \$200 to the East Hill Neighborhood Association, \$500 to the University of West Florida (UWF) Historic Trust, \$500 to the Gulf Coast Minority Chamber of Commerce from the City Council Discretionary Funds for District 5.

HEARING REQUIRED: No Hearing Required

SUMMARY:

In accordance with Section 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.

The Muscogee Nation of Northwest Florida was originally established in 1990 as the Perdido Bay Tribe of Southeastern Lower Muscogee Creek Indians and has since been transformed into the Muscogee Nation of Northwest Florida. The organization is dedicated to preserving and sharing the history and culture of the Indigenous people in the Pensacola Area. The Cultural Heritage Resource Center & Museum serves as a key resource for preserving and sharing Indigenous history and culture. The museum features art, history and artifacts from the early Mississippian period to the current date. They provide community outreach such as speaking at schools and contributing to projects benefiting local Veterans. The museum, located at 3300 Beloved Path has recently been remodeled and a grand re-opening will be held on June 29, 2024. Funding will go towards the costs associated with this event.

Founded on the principles of compassion, resilience, and empowerment, SWAG - Safe Women and Girls stands as a source of hope and support for women and girls navigating the struggles of life. Established with a strong commitment to nurturing safety, guidance, and empowerment, SWAG has grown into a strong organization dedicated to breaking down barriers and building a future where every woman and girl can thrive. Funding will be used to

further their mission.

In 2004, a woman by the name of Ms. Colleen McDonough approached the City of Pensacola about issues in the neighborhood. While she thought she'd be organizing a neighborhood watch group, with support from the city, what became of it was much more. At the time, the City was urging areas to organize neighborhood associations to create a greater sense of community and government partnership. So, with that, the dream of a crime watch group grew to something much greater. And the East Hill Neighborhood Association was born and was the second to form within the City limits, following the long-standing North Hill Neighborhood.

Today, a 15-member volunteer Board of Directors governs the Association and spearheads its great initiatives. From park improvements and planting trees to hosting movie nights and outdoor concerts, the association continues to help make East Hill a wonderful place to live, work and play. Funding will be used to offset costs associated with their participation in the Juneteenth celebration.

The UWF Historic Trust creates opportunities to experience the authentic and diversely rich history of Northwest Florida. The UWF Historic Trust celebrates diversity through accepting, valuing, and respecting each member of our community. Each year, the UWF Historic Trust participates in various events celebrating Juneteenth. The funds will be used to offset the costs of these events.

The Gulf Coast Minority Chamber of Commerce serves as an advocate and the conscience of the Minority and Small Business Community, while striving to ensure economic fairness for all. Funds will be used to offset costs associated with various Juneteenth events.

PRIOR ACTION:

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

FUNDING:

Budget:	\$ 4,857	FY 2024 District 5 Discretionary Funds Balance
Actual:	\$ 500	Muscogee Nation of Northwest Florida
	250	SAFE Women and Girls
	200	East Hill Neighborhood Association
	500	UWF Historic Trust
	<u>500</u>	Gulf Coast Minority Chamber of Commerce
	\$ <u>1,950</u>	Total

FINANCIAL IMPACT:

A balance of \$4,857 is currently available within the District 5 Discretionary Fund Account for FY 2024. Upon approval by City Council, a balance of \$2,907 will remain in the District 5 Discretionary Fund Account.

LEGAL REVIEW ONLY BY CITY ATTORNEY: No

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 #: 24-500

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

ADD-ON: AIRPORT - AWARD OF BID NO. 24-028 - PENSACOLA INTERNATIONAL
AIRPORT TIPPIN AVENUE PARKING LOT

RECOMMENDATION:

That City Council award Bid # 24-028, Pensacola International Airport Tippin Avenue Parking Lot to C.W. Roberts Contracting, Inc. of Pensacola, FL, the lowest and most responsible bidder with a base bid of \$2,845,539.10 plus a 10% contingency of \$284,553.91 for a total of \$3,130,093.01. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer this contract and complete the work, consistent with the bid, contracting documents, and the Mayor's Executive Powers as granted in the City Charter.

HEARING REQUIRED: No Hearing Required

SUMMARY:

To help meet the increased parking demands experienced by the Pensacola International Airport, the Airport plans to begin development of additional economy parking as well as provide residents and visitors with a safe place when needing to use their cell phones for picking up or dropping off patrons.

The base project is designed to meet the increased parking demands by the creation of an estimated 434 new asphalt paved parking stalls along Tippin Avenue, just north of Francis Taylor Boulevard, within a vacant parcel on Pensacola International Airport property. The proposed site is currently used during the holiday travel season as an overflow parking lot. This grass lot will be revamped to allow revenue-controlled access year-round. The proposed improvements include installing new stormwater pipes and inlets, new curbs and gutters, a new stormwater pond fitted with a sand chimney, and paving an approximately 18,000 square yard area. Other associated improvements include striping the new parking lot, sidewalk installation, installation of irrigation, landscaping, lighting, electric vehicle charging stations, bus shelters, and security call boxes. The irrigation system, lighting, bus shelters, electric vehicle charging stations, and security call boxes shall be designed and installed as a design-build portion of the work performed by the contractor. In connection to the parking lot project, additive alternate No. 1 was bid to install 12-strand fiber to the revenue control equipment in

the new parking lot.

The additive alternate No. 2 is designed to provide customers with a safe place to wait while picking up passengers, in lieu of the current practice of waiting along the curb front. The waiting lot, also called a cell phone lot, will be a 16-space waiting area where drivers can wait for free for their party to arrive. The location will be separated out of Parking Lot 1. The efforts associated with this project include, but are not limited to, removal of existing chain link fencing, removal of existing landscaping, and removal of existing striping. Then, new striping, new chain link fencing, and new asphalt driveway are to be installed. All disturbed areas shall then be restored with landscaping to match the preexisting conditions.

On May 3, 2024, City Purchasing issued Invitation to Bid No. 24-028 for parking lot construction. Bids were due June 3, 2024, and four (4) responses were received. C.W. Roberts Contracting, Inc. of Pensacola, FL, was the lowest and most responsible bidder with a base bid of \$2,754,965.10 and additive alternative bids No. 1 and No. 2 of \$90,574.00 for a total bid of \$2,845,539.10.

With the current demand for parking, the Airport would like to have the new parking lot available for the 2024 holiday season. In order to achieve this goal, construction would need to start by July 1, 2024, which would require the award of bid to be approved at the June 13, 2024 City Council meeting to allow time for contract routing and approval. With the bids due June 3, 2024, and the requirement of a 5-day protest period, staff was not able to meet the media deadline for the June 10, 2024 Agenda Conference. Therefore, we are asking City Council to consider this item as an add-on.

PRIOR ACTION:

March 23, 2023 – City Council approved Resolution 2023-023 authorizing the Mayor to coordinate with FDOT to change the project title, funding, scope and deliverables for FDOT grant 446650-1.

May 23, 2024 - City Council approved the acceptance of the Public Transportation Grant Agreement No. 446650-1-94-01 for the Remote Parking Lot Construction in the amount of \$2,200,000 with a \$2,200,000 local match.

May 23, 2023 – City Council approved Resolution 2024-40 authorizing the Mayor to execute the Public Transportation Grant Agreement No. 446650-1-94-01 for the Remote Parking Lot Construction.

FUNDING:

Budget:	\$2,200,000.00	Florida Department of Transportation Grant 446650-1-94-01
	2,200,000.00	City Required Match-Airport Capital Funds
	50,000.00	Airport Operating Fund
	<u>\$4,450,000.00</u>	

Actual:	\$2,754,965.10	Base Bid
	46,000.00	Additive Alternative No. 1
	44,574.00	Additive Alternative No. 2
	<u>284,553.91</u>	10% Contingency Base Bid
	<u>\$3,130,093.01</u>	

FINANCIAL IMPACT:

In anticipation of this project, funds were allocated in the fiscal year 2024 budget. In fiscal year 2024, funding in the amount of \$2,200,000 has been appropriated in the Airport's State grant account, and funding in the amount \$2,200,000 has been appropriated in the Airport's capital improvement account for the tippin parking lot. In addition, \$50,000 has been appropriated in the Airport operating and maintenance account for the cell phone lot modifications.

Funds will be provided from the FDOT on a reimbursable basis.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

6/6/2024

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Miller, Deputy City Administrator
Matthew F. Coughlin, Airport Director

ATTACHMENTS:

1. ITB No. 24-028 Tabulation of Bids
2. ITB No. 24-028 Final Vendor Reference List

PRESENTATION: No

TABULATION OF BIDS

BID NO: 24-028

TITLE: PENSACOLA INTERNATIONAL AIRPORT TIPPIN AVENUE PARKING LOT

Submittals Due: 06/03/24, 2:30 P.M.	C.W. ROBERTS CONTRACTING, INC.	HEWES & COMPANY, LLC	SITE & UTILITY, LLC	CHIVERS CONSTRUCTION, INC.
Airport	Pensacola, FL	Pensacola, FL	Pensacola, FL	Cantonment, FL

Base Bid	\$2,754,965.10	\$2,859,499.68	\$2,876,028.00	\$3,139,595.63
Bid Alternate 1	\$46,000.00	\$43,713.20	\$47,380.00	\$60,320.00
Bid Alternate 2	\$44,574.00	\$37,227.52	\$43,920.00	\$49,526.10
Bid Alternate 3	(\$21,289.10)	(\$21,116.95)	(\$14,500.00)	(\$15,000.00)

Submittals Due: 06/03/24

Bid No.: 24-028

FINAL VENDOR REFERENCE LIST
PENSACOLA INTERNATIONAL AIRPORT TIPPIN AVENUE PARKING LOT
PENSACOLA INTERNATIONAL AIRPORT/ENGINEERING

Vendor	Name	Address	City	St	Zip Code	SMWBE
004632	A E NEW JR INC	460 VAN PELT LANE	PENSACOLA	FL	32505	
067544	AFFORDABLE CONCRETE & CONSTRUCTION LLC	4089 E JOHNSON AVE	PENSACOLA	FL	32515	Y
077498	ALL PHASE CONSTRUCTION OF NW FL LLC	5340 BRIGHT MEADOW RD	MILTON	FL	32570	Y
088282	AMERICAN EAGLE FENCE	768 JOHN SIMS PARKWAY E	NICEVILLE	FL	32578	
071765	ATLAS BUILDERS GROUP	4366 AVALON BLVD	MILTON	FL	32583	
081043	BCK SPECIALTIES INC	1709 ANTIBES CIR	GULF BREEZE	FL	32563	
069786	BEAR GENERAL CONTRACTORS LLC	2803 E CERVANTES ST STE C	PENSACOLA	FL	32503	
036997	BELLVIEW SITE CONTRACTORS INC	3300 GODWIN LANE	PENSACOLA	FL	32526	Y
038068	BIGGS GREEN CONSTRUCTION SERVICES INC	PO BOX 1552	PENSACOLA	FL	32591	Y
051492	BILL SMITH ELECTRIC INC	P O BOX 1057	GONZALEZ	FL	32560	Y
053457	BIRKSHIRE JOHNSTONE LLC	507 E FAIRFIELD DR	PENSACOLA	FL	32503	Y
065013	BKW INC	8132 PITTMAN AVE	PENSACOLA	FL	32534	Y
070527	BLOWERS, BENJAMIN DBA INNOVIS USA LLC	5540 LEESWAY BLVD	PENSACOLA	FL	32504	
022856	BROWN CONSTRUCTN OF NW FL INC	10200 COVE AVE	PENSACOLA	FL	32534	Y
078639	C W ROBERTS CONTRACTING INC	3372 CAPITAL CIR NE	TALLAHASSEE	FL	32308	
042045	CHIVERS CONSTRUCTION INC	801 VIRECENT ROAD	CANTONMENT	FL	32533	Y
049653	CHRISTOPHER C BARGAINEER CONCRETE CONSTRUCTION INC	6550 BUD JOHNSON ROAD	PENSACOLA	FL	32505	Y
070475	CRUZ, SHAWN C DBA COASTAL PROPERTY PREPARATION LLC	5700 ALMAX COURT	PENSACOLA	FL	32506	
033554	D K E MARINE SERVICES	P O BOX 2395	PENSACOLA	FL	32513	Y
070603	D+B BUILDERS	670 MOLINO ROAD	MOLINO	FL	32577	
007055	DAVIS MARINE CONSTRUCTION INC	8160 ASHLAND AVENUE	PENSACOLA	FL	32534	Y
065871	ECSC LLC	8400 LITLE JOHN JUNCTION	NAVARRE	FL	32566	Y
072705	EVAN CHASE CONSTRUCTION INC	2991 SOUTH HIGHWAY 29	CANTONMENT	FL	32533	Y
032038	EVANS CONTRACTING INC	400 NEAL ROAD	CANTONMENT	FL	32533	
055177	FLORIDA CONCRETE CONCEPTS INC	4432 ALANTHUS STREET	MILTON	FL	32583	
087144	GANNETT MEDIA CORP DBA GANNETT FLORIDA LOCALIQ	P O BOX 631244	CINCINNATI	O	45263	
050495	GB GREEN CONSTRUCTION MGMT & CONSULTING INC	303 MAN'O'WAR CIRCLE	CANTONMENT	FL	32533	Y
058714	GREG ALLEN CONSTRUCTION INC	5006 PERSIMMON HOLLOW ROAD	MILTON	FL	32583	Y
000591	GULF ATLANTIC CONSTRUCTORS INC	650 WEST OAKFIELD RD	PENSACOLA	FL	32503	Y
044100	GULF BEACH CONSTRUCTION	1308 UPLAND CREST COURT	GULF BREEZE	FL	32563	Y
069565	GULF COAST INDUSTRIAL CONSTRUCTION LLC	12196 HWY 89	JAY	FL	32565	Y
074827	GULF COAST MINORITY CHAMBER OF COMMERCE INC	321 N DEVILLERS ST STE 104	PENSACOLA	FL	32501	

Submittals Due: 06/03/24

Bid No.: 24-028

FINAL VENDOR REFERENCE LIST
PENSACOLA INTERNATIONAL AIRPORT TIPPIN AVENUE PARKING LOT
PENSACOLA INTERNATIONAL AIRPORT/ENGINEERING

Vendor	Name	Address	City	St	Zip Code	SMWBE
017352	GULF COAST TRAFFIC ENGINEERS	8203 KIPLING STREET	PENSACOLA	FL	32514	
036662	H H H CONSTRUCTION OF NWF INC	8190 BELLE PINES LANE	PENSACOLA	FL	32526	
070385	HANTO & CLARKE GENERAL CONTRACTORS LLC	1401 EAST BELMONT STREET	PENSACOLA	FL	32501	
080650	HARRIS INMAN CONSTRUCTN CO INC	3583 LAGUNA COURT	GULF BREEZE	FL	32563	
044713	HENRY HAIRE BUILDING & DEVELOPMENT INC	6341 HIGHWAY 90 STE B	MILTON	FL	32570	
052866	HEWES & COMPANY LLC	251 AMBER STREET	PENSACOLA	FL	32503	Y
022978	INGRAM SIGNALIZATION INC	4522 N DAVIS HWY	PENSACOLA	FL	32503	Y
049240	J MILLER CONSTRUCTION INC	8900 WARING RD	PENSACOLA	FL	32534	Y
071564	JOSEPH BRIDGES DBA JOE'S LINE UP	222 EHRMANN ST	PENSACOLA	FL	32507	
068161	LEA, DOUGLAS C DBA L&L CONSTRUCTION SERVICES LLC	9655 SOUTH TRACE ROAD	MILTON	FL	32583	Y
016210	NORD, STEVE DBA SEA HORSE GENERAL CONTRACTORS INC	4238 GULF BREEZE PKWY	GULF BREEZE	FL	32563	Y
001823	NWF CONTRACTORS INC	P O BOX 1718	FORT WALTON BEACH	FL	32549	
002720	PANHANDLE GRADING & PAVING INC	P O BOX 3717	PENSACOLA	FL	32516	
060344	PENSACOLA BAY AREA CHAMBER OF COMMERCE DBA GREATER PENSACOLA CHAMBER	117 W GARDEN ST	PENSACOLA	FL	32502	
055028	PERDIDO GRADING & PAVING	PO BOX 3333	PENSACOLA	FL	32516	Y
073174	PERRITT, CHRIS LLC	5340 BRIGHT MEADOWS ROAD	MILTON	FL	32570	Y
018305	R D WARD CONSTRUCTION CO INC	15 EAST HERMAN STREET	PENSACOLA	FL	32505	
049671	RADFORD & NIX CONSTRUCTION LLC	7014 PINE FOREST ROAD	PENSACOLA	FL	32526	Y
001681	RANDALL, HENRY DBA RANDALL CONSTRUCTION	1045 S FAIRFIELD DRIVE	PENSACOLA	FL	32506	
031881	ROADS INC OF NWF	106 STONE BLVD	CANTONMENT	FL	32533	
065450	SITE AND UTILITY LLC	PO BOX 30136	PENSACOLA	FL	32503	Y
011457	SOUTHERN UTILITY CO INC	P O BOX 2055	PENSACOLA	FL	32513	Y
028060	THE GREEN SIMMONS COMPANY INC	3407 NORTH W STREET	PENSACOLA	FL	32505	Y
045430	THE WALSH GROUP	929 W ADAMS	CHICAGO	IL	60607	
002482	UTILITY SERVICE COMPANY INC	4326 GULF BREEZE PARKWAY	GULF BREEZE	FL	32563	
030317	W P R INC	4175 BRIARGLEN RD	MILTON	FL	32583	Y
030448	WARRINGTON UTILITY & EXCAVATING INC	8401 UNTREINER AVE	PENSACOLA	FL	32534	Y
042739	WESTON SOLUTIONS	PO BOX 538253	ATLANTA	G	30353	
021725	WHITESELL-GREEN INC	P O BOX 2849	PENSACOLA	FL	32513	
069212	YERKES SOUTH INC	634 LAKEWOOD RD	PENSACOLA	FL	32507	Y

Vendors: 62



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-578

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

ADD-ON -- SECOND ADDENDUM TO OPTION AGREEMENT WITH INSPIRED COMMUNITIES OF FLORIDA, LLC FOR LOTS 4 AND 5 AT THE COMMUNITY MARITIME PARK

RECOMMENDATION:

That City Council approve and authorize the Mayor to execute the Second Addendum to the Option Agreement with Inspired Communities of Florida, LLC for the development of Lots 4 and 5 of Vince J. Whibbs Sr. Community Maritime Park, extending the agreement through July 31, 2024. Also, that City Council authorize the Mayor to take actions necessary to execute and administer this 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:

In October 2018, the City entered into an option agreement with Studer Properties, LLC for the exclusive right to develop and lease all of the vacant parcels at the Community Maritime Park, specifically parcels 3, 4, 5, 6, 7, 8, and 9. In March 2020, the option agreement was extended through March 31, 2021. In October 2020, prior to the expiration of the option agreement with Studer Properties, both parties entered into a partial assignment of the option agreement with Inspired Communities of Florida for parcels 3, 6, 8, and 9. Corresponding partial assignments were also entered into with two other development groups for the remainder of the parcels - Valencia Development Group for parcel 7 and Silver Hills Development for parcels 4 and 5, with the former still in effect and the latter parcels now under this option agreement to Inspired Communities of Florida.

After issuing a public notice requesting proposals in April 2021, City Council received presentations and ranked submittals in July 2021. After rejecting a Memorandum of Understanding with the highest ranked group at the time, Carson Lovell, in October 2021, the City then proceeded to negotiate with the next highest ranked group, Inspired Communities of Florida. In March 2022, the City and Inspired entered into an Option Agreement that gave Inspired exclusive rights to develop Parcels 4 and 5 until August 31, 2023 with the ability to

extend the option for one 6-month period. Inspired exercised their extension through February 28, 2024 by making a lump sum payment of \$60,000. In February 2024, the City approved the first addendum to the Option Agreement, extending the agreement through June 30, 2024. The City and Inspired now seek to extend the term of their Option Agreement for another month via this Second Addendum, as negotiations proceed in good faith to the outcome of an executable ground lease.

PRIOR ACTION:

April 22, 2021 - City Council approved the issuance of public notice requesting proposals for the redevelopment of Lots 4 and 5 at the Community Maritime Park

July 12, 2021 - City Council approved the scheduling of a special meeting regarding the proposals and ranking

July 28, 2021 - City Council selected Carson Lovell as the highest ranked submitter, and allowed for negotiations to proceed with the next highest ranked submitter, Inspired Communities of Florida, if negotiations failed with Carson Lovell

October 14, 2021 - City Council rejected a Memorandum of Understanding from Carson Lovell

February 10, 2022 - City Council approved an Option Agreement with Inspired Communities of Florida

February 22, 2024 – City Council approved an Addendum to Option Agreement with Inspired Communities of Florida.

FUNDING:

N/A

FINANCIAL IMPACT:

None

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

6/5/2024

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Lovoy, Finance Director
Deana Stallworth, Property Lease Manager

ATTACHMENTS:

1. Second Addendum to Inspired Option Agreement for Lots 4 and 5

PRESENTATION: No

**SECOND ADDENDUM TO OPTION AGREEMENT
BETWEEN CITY OF PENSACOLA AND INSPIRED COMMUNITIES OF FLORIDA,
LLC FOR COMMUNITY MARITIME PARK
PARCELS 4 AND 5**

THIS SECOND ADDENDUM TO OPTION AGREEMENT (this “**Second Addendum**”), dated as of June 18, 2024 (the “**Effective Date**”), is entered into between **CITY OF PENSACOLA**, a Florida municipal corporation (“**Optionor**”), and **INSPIRED COMMUNITIES OF FLORIDA, LLC.**, a Florida limited liability corporation (“**Optionee**”). Optionor, and Optionee, their successors, and assigns, are each a “**Party**,” and collectively referred to herein as the “**Parties**”.

RECITALS

WHEREAS, Optionor is the owner of those certain vacant parcels of land more particularly described on the attached **Exhibit “A”** (the “**Lots**” described in the description on Exhibit “A” are referred to hereinafter individually as a “**Parcel**”, and collectively as the “**Parcels**” or the “**Property**”); and

WHEREAS, the City Council approved that certain Option Agreement between the Parties contemplating Optionee’s possible ground lease and development of Property on or about February 10, 2022, with said agreement dated March 1, 2022 and expiring on February 28, 2024 (the “**Option Agreement**”); and

WHEREAS, the Parties desired to extend the term of the Option Agreement and entered into a First Addendum to Option Agreement, with an effective date of March 1, 2024, and expiring on June 30, 2024; and

WHEREAS, the Parties desire to extend the term of the Option Agreement another month to facilitate their attempt to finalize the terms of a ground lease as to parcel 5 of the Property;

WHEREAS, the Parties understand and agree that Optionor and Optionee will negotiate in good faith to reach the outcome of an executable ground lease agreement at the conclusion of the new option term, if approved; and

WHEREAS, Optionee understands and agrees that approval of any renegotiated option agreement, renegotiated ground lease, and development of the Property is contingent upon the approval of the City Council in its sole and complete discretion; and

NOW, THEREFORE, in consideration of the forgoing, the other mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Recitals. The recitals set forth above are true and correct and are hereby incorporated by reference.

2. Option Term. The Option Term is extended and will automatically expire at midnight on July 31, 2024, unless duly extended, exercised, or sooner terminated as provided in the Option Agreement.

3. No Other Revisions to the Inspired Option Agreement. Except as expressly set forth above, none of the terms and conditions of this Second Addendum shall be deemed to modify or amend any of the terms and conditions of the Option Agreement, and the Option Agreement shall, as amended by this Second Addendum, remain in full force and effect during its term.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Second Addendum to Option Agreement as of the Effective Date.

OPTIONOR:

CITY OF PENSACOLA
a Florida municipal corporation

D.C. Reeves, Mayor

(AFFIX CITY SEAL)

Date signed: _____, 2024

Attest: _____
Ericka L. Burnett, City Clerk

Legal in form and valid as drawn:

Adam Cobb, City Attorney

STATE OF FLORIDA

COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me by means of physical presence this __ day of _____, 2024, by D.C. Reeves, the Mayor of City of Pensacola, a Florida municipal corporation, on behalf of said municipal corporation, who () is personally known to me or () has produced a driver's license as identification.

NOTARY PUBLIC

[SEAL]

OPTIONEE:

INSPIRED COMMUNITIES OF FLORIDA

By: _____

Print name: _____

Its: _____

Date signed: _____, 2024

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence this ____ day of _____, 2024, by _____, the managing member of INSPIRED COMMUNITIES OF FLORIDA, LLC., a Florida limited liability company, on behalf of said limited liability company, who () is personally known to me or () has produced a driver's license as identification.

NOTARY PUBLIC

[SEAL]

EXHIBIT “A”
to
SECOND ADDENDUM TO OPTION
AGREEMENT BETWEEN
CITY OF PENSACOLA AND INSPIRED COMMUNITIES OF FLORIDA, LLC

PROPERTY

The land referred to herein below is situated in the County of Escambia, State of Florida, and is described as follows:

Lots 4 and 5 of VINCE WHIBBS SR. COMMUNITY MARITIME PARK, according to the Plat thereof as recorded in Plat Book 19, Page(s) 23 and 23A, of the Public Records of Escambia County, Florida.



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-554

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Council President Casey Jones

SUBJECT:

PUBLIC HEARING -- DISPOSTION OF REAL PROPERTY - 1491 N. E. ST., 2300 W. JACKSON ST., 113 N. SPRING ST.

RECOMMENDATION:

That City Council conduct a Public Hearing regarding the disposition of real property located at 1491 N. E. Street, 2300 W. Jackson Street, and 113 N. Spring Street, in accordance with Chapter 163, Part III, Florida Statutes.

HEARING REQUIRED: Public Hearing Required

SUMMARY:

Each of these residential infill parcels were declared surplus with disposition to other methods of attainable/affordable housing in 2022. In April 2024, the CRA Board approved the required public notice period for these three residential infill properties, and this action seeks to authorize the new method of disposition of this real property to a Community Land Trust (CLT). This action is one of the steps required in the disposition of real property owned by the City or Community Redevelopment Agency. Northwest Florida Community Land Trust LLC was selected at the expiration of the required notice period, using the criteria established therein. Northwest Florida Community Land Trust submitted the only valid response to the Notice of Intent to Dispose prior to its expiration, though one other company did email their unrealized intention to submit after its expiration. The City Attorney and staff have negotiated a land donation agreement which maintains the tenets of affordability as established in the notice and prior actions.

Pursuant to Section 163.380 Florida Statutes which governs the disposal of real property by a city or redevelopment agency when the property is located in a community redevelopment area and was acquired for redevelopment purposes; and subsection 163.380(3)(a) which includes a requirement that prior to the sale or lease of such property to a private party, the city or agency must advertise for and invite competing proposals for the property, The intent is and has been to redevelop the three lots for attainable/workforce housing. After receiving approval in April 2024, staff advertised for the required notice period, which expired in late May. A community land trust model is a mechanism that ensures affordable housing by separating

ownership of land from ownership of structures on the land, keeping housing costs low and maintaining affordability in perpetuity. Common in both urban and rural areas, CLTs are increasing in popularity as a proven tool to address affordable housing challenges. The number of community land trusts has grown significantly in recent years, with hundreds now operating across the United States.

The three lots - 1491 N. E Street (formerly addressed as 901 W. Blount Street), 2300 W. Jackson Street, and 113 N. Spring Street - are all located within a CRA district. While both the E Street and the Jackson Street properties are shown as owned by the CRA, the Spring Street property is owned by the City and houses an obsolete Pensacola Energy low-pressure natural gas regulator. When previously declared surplus in 2022, the method of disposition for all three was to attainable infill housing programs. Per the Council policy for surplus and disposition of real property, property owners within a 300-ft radius of each of the parcels were again mailed notices of the pending disposition of the property on June 3, 2024.

PRIOR ACTION:

July 18, 2022 - CRA declared 2300 W. Jackson Street, 901 W. Blount Street (now 1491 N. E Street), and two other parcels as surplus and authorized disposition to the City of Pensacola Attainable Infill Housing Program

August 18, 2022 - City of Pensacola approved surplus and disposition of 2300 W. Jackson Street, 901 W. Blount Street (now 1491 N. E Street), and two other parcels to the City of Pensacola Attainable Infill Housing Program and held a public hearing regarding their disposition pursuant to F.S. 163.380

September 29, 2022 - City Council declared 113 N. Spring Street as surplus and authorized its disposition to the Attainable Housing Infill Program

April 8, 2024 - CRA approved the issuance of the required public notice for the three residential infill lots

June 10, 2024 -- CRA approved a Land Donation Agreement

FUNDING:

N/A

FINANCIAL IMPACT:

The addition of these parcels to a CLT will eventually generate modest ad valorem tax and Tax Increment Financing (TIF) revenue to the City's General Fund and CRA Fund after redevelopment is actualized. This income will be dependent upon the number of homes constructed and sold.

LEGAL REVIEW ONLY BY CITY ATTORNEY: No

STAFF CONTACT:

Don Kraher, Council Executive
Kerrith Fiddler, City Administrator
Amy Lovoy, Finance Director
Victoria D'Angelo, CRA Manager
Deana Stallworth, Property Lease Manager

ATTACHMENTS:

1. Land Donation Agreement with NWFL CLT - June 2024

PRESENTATION: No

LAND DONATION AGREEMENT

This Land Donation Agreement (the “**Agreement**”) is made and entered into this ____ day of _____, 2024 by and between Northwest Florida Community Land Trust, LLC, a Florida limited liability company (“**Land Trust**”), and the City of Pensacola, Florida, a Florida municipal corporation (“**City**”) and the Community Redevelopment Agency of the City of Pensacola, a public body, corporate and politic, of the State of Florida (“**CRA**”) (each of the City and CRA may hereinafter be referred to individually as a “**Donor**” and collectively as “**Donors**”).

W I T N E S S E T H:

WHEREAS, the CRA is the owner of certain real property located at 1491 N. E Street, Pensacola, Florida, as more particularly depicted and described in the attached Exhibit A (“**Parcel 1**”);

WHEREAS, the CRA is the owner of certain real property located at 2300 W. Jackson Street, A, Pensacola, Florida, as more particularly depicted and described in the attached Exhibit B (“**Parcel 2**”);

WHEREAS, the City is the owner of certain real property located on Spring Street in Pensacola, Florida, Parcel ID #000S009003001462, as more particularly depicted in the attached Exhibit C (“**Parcel 3**”) (Parcel 1, Parcel 2 and Parcel 3 are hereinafter sometimes referred to individually as a “**Parcel**”, and, collectively as the “**Property**”);

WHEREAS, Land Trust is a not-for-profit charitable organization engaged in the development and provision of housing opportunities for low to moderate income people and families in the greater Pensacola metropolitan area;

WHEREAS, Donors desire to donate the Property to Land Trust, to be developed, improved, and used by, through or under the Land Trust in perpetuity for the sole purpose of provision of housing for low to moderate income people and families in Pensacola, Florida; and

WHEREAS, Land Trust agrees to accept the donation of the Property from Donors, subject to the terms and conditions and covenants further set forth in this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt whereof is hereby acknowledged, and in consideration of the mutual covenants, conditions and promises herein contained, the parties hereto, hereby agree as follows:

1. **Recitals and Exhibits.** The foregoing recitations are true and correct and are hereby incorporated herein by reference. All Exhibits annexed to this Agreement are hereby incorporated herein and by reference made a part hereof.

2. **Donation of the Property.** Donors agree to donate and Land Trust agrees to accept donation of the Property upon the terms and conditions hereafter set forth.

3. **Conditions Precedent to the Land Trust's Obligation.** Unless waived in whole or in part in writing by Land Trust (which Land Trust shall have the right to do), this Agreement and Land Trust's obligations hereunder are subject to and conditioned upon the satisfaction of each and all of the following (hereinafter sometimes collectively referred to as the "**Conditions Precedent**" and singularly as "**Condition Precedent**"):

(a) **Title Status.** After the execution of the Agreement, Land Trust shall obtain from a closing agent selected by Land Trust, at Land Trust's cost and expense, a commitment to issue title insurance by a licensed title insurer. Such commitment shall be for the issuance of an ALTA Form Owner's Title Insurance Policy on the Property without exception other than the standard pre-printed exceptions normally contained therein, and those exceptions acceptable to Land Trust in its sole and absolute discretion (collectively, the "**Permitted Exceptions**"). Further:

(i) Donors shall supply such standard sellers' affidavits and other documentation as is reasonably required and satisfactory to Donors to cause the standard printed exception for parties in possession to be deleted;

(ii) Donors shall supply such standard sellers' affidavits and other documentation as may be reasonably required and satisfactory to Donors so as to permit the standard printed exception for construction liens to be deleted;

(iii) Land Trust may cause a survey or surveys to be prepared by a Florida licensed land surveyor from being sufficient to permit the title insurance company in question to delete the standard printed exception regarding matters which would be reflected by an accurate field survey; and

(iv) Land Trust shall determine whether the Property has legal, appropriate and practicable access for Land Trust's use of the Property which determination shall be made at Land Trust's sole discretion.

Land Trust shall, on or before the Closing Date (as defined below), notify Donors of any objections which Land Trust may have to Donors' title or to the other matters listed above, which matters shall be treated as title defects if unsatisfactory to Land Trust. If Donors are unable or unwilling to cure the defect(s) of which Land Trust gave notice, then Land Trust shall have the right, but not the obligation, for an additional sixty (60) days, to itself cure such defect(s) in title (and, if applicable, to extend the Closing Date contemplated hereby). If, after expiration of the above-referenced time periods, Donor has not cured the defect(s) in title and Land Trust either does not exercise its right to attempt to cure or is unable to cure such defect(s) within the time period heretofore specified, and Land Trust does not choose, at its option, to accept title to the Property in its then existing conditions, thereby waiving such objections to title then this Agreement shall terminate.

(b) **Due Diligence, Feasibility.** On or before sixty (60) days following the effective date of this Agreement (the "**Due Diligence Period**"), Land Trust shall determine whether the development or re-development of the Property for the purposes stated

herein is feasible. In so doing, Land Trust shall, among other things, determine: (i) whether there are any zoning restrictions or other prohibitions, codes, regulations, ordinances or requirements imposed by any governmental or quasi-governmental authority which will prevent Land Trust from development or re-development of the Property in the manner contemplated by Land Trust or otherwise impact Land Trust or the Property in any way; and (ii) whether the Property is free from hazardous materials and does not constitute an environmental hazard under federal, state or local law.

In the event: (i) Land Trust is unable to use the Property as contemplated by this Agreement or such use of the Property is not feasible, in Land Trust's sole and absolute discretion; or (ii) Land Trust's due diligence reveals the existence of a regulatory or environmental concern, then this Agreement shall, at Land Trust's request, made during the Due Diligence Period, be cancelled at which time it will be null and void, and Donors and Land Trust shall be released and relieved of any and all further obligations hereunder or in connection herewith. In the event Land Trust cancels the Agreement due to the failure of any of the Conditions Precedent, Land Trust will provide the Donors with copies of any engineering reports, plans, inspection reports or other documentation obtained by Land Trust during the due diligence process which pertain to the Property. Land Trust's officers, agents, employees and contractors will have the right to enter upon the Property to conduct any surveys, inspections and investigations at Land Trust's risk. Land Trust shall hold harmless Donors and indemnify them against loss, cause, damage or claim arising from entry onto the Property by Land Trust's officers, agents, employees and contractors.

4. **Donors' Representations and Warranties.** As an inducement to Land Trust to execute this Agreement and to close the transaction contemplated hereby, each Donor represents and warrants to Land Trust that, as to itself:

(a) Such Donor has the full right, power and authority to enter into this Agreement, to perform under this Agreement, and to consummate the transactions contemplated by this Agreement and the consummation of the transactions contemplated by this Agreement will not violate any other agreement to which such Donor is a party.

(b) This Agreement has been duly authorized, executed and delivered by such Donor, creates legal, valid and binding obligations of said Donor, and does not violate and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any judicial order, agreement, arrangements, understanding, accord, document or instrument by which such Donor or its portion of the Property is bound.

(c) No consent, waiver, approval or authorization is required from any person or entity in connection with the execution, delivery and performance of this Agreement by such Donor (other than those that have been obtained or will be obtained on or prior to the Closing).

(d) **DISCLAIMERS.** SUBJECT TO THE REPRESENTATIONS AND WARRANTIES OF DONORS SET FORTH IN THIS AGREEMENT AND ANY MATTERS SET FORTH IN THE DOCUMENTS TO BE DELIVERED IN CONNECTION WITH THE

CLOSING, IT IS UNDERSTOOD AND AGREED THAT DONORS ARE NOT MAKING AND HAVE NOT AT ANY TIME MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, AS TO HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. SUBJECT TO THE REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN THIS AGREEMENT, LAND TRUST ACKNOWLEDGES AND AGREES THAT UPON CLOSING, DONORS SHALL DONATE AND CONVEY TO LAND TRUST AND LAND TRUST SHALL ACCEPT THE PROPERTY “AS IS, WHERE IS, WITH ALL FAULTS.”

(e) Donors’ representations and warranties set forth in this Section 4 shall survive the Closing and thereafter shall be fully effective and enforceable.

5. **Land Trust’s Representations and Warranties.**

(a) Land Trust has the full right, power and authority to enter into this Agreement, to perform under this Agreement, and to consummate the transactions contemplated by this Agreement and the consummation of the transactions contemplated by this Agreement will not violate any other agreement to which Land Trust is a party.

(b) This Agreement has been duly authorized, executed and delivered by Land Trust, creates legal, valid and binding obligations of Land Trust, and does not violate and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any judicial order, agreement, arrangements, understanding, accord, document or instrument by which Land Trust is bound.

(c) No consent, waiver, approval or authorization is required from any person or entity in connection with the execution, delivery and performance of this Agreement by Land Trust (other than those that have been obtained or will be obtained on or prior to the Closing).

(d) Land Trust’s representations and warranties set forth in this Section 5 shall survive the Closing and thereafter shall be fully effective and enforceable.

6. **Land Trust’s Covenants.**

(a) Within 12 months from the Effective Date (“**Construction Deadline**”), Land Trust shall:

- i. Cause a single-family home to be constructed upon each of Parcel 2 and Parcel 3 (each a “**Home**”). Each such Home shall be constructed in accordance with all applicable law, and issuance of a certificate of occupancy related to each such Home by the Construction Deadline shall be evidence of satisfaction of this subsection.
- ii. Cause the single-family home existing upon Parcel 1 to be remodeled to substantially like-new condition (“**Remodel**”). The Remodel shall

be completed in accordance with all applicable law, and issuance of a certificate of occupancy related to such Remodel by the Construction Deadline shall be evidence of satisfaction of this subsection.

(b) As to each Parcel and within 18 months following the Effective Date (“**Lease Deadline**”), Land Trust shall enter into, and deliver a fully-executed copy to the applicable Donor, a ground lease in substantially the form attached hereto as Exhibit D (the “**Ground Lease**”) with an “Income-Qualified Person” as defined in said Ground Lease. The form of Ground Lease shall not be changed without the prior written consent of the applicable Donor, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Following the Lease Deadline, each Parcel shall at all times be used for the provision of housing for low to moderate income people and families and used and occupied only pursuant to the terms of a duly executed Ground Lease and to an “Income-Qualified Person” as defined in the Ground Lease. Without limiting the forgoing and understanding there may be transitional periods between tenants under the Ground Lease, in no event shall any Parcel be vacant or unoccupied for a period of longer than three consecutive months following the Lease Deadline, unless the reason for the vacancy is beyond the control of the Land Trust and the Land Trust is exercising reasonable diligence in enforcing its rights..

(d) Land Trust shall diligently and in good-faith monitor and enforce compliance with the terms of any Ground Lease. To that end, Land Trust agrees to promptly provide such information and documentation as may be requested by Donors to ensure Land Trust’s compliance with this provision, including, without limitation, such financial documentation and information of counterparties to any Ground Lease as reasonably sufficient to enable verification that such counterparty meets the standards of an “Income-Qualified Person” as defined in the Ground Lease. Land Trust further agrees that within 10 business days after a written request from any Donor, Land Trust shall deliver a duly executed and acknowledged written certification, in form and substance reasonably acceptable to the requesting Donor(s), as to the validity and force and effect of any Ground Lease, the existence of any default on the part of any party to a Ground Lease, and the existence of any offset, counterclaim or defense thereto on the part of Land Trust, as well as to any other matters as may be reasonably requested by Donors.

(e) Land Trust will not amend any Ground Lease without Donors’ prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(f) Land Trust will not allow any assignment or subletting of any interest in any Ground Lease by the counterparty thereto without Donors’ prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(g) Land Trust’s covenants set forth in this Section 6 shall survive the Closing and thereafter shall be fully effective and enforceable.

7. **Land Trust’s Breach of Covenants.**

(a) Default. The occurrence of either of the following shall constitute an "Event of Default" under this Agreement:

- i. Should Land Trust at any time be in breach of the timely performance of its covenants set forth in Sections 6(e) or 6(f) above, and such breach remains un-remedied after expiration of a period of 30 days after delivery of a written notice from Donors to Land Trust specifying the breach in question; or
- ii. Should Land Trust be in breach of the timely performance of its covenants set forth in Sections 6(a)-6(d), above, and should such breach of performance remain un-remedied, after expiration of a period of thirty (30) days after delivery of a written notice from Donors to Land Trust specifying the breach in question, or, in the case of a breach that cannot reasonably be remedied within a thirty (30) day period, then such breach remains un-remedied after expiration of such longer period of time after delivery of such written notice from Donors as is reasonably required by Land Trust to fulfill or perform such obligations, provided that Land Trust commences to fulfill such obligations or remedy such breach within thirty (30) days after notice from Donors and thereafter diligently prosecutes such curative efforts in a commercially reasonable manner to completion.

(b) Remedies of Donors. Upon any Event of Default, Donors shall have the right to buy back any Parcel affected by said Event of Default and all improvements thereon, including, without limitation, any Home or Remodel ("**Repurchase Option**"). Any such Repurchase Option shall be exercised by the Donor that conveyed the Parcel pursuant to this Agreement, by delivering written notice to Land Trust within 90 days following the Event of Default ("**Repurchase Notice**"). With the Repurchase Notice, Donors shall include a then-current appraisal issued by a Florida-licensed real estate appraiser appraising the value of a fee simple interest in the applicable Parcel and all improvements thereon ("**Appraisal**"), along with the identity and contact information for the closing agent selected by Donors that will conduct the closing of the transaction contemplated by the Repurchase Option ("**Repurchase Agent**"). The Appraisal shall include a separate valuation of the unimproved Parcel (the "**Vacant Parcel Value**") and the improvements upon said Parcel (the "**Improvement Value**"), all as if unencumbered, vacant, and fee-simple interests. For clarity, Land Trust will ensure that, within seven days following request, Donors and their respective appraiser(s) will have access to the Property and all improvements thereon sufficient to facilitate and enable the timely preparation and delivery of any Appraisal. As soon as possible and in any event within no later than 180 days following delivery of the Repurchase Notice ("**Repurchase Closing Date**"), Land Trust shall execute and deliver to the applicable Donor a special warranty deed for the applicable Parcel(s) and all improvements thereon ("**Repurchase Deed**") free and clear of any and all encumbrance or right, title, claim or interest of any person or entity other than the Permitted Exceptions. For avoidance of doubt, any Ground Lease will be considered a Permitted Exception if and only if no event of default exists under that Ground Lease on (i) the date of delivery of the Repurchase Notice, and (ii) the Repurchase Closing Date. . On the Repurchase

Closing Date, Land Trust shall likewise execute and deliver to the applicable Donor such customary seller's affidavits and other documents as are reasonably necessary or requested to enable the conveyance to Donor(s) contemplated hereby and the deletion of the standard title policy exceptions from any owner's policy of title insurance to issue in favor of Donors, along with an assignment and assumption of any Ground Lease affecting the repurchased Parcel(s), in form and substance reasonably satisfactory to Land Trust and the applicable Donor (collectively, such affidavit along with the deed from Land Trust are the "**Repurchase Documents**"). On the Repurchase Closing Date, Donor(s) will deliver to Land Trust the Improvement Value. Land Trust will pay any documentary stamp taxes and recording fees due in relation to any Repurchase Deed; otherwise, the parties will bear their own fees and costs associated with the exercise of any Repurchase Option. Land Trust's obligations under this Section 7(b) shall be enforceable by Grantors via an action for specific performance and by such other remedies available under applicable law.

(c) Following the exercise of any Repurchase Option, Donors agree to recognize and not disturb the rights of any tenant under a Ground Lease in place in relation to the repurchased Parcel(s), for so long as such tenant is not in default under the terms of said Ground Lease.

8. **Brokers.** The parties hereto represent and warrant unto the other party that there are no real estate brokers involved with respect to this transaction and there are no brokerage fees, finders fees or broker's commissions due as a result of their respective executions of this Agreement or which will be due as a result of the Closing by virtue of their respective acts, inactions, conduct or otherwise. Each party hereto does hereby agree to indemnify and hold the other harmless from any breach of their respective representations and warranties as set forth in this paragraph.

9. **Closing.** The closing of the transaction contemplated by this Agreement (execution and delivery of the statutory warranty deed, as well as the execution and delivery of all other documents required pursuant to this Agreement and the payment of all sums required to be paid) ("**Closing**") shall take place, if at all, at the time, place and manner hereinafter set forth.

(a) **Closing Date.** The Closing shall take place on such date as the parties may agree, but no later than sixty (60) days following the date of this Agreement, unless extended by the parties (the "**Closing Date**").

(b) **Place of Closing.** The Closing shall take place at closing agent determined by Land Trust ("**Closing Escrow Agent**"), on the Closing Date at such time as mutually is agreed to between Donor and Land Trust.

(c) **Closing Documents.** At Closing, each applicable Donor shall deliver to Land Trust a Special Warranty Deed for each of the Parcels, in the substantially the form attached hereto as **Exhibit E**.

(d) **Closing Expenses.** Land Trust shall be responsible for payment of the costs of Closing, including, but not limited to, the cost of any owner's title insurance premium and related title insurance costs, documentary stamp tax and recording fees on the deed and Land Trust's attorney's fees. Donor shall be responsible for Donor's attorney's fees and tax advisor fees, if any. Property taxes for the year of closing shall be prorated to the Closing Date.

10. **Governing Law/Venue/Waiver of Trial by Jury.** This Agreement shall be governed by and enforced and construed under the laws of the State of Florida (without regard to its conflicts of laws provisions). Venue will be in Escambia County, Florida. Neither Land Trust nor Donors shall seek a jury trial on any lawsuit, proceeding or counterclaim based upon or arising out of this Agreement, or the relationship between the parties hereto. The provisions of this paragraph shall survive the termination or consummation of this Agreement.

11. **Captions.** All captions or title of paragraphs used in this Agreement are for convenience only and are not intended to construe, limit, define or describe the scope or intent of any paragraph of this Agreement nor in any way affect this Agreement.

12. **Counterparts.** This Agreement and any amendments hereto may be executed in counterparts, each of which shall be deemed an original and such counterparts shall constitute but one and the same instrument.

13. **Binding Effects.** All covenants, agreements, warranties and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors, and permitted assigns.

14. **Further Acts.** In addition to the acts and deeds recited herein and contemplated to be performed, executed, and/or delivered by Donors and Land Trust, Donor and Land Trust agree to perform, execute, and/or deliver or cause to be performed, executed and/or delivered at Closing or after Closing any and all such further acts, deeds, and assurances as may be necessary to consummate the transaction contemplated hereby.

15. **Construction of Terms.** Where appropriate, any word denoting the singular shall be deemed to denote the plural, and vice versa. Where appropriate, any word denoting or referring to one gender shall be deemed to include the other gender.

16. **Time of the Essence.** Time is of the essence of this Agreement.

17. **Effective Date.** Whenever used herein the "date hereof," the "effective date" and the "date of the execution of this Agreement" shall be deemed to mean the date the last of the parties hereto has executed this Agreement.

18. **Entire Agreement.** This contract contains the sole and entire agreement of Donors and Land Trust with respect to the transaction contemplated hereunder and no representation, inducement, promise or agreement, parole or written, between Donors and Land

Trust and not incorporated or referred to herein shall be of any force or effect. Any amendment to this Agreement shall be in writing and executed by both Donors and Land Trust.

19. **Survival.** It is understood and agreed that the ongoing and perpetual enforceability of the parties' respective covenants, representations and warranties contained herein are material to the parties' willingness and ability to consummate the transactions contemplated hereby. As a result, all of the terms, covenants, conditions, representations, warranties, and agreements of this Agreement shall survive and continue in full force and effect and shall be enforceable after Closing and shall not be merged with the documents delivered in connection therewith.

20. **Florida Public Records Law.** The Florida Public Records Law, as contained in Chapter 119, Florida Statutes, is very broad. As a result, any written communication created or received by Donors will be made available to the public and media, upon request, unless a statutory exemption from such disclosure exists. Land Trust shall comply with the Florida Public Records Law in effect from time to time if and to the extent that the Florida Public Records Law is applicable to Land Trust.

21. **Relationship.** Nothing herein shall be construed to create or imply the existence of a partnership, joint venture or other relationship of any kind or nature between Land Trust and either Donor.

22. **Radon.** In accordance with Florida law, the following disclosure is hereby made:

RADON GAS: Radon gas is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed over time. Levels of radon that exceed Federal and State Guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

23. **Notices.** All notices which are required or permitted under this Agreement must be in writing and shall be deemed to have been given, delivered or made, as the case may be (notwithstanding lack of actual receipt by the addressee), (a) when delivered by personal delivery, or (b) one business day after having been deposited with an expedited, overnight courier service, in each case addressed to the party to whom notice is intended to be given at the address set forth below:

If to City:

City of Pensacola
Attn: City Administrator
222 West Main Street
Pensacola, Florida 32502

With a copy to:

City of Pensacola
Attn: City Attorney
222 West Main Street
Pensacola, Florida 32502

If to CRA:

Community Redevelopment Agency of the City of Pensacola
Attn: CRA Division Manager
222 West Main Street
Pensacola, Florida 32502

With a copy to:

City of Pensacola
Attn: City Attorney
222 West Main Street
Pensacola, Florida 32502

If to Land Trust:

Northwest Florida Community Land Trust, LLC
300A W. Leonard Street
Pensacola, Florida 32501

With a copy to:

Moorhead Law Group
Attn: Stephen R. Moorhead
127 Palafox Place, Suite 200
Pensacola, Florida 32502

or to such other address as any party may from time to time designate by notice in writing to the other. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section 23 shall constitute delivery.

24. **Waiver.** The failure of any party to exercise any right given hereunder or to insist upon strict compliance with any term, condition or covenant specified herein, shall not constitute a waiver of such party's right to exercise such right or to demand strict compliance with such term, condition, or covenant.

25. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all

respects as if such invalid or unenforceable provision were omitted.

26. **Amendment.** Neither this Agreement nor any provision hereof may be changed, amended, modified, waived, or discharged either orally or by any course of dealing, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

(end of text – signature page to follow)

IN WITNESS WHEREOF, Donors and Land Trust have executed this Agreement and have hereunto set their hands and seals as of the dates of their respective signatures below.

CITY OF PENSACOLA
a Florida municipal corporation

By: _____
D.C. Reeves, Mayor

Date: _____

(AFFIX CITY SEAL)

Attest:

Ericka L. Burnett, City Clerk

Approved as to form:

By: _____
Adam C. Cobb, City Attorney

[Separate signature pages follow.]

Land Donation Agreement – signature page

COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF PENSACOLA, a public body,
corporate and politic

By: _____
Jennifer Brahier, Chairperson

Date: _____

[A separate signature page follows.]

Land Donation Agreement – signature page

NORTHWEST FLORIDA COMMUNITY LAND
TRUST, LLC, a Florida limited liability company

Sign: _____

Print: _____

Title: _____

Date: _____

EXHIBIT "A"

Parcel 1

Parcel ID: 000S009050016054

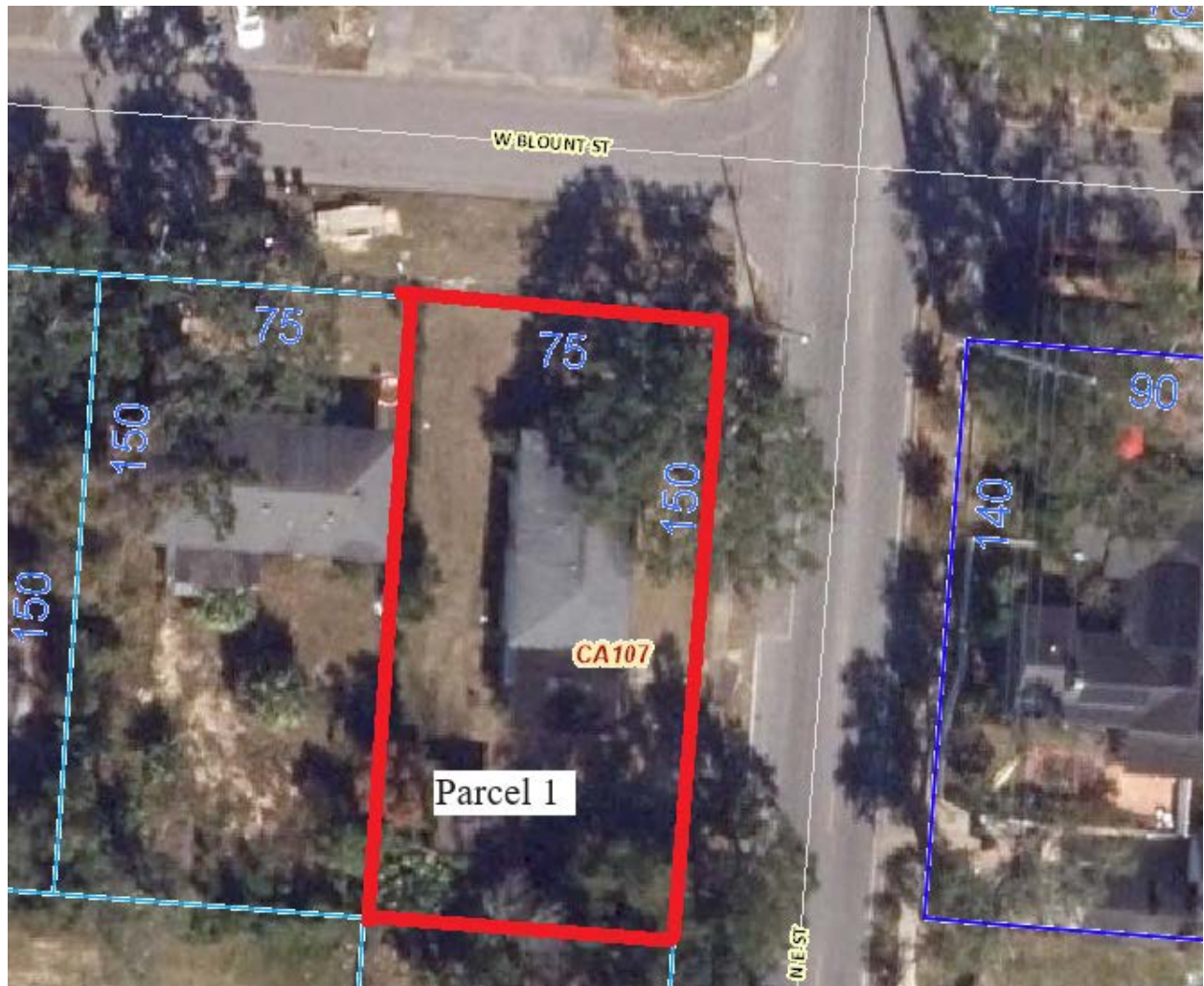


EXHIBIT "B"

Parcel 2

Parcel ID: 000S009060020172



EXHIBIT "C"

Parcel 3

Parcel ID: 000S009003001462



Ground Lease

between

NORTHWEST FLORIDA COMMUNITY LAND TRUST

and

[Name], Homeowner

dated as of
the ____ day of _____, 20____

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DRAFT

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (the "Lease") entered into this _____ day of _____, 20____, by and between Northwest Florida Community Land Trust, LLC, a Florida limited liability company, having an office at 300 W Leonard St, Pensacola, FL 32501 ("CLT"), and _____ ("Homeowner").

RECITALS

- A. CLT is organized exclusively for charitable purposes, including the purpose of providing homeownership opportunities for low and moderate income (30 – 120% AMI) people who would otherwise be unable to afford homeownership.
- B. A goal of CLT is to preserve affordable homeownership opportunities through the long-term leasing of land under owner-occupied homes.
- C. The Leased Land described in this Lease has been acquired and is being leased by CLT in furtherance of this goal.
- D. The Homeowner shares the purposes of CLT and has agreed to enter into this Lease not only to obtain the benefits of homeownership, but also to further the charitable purposes of CLT.
- E. Homeowner and CLT recognize the special nature of the terms of this Lease, and each of them accepts these terms, including those terms that affect the marketing and resale price of the property now being purchased by the Homeowner.
- F. Homeowner and CLT agree that the terms of this Lease further their shared goals over an extended period of time and through a succession of owners.

NOW THEREFORE, Homeowner and CLT agree on all of the terms and conditions of this Lease as set forth below.

DEFINITIONS: Homeowner and CLT agree on the following definitions of key terms used in this Lease.

Leased Land: the parcel of land, described in Exhibit: LEASED LAND, that is leased to the Homeowner.

Home: the residential structure and other permanent improvements located on the Leased Land and owned by the Homeowner, including both the original Home described in Exhibit: DEED, and all permanent improvements added thereafter by Homeowner at Homeowner’s expense.

Area Median Income (AMI): Area median income is defined as the midpoint of a specific area’s income distribution and is calculated on an annual basis by the Department of Housing and Urban Development.

Base Price: the total price that is paid for the Home by the Homeowner (including the amount provided by a first mortgage loan but not including subsidy in the form of deferred loans to the Homeowner).

Purchase Option Price: the maximum price the Homeowner is allowed to receive for the sale of the Home and the Homeowner’s right to possess, occupy and use the Leased Land, as defined in Article 10 of this Lease.

Lease Fee: The monthly fee that the Homeowner pays to the CLT for the continuing use of the Leased Land and any additional amounts that the CLT charges to the Homeowner for reasons permitted by this Lease.

Permitted Mortgage: A mortgage or deed of trust on the Home and the Homeowner's right to possess, occupy and use the Leased Land granted to a lender by the Homeowner with the CLT's Permission. The Homeowner may not mortgage the CLT's interest in the Leased Land, and may not grant any mortgage or deed of trust without CLT's Permission.

Event of Default: Any violation of the terms of the Lease unless it has been corrected ("cured") by Homeowner or the holder of a Permitted Mortgage in the specified period of time after a written notice of default has been given by CLT.

Due Date: With respect to: (a) the Lease Fee, the date on which such Lease Fee is due as provided in this Lease; and (b) any Imposition, the last date on which such Imposition can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the non-payment thereof. The time cutoff is 5:00 p.m. for all Due Dates.

ARTICLE 1: Homeowner's Letter of Agreement and Attorney's Letter of Acknowledgment are Attached as Exhibits.

Attached as Exhibit HOMEOWNER'S LETTER OF AGREEMENT AND ATTORNEY'S LETTER OF ACKNOWLEDGMENT and made part of this Lease by reference are a Letter of Agreement from the Homeowner, describing the Homeowner's understanding and acceptance of this Lease (including the parts of the Lease that affect the resale of the Home), and a Letter of Acknowledgment from the Homeowner's attorney, describing the attorney's review of the Lease with the Homeowner.

ARTICLE 2: Leasing of Rights to the Land

2.1 CLT LEASES THE LAND TO HOMEOWNER: The CLT hereby leases to the Homeowner, and Homeowner hereby accepts, the right to possess, occupy and use the Leased Land in accordance with the terms of this Lease. CLT has furnished to Homeowner a copy of the most current title report, if any, obtained by CLT for the Leased Land, and Homeowner accepts title to the Leased Land in its condition "as is" as of the signing of this Lease.

2.2 MINERAL RIGHTS NOT LEASED TO HOMEOWNER: CLT does not lease to Homeowner the right to remove from the Leased Land any minerals lying beneath the Leased Land's surface. Ownership of such minerals remains with the CLT (or may be owned by prior owners), but the CLT shall not remove any such minerals from the Leased Land without the Homeowner's written permission.

ARTICLE 3: Term of Lease, Change of Land Owner

3.1 TERM OF LEASE IS 99 YEARS: This Lease shall remain in effect for 99 years, beginning on the ____ day of _____, 20____, and ending on the _____ day of _____, 21____, unless ended sooner or renewed as provided below.

3.2 HOMEOWNER CAN RENEW LEASE FOR ANOTHER 99 YEARS: Homeowner may renew this Lease for one additional period of 99 years. The CLT may change the terms of the Lease for the renewal period prior to the beginning of the renewal period but only if these changes do not materially and adversely interfere with the rights possessed by Homeowner under the Lease. Not more than 365 nor less than 180 days before the last day of the first 99-year period, CLT shall give Homeowner a written notice that states the date of the expiration of the first 99-year period and the conditions for renewal as set forth in the following paragraph (the "Expiration Notice"). The Expiration Notice shall also describe any

changes that CLT intends to make in the Lease for the renewal period as permitted above.

The Homeowner shall then have the right to renew the Lease only if the following conditions are met: (a) within 60 days of receipt of the Expiration Notice, the Homeowner shall give CLT written notice stating the Homeowner's desire to renew (the "Renewal Notice"); (b) this Lease shall be in effect on the last day of the original 99-year term, and (c) the Homeowner shall not be in default under this Lease or under any Permitted Mortgage on the last day of the original 99-year term.

When Homeowner has exercised the option to renew, Homeowner and CLT shall sign a memorandum stating that the option has been exercised. The memorandum shall comply with the requirements for a notice of lease as stated in Section 14.12 below. CLT shall record this memorandum in accordance with the requirements of law promptly after the beginning of the renewal period.

3.3 WHAT HAPPENS IF CLT DECIDES TO SELL THE LEASED LAND: If ownership of the Leased Land is ever transferred by CLT (whether voluntarily or involuntarily) to any other person or institution, this Lease shall not cease, but shall remain binding on the new land-owner as well as the Homeowner. If CLT agrees to transfer the Leased Land to any person or institution other than a non-profit corporation, charitable trust, government agency or other similar institution sharing the goals described in the Recitals above, the Homeowner shall have a right of first refusal to purchase the Leased Land. The details of this right shall be as stated in the attached Exhibit FIRST REFUSAL. Any sale or other transfer contrary to this Section 3.3 shall be null and void. Notwithstanding the forgoing or anything herein to the contrary, any right of first refusal granted hereby shall be subordinate and inferior to that held by the City of Pensacola and/or the Community Redevelopment Agency of the City of Pensacola, as reflected in that certain Special Warranty Deed recorded at Book _____, Page _____ of the Official Records of Escambia County, Florida.

ARTICLE 4: Use of Leased Land

4.1 HOMEOWNER MAY USE THE HOME ONLY FOR RESIDENTIAL AND RELATED PURPOSES: Homeowner shall use, and allow others to use, the Home and Leased Land only for residential purposes and any activities related to residential use that were permitted by local zoning law when the Lease was signed, as indicated in the attached Exhibit ZONING.

Use of the Leased Land shall be further limited by the restrictions described in the attached Exhibit RESTRICTIONS.]

4.2 HOMEOWNER MUST USE THE HOME AND LEASED LAND RESPONSIBLY AND IN COMPLIANCE WITH THE LAW: Homeowner shall use the Home and Leased Land in a way that will not cause harm to others or create any public nuisance. Homeowner shall dispose of all waste in a safe and sanitary manner. Homeowner shall maintain all parts of the Home and Leased Land in safe, sound and habitable condition, in full compliance with all laws and regulations, and in the condition that is required to maintain the insurance coverage required by Section 9.4 of this Lease.

4.3 HOMEOWNER IS RESPONSIBLE FOR USE BY OTHERS: Homeowner shall be responsible for the use of the Home and Leased Land by all residents and visitors and anyone else using the Leased Land with Homeowner's permission and shall make all such people aware of the restrictions on use set forth in this Lease.

4.4 HOMEOWNER MUST OCCUPY THE HOME FOR AT LEAST 11 MONTHS EACH YEAR: Homeowner shall occupy the Home for at least

11 months of each year of this Lease, unless otherwise agreed by CLT. Occupancy by Homeowner's child, spouse, domestic partner, or other persons approved by CLT shall be considered occupancy by Homeowner. Neither compliance with the occupancy requirement nor CLT's permission for an extended period of non-occupancy constitutes permission to sublease the Leased Land and Home, which is addressed in Section 4.5 below.

4.5 LEASED LAND MAY NOT BE ASSIGNED OR SUBLEASED WITHOUT CLT'S PERMISSION. Except as otherwise provided in Article 8 and Article 10, Homeowner shall not sublease, assign, sell or otherwise convey any of Homeowner's rights under this Lease, for any period of time, without the written permission of CLT. Homeowner agrees that CLT shall have the right to withhold such consent in order to further the purposes of this Lease.

If permission for subleasing is granted, the sublease shall be subject to the following conditions.

- a) Any sublease shall be subject to all of the terms of this Lease.
- b) The rental or occupancy fee charged the sub-lessee shall not be more than the amount of the Lease Fee charged the Homeowner by the CLT, plus an amount approved by CLT to cover Homeowner's costs in owning the Home, including but not limited to the cost of taxes, insurance and mortgage interest.

4.6 CLT HAS A RIGHT TO INSPECT THE LEASED LAND: The CLT may inspect any part of the Leased Land except the interiors of fully enclosed buildings, at any reasonable time, after notifying the Homeowner at least 48 hours before the planned inspection. No more than 4 regular inspections may be carried out in a single year, except in the case of an emergency. In an emergency, the CLT may inspect any part of the Leased Land except the interiors of fully enclosed buildings, after making reasonable efforts to inform the Homeowner before the inspection.

If the CLT has received an Intent-To-Sell Notice (as described in Section 10.4 below), then the CLT has the right to inspect the interiors of all fully enclosed buildings to determine their condition prior to the sale. The CLT must notify the Homeowner at least 24 hours before carrying out such inspection.

4.7 HOMEOWNER HAS A RIGHT TO QUIET ENJOYMENT: Homeowner has the right to quiet enjoyment of the Leased Land. The CLT has no desire or intention to interfere with the personal lives, associations, expressions, or actions of the Homeowner in any way not permitted by this Lease.

ARTICLE 5: Lease Fee

5.1 AMOUNT OF LEASE FEE: The Homeowner shall pay a monthly Lease Fee in an amount equal to the sum of \$_____ to be paid in return for the continuing right to possess, occupy, and use the Leased Land.

5.2 WHEN THE LEASE FEE IS TO BE PAID: The Lease Fee shall be payable to CLT on the first day of each month for as long as this Lease remains in effect, unless the Lease Fee is to be escrowed and paid by a Permitted Mortgagee, in which case payment shall be made as directed by such mortgagee.

5.3 HOW THE AMOUNT OF THE LEASE FEE HAS BEEN DETERMINED: The amount of the Lease Fee stated in Section 5.1 above has been determined as follows. First, the approximate monthly fair rental value of the Leased Land has been established, as of the beginning of the Lease term, recognizing that use of the Leased Land is restricted by certain provisions imposed by this Lease. Then the affordability of this monthly amount for the Homeowner has been analyzed and, if necessary, the Lease Fee has been reduced to an amount considered to be affordable for Homeowner.

5.4 CLT MAY REDUCE OR SUSPEND THE LEASE FEE TO IMPROVE AFFORDABILITY: CLT may reduce, in its sole discretion, or suspend the total amount of the Lease Fee for a period of time for the purpose of improving the affordability of the Homeowner's monthly housing costs. Any such reduction or suspension must be in writing and signed by CLT.

5.5 FEES MAY BE INCREASED FROM TIME TO TIME: The CLT may increase the amount of the Lease Fee and/or the Repair Reserve Fee from time to time, but not more often than once every 3 years. Each time such amounts are increased, the total percentage of increase since the date this Lease was signed shall not be greater than the percentage of increase, over the same period of time, in the Consumer Price Index for urban wage earners and clerical workers for the urban area in which the Leased Land is located, or, if none, for urban areas the size of Escambia County, Florida.

5.6 LEASE FEE WILL BE INCREASED IF RESTRICTIONS ARE REMOVED: If, for any reason, the provisions of Article 10 regarding transfers of the Home or Sections 4.4 and 4.5 regarding occupancy and subleasing are suspended or invalidated for any period of time, then during that time the Lease Fee shall be increased to an amount calculated by CLT to equal the fair rental value of the Leased Land for use not restricted by the suspended provisions, but initially an amount not exceeding \$_____ dollars. Such increase shall become effective upon CLT's written notice to Homeowner. Thereafter, for so long as these restrictions are not reinstated in the Lease, the CLT may, from time to time, further increase the amount of such Lease Fee, provided that the amount of the Lease Fee does not exceed the fair rental value of the Leased Land, and provided that such increases do not occur more often than once in every 5 years.

5.7 IF PAYMENT IS LATE, A LATE FEE CAN BE CHARGED: If the CLT has not received any monthly installment of the Lease Fee on or before the date on which such installment first becomes payable under this Lease (the "Due Date"), the CLT may require Homeowner to pay a late fee from the Due Date through and including the date such payment or installment is received by CLT, at a fee not to exceed \$10 per day payment is late. Such late fee shall be deemed additional Lease Fee and shall be paid by Homeowner to CLT upon demand; provided, however, that CLT shall waive any such late fee that would otherwise be payable to CLT if such payment of the Lease Fee is received by CLT on or before the thirtieth (30th) day after the Due Date.

5.8 CLT CAN COLLECT UNPAID FEES WHEN HOME IS SOLD: In the event that any amount of payable Lease Fee remains unpaid when the Home is sold, the outstanding amount of payable Lease Fee, including any interest as provided above, shall be paid to CLT out of any proceeds from the sale that would otherwise be due to Homeowner. The CLT shall have, and the Homeowner hereby consents to, a lien upon the Home for any unpaid Lease Fee. Such lien shall be prior to all other liens and encumbrances on the Home except (a) liens and encumbrances recorded before the recording of this Lease, (b) Permitted Mortgages as defined in section 8.1 below; and (c) liens for real property taxes and other governmental assessments or charges against the Home.

ARTICLE 6: Taxes and Assessments

6.1 HOMEOWNER IS RESPONSIBLE FOR PAYING ALL TAXES AND ASSESSMENTS: Homeowner shall pay directly, when due, all taxes and governmental assessments that relate to the Home and the Leased Land (including any taxes relating to the CLT's interest in the Leased Land).

6.2 CLT WILL FORWARD ANY TAX BILLS IT RECEIVES TO HOMEOWNER: In the event that the local taxing authority bills CLT for any portion of the taxes on the Home or Leased Land, CLT shall pass the bill to Homeowner and Homeowner shall promptly pay this bill.

6.3 HOMEOWNER HAS A RIGHT TO CONTEST TAXES: Homeowner shall have the right to contest the amount or validity of any taxes relating to the Home and Leased Land. Upon receiving a reasonable request from Homeowner for assistance in this matter, CLT shall join in contesting such taxes. All costs of such proceedings shall be paid by Homeowner.

6.4 IF HOMEOWNER FAILS TO PAY TAXES, CLT MAY INCREASE LEASE FEE: In the event that Homeowner fails to pay the taxes or other charges described in Section 6.1 above, CLT may increase Homeowner's Lease Fee to offset the amount of taxes and other charges owed by Homeowner. Upon collecting any such amount, CLT shall pay the amount collected to the taxing authority in a timely manner. CLT shall have the right but not the obligation to advance taxes and then charge such taxes to the Homeowner.

6.5 PARTY THAT PAYS TAXES MUST SHOW PROOF: When either party pays taxes relating to the Home or Leased Land, that party shall furnish satisfactory evidence of the payment to the other party. A photocopy of a receipt shall be the usual method of furnishing such evidence.

ARTICLE 7: The Home

7.1 HOMEOWNER OWNS THE HOUSE AND ALL OTHER IMPROVEMENTS ON THE LEASED LAND: All structures, including the house, fixtures, and other improvements purchased, constructed, or installed by the Homeowner on any part of the Leased Land at any time during the term of this Lease (collectively, the "Home") shall be property of the Homeowner. However, Homeowner's rights of ownership are limited by certain provisions of this Lease, including provisions regarding the sale or leasing of the Home by the Homeowner and the CLT's option to purchase the Home. In addition, Homeowner shall not remove any part of the Home from the Leased Land without CLT's prior written consent.

7.2 HOMEOWNER PURCHASES HOME WHEN SIGNING LEASE: Upon the signing of this Lease, Homeowner is simultaneously purchasing the Home located at that time on the Leased Land.

7.3 CONSTRUCTION CARRIED OUT BY HOMEOWNER MUST COMPLY WITH CERTAIN REQUIREMENTS: Any construction in connection with the Home is permitted only if the following requirements are met: (a) all costs shall be paid for by the Homeowner; (b) all construction shall be performed in a professional manner and shall comply with all applicable laws and regulations; (c) all changes in the Home shall be consistent with the permitted uses described in Article 4; (d) the footprint, square-footage, or height of the Home shall not be increased and new structures shall not be built or installed on the Leased Land without the prior written consent of CLT.

For any construction requiring CLT's prior written consent, Homeowner shall submit a written request to the CLT. Such request shall include:

- a) a written statement of the reasons for undertaking the construction;
- b) a set of drawings (floor plan and elevations) showing the dimensions of the proposed construction;
- c) a list of the necessary materials, with quantities needed;
- d) a statement of who will do the work;

If the CLT finds it needs additional information it shall request such information from Homeowner within two weeks of receipt of Homeowner's request. The CLT then, within two weeks of receiving all necessary information (including any additional information it may have requested) shall give Homeowner either its written consent or a written statement of its reasons for not consenting. Before construction can begin, Homeowner shall provide CLT with copies of all necessary building permits, if not previously provided.

7.4 HOMEOWNER MAY NOT ALLOW LIENS TO REMAIN AGAINST LEASED LAND OR HOME: No lien of any type shall attach to the CLT's title to the Leased Land. Homeowner shall not permit any statutory or similar lien to be filed against the Leased Land or the Home which remains more than 60 days after it has been filed. Homeowner shall take action to discharge such lien, whether by means of payment, deposit, bond, court order, or other means permitted by law. If Homeowner fails to discharge such lien within the 60-day period, then Homeowner shall immediately notify CLT of such failure. CLT shall have the right to discharge the lien by paying the amount in question. Homeowner may, at Homeowner's expense, contest the validity of any such asserted lien, provided Homeowner has furnished a bond or other acceptable surety in an amount sufficient to release the Leased Land from such lien. Any amounts paid by CLT to discharge such liens shall be treated as an additional Lease Fee payable by Homeowner upon demand.

7.5 HOMEOWNER IS RESPONSIBLE FOR SERVICES, MAINTENANCE AND REPAIRS: Homeowner hereby assumes responsibility for furnishing all services or facilities on the Leased Land, including but not limited to heat, electricity, air conditioning and water. CLT shall not be required to furnish any services or facilities or to make any repairs to the Home. Homeowner shall maintain the Home and Leased Land as required by Section 4.2 above and shall see that all necessary repairs and replacements are accomplished in a reasonable time not to exceed thirty (30) days following written notice by the CLT.

7.6 RESERVED

7.7 WHEN LEASE ENDS, OWNERSHIP REVERTS TO CLT, WHICH SHALL REIMBURSE HOMEOWNER: Upon the expiration or termination of this Lease, ownership of the Home shall revert to CLT. Upon thus assuming title to the Home, CLT shall promptly pay Homeowner and Permitted Mortgagee(s), as follows:

FIRST, CLT shall pay any Permitted Mortgagee(s) the full amount owed to such mortgagee(s) by Homeowner;

SECOND, CLT shall pay the Homeowner the balance of the Purchase Option Price calculated in accordance with Article 10 below, as of the time of reversion of ownership, less the total amount of any unpaid Lease Fee and any other amounts owed to the CLT under the terms of this Lease. The Homeowner shall be responsible for any costs necessary to clear any additional liens or other charges related to the Home which may be assessed against the Home. If the Homeowner fails to clear such liens or charges, the balance due the Homeowner shall also be reduced by the amount necessary to release such liens or charges, including reasonable attorneys fees incurred by the CLT.

ARTICLE 8: Financing

8.1 HOMEOWNER CANNOT MORTGAGE THE HOME WITHOUT CLT's PERMISSION: The Homeowner may mortgage the Home only with the written permission of CLT. Any mortgage permitted in writing by the CLT is defined as a

Permitted Mortgage, and the holder of such a mortgage is defined as a Permitted Mortgagee.

8.2 BY SIGNING LEASE, CLT GIVES PERMISSION FOR ORIGINAL MORTGAGE. By signing this Lease, CLT gives written permission for any mortgage or deed of trust signed by the Homeowner effective on the day this Lease is signed for the purpose of financing Homeowner's purchase of the Home.

8.3 HOMEOWNER MUST GET SPECIFIC PERMISSION FOR REFINANCING OR OTHER SUBSEQUENT MORTGAGES. If, at any time subsequent to the purchase of the Home and signing of the Lease, the Homeowner seeks a loan that is to be secured by a mortgage on the Home (to refinance an existing Permitted Mortgage or to finance home repairs or for any other purpose), Homeowner must inform CLT, in writing, of the proposed terms and conditions of such mortgage loan at least 15 business days prior to the expected closing of the loan. The information to be provided to the CLT must include:

- a. the name of the proposed lender;
- b. Homeowner's reason for requesting the loan;
- c. the principal amount of the proposed loan and the total mortgage debt that will result from the combination of the loan and existing mortgage debt, if any;
- d. expected closing costs;
- e. the rate of interest;
- f. the repayment schedule; and
- g. a copy of the appraisal commissioned in connection with the loan request.

CLT may also require Homeowner to submit additional information. CLT will not permit such a mortgage loan if the loan increases Homeowner's total mortgage debt to an amount greater than 90% of the then current Purchase Option Price, calculated in accordance with Article 10 below, or if the terms of the transaction otherwise threaten the interests of either the Homeowner or the CLT.

8.4 CLT IS REQUIRED TO PERMIT A "STANDARD PERMITTED MORTGAGE." The CLT shall be required to permit any mortgage for which the mortgagee has signed a "Standard Permitted Mortgage Agreement" as set forth in "Exhibit: Permitted Mortgages, Part C," and for which the loan secured thereby does not increase Homeowner's total mortgage debt to an amount greater than 90% of the then current Purchase Option Price, calculated in accordance with Article 10 below.

8.5 A PERMITTED MORTGAGEE HAS CERTAIN OBLIGATIONS UNDER THE LEASE. Any Permitted Mortgagee shall be bound by each of the requirements stated in "Exhibit: Permitted Mortgages, Part A, Obligations of Permitted Mortgagee," which is made a part of this Lease by reference, unless the particular requirement is removed, contradicted or modified by a Rider to this Lease signed by the Homeowner and the CLT to modify the terms of the Lease during the term of the Permitted Mortgage.

8.6 A PERMITTED MORTGAGEE HAS CERTAIN RIGHTS UNDER THE LEASE. Any Permitted Mortgagee shall have all of the rights and protections stated in "Exhibit: Permitted Mortgages, Part B, Rights of Permitted Mortgagee," which is made a part of this Lease by reference.

8.7 IN THE EVENT OF FORECLOSURE, ANY PROCEEDS IN EXCESS OF THE PURCHASE OPTION PRICE WILL GO TO CLT. Homeowner and CLT recognize that it would be contrary to the purposes of this agreement if Homeowner could receive more than the Purchase Option Price as the result of the foreclosure of a mortgage. Therefore, Homeowner hereby irrevocably assigns to

CLT all net proceeds of sale of the Home that would otherwise have been payable to Homeowner and that exceed the amount of net proceeds that Homeowner would have received if the property had been sold for the Purchase Option Price, calculated as described in Section 10.10 below. Homeowner authorizes and instructs the Permitted Mortgagee, or any party conducting any sale, to pay such excess amount directly to CLT. If, for any reason, such excess amount is paid to Homeowner, Homeowner hereby agrees to promptly pay such amount to CLT.

ARTICLE 9: Liability, Insurance, Damage and Destruction, Eminent Domain

9.1 HOMEOWNER ASSUMES ALL LIABILITY. Homeowner assumes all responsibility and liability related to Homeowner's possession, occupancy and use of the Leased Land.

9.2 HOMEOWNER MUST DEFEND CLT AGAINST ALL CLAIMS OF LIABILITY. Homeowner shall defend, indemnify and hold CLT harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Land. Homeowner waives all claims against CLT for injury or damage on or about the Leased Land. However, CLT shall remain liable for injury or damage due to the grossly negligent or intentional acts or omissions of CLT or CLT's agents or employees.

9.3 HOMEOWNER MUST REIMBURSE CLT. In the event the CLT shall be required to pay any sum that is the Homeowner's responsibility or liability, the Homeowner shall reimburse the CLT for such payment and for reasonable expenses caused thereby.

9.4 HOMEOWNER MUST INSURE THE HOME AGAINST LOSS AND MUST MAINTAIN LIABILITY INSURANCE ON HOME AND LEASED LAND.

Homeowner shall, at Homeowner's expense, keep the Home continuously insured against "all risks" of physical loss, using Insurance Services Office (ISO) Form HO 00 03, or its equivalent, for the full replacement value of the Home, and in any event in an amount that will not incur a coinsurance penalty. The amount of such insured replacement value must be approved by the CLT prior to the commencement of the Lease. Thereafter, if the CLT determines that the replacement value to be insured should be increased, the CLT shall inform the Homeowner of such required increase at least 30 days prior to the next date on which the insurance policy is to be renewed, and the Homeowner shall assure that the renewal includes such change. If Homeowner wishes to decrease the amount of replacement value to be insured, Homeowner shall inform the CLT of the proposed change at least 30 days prior to the time such change would take effect. The change shall not take effect without CLT's approval.

Should the Home lie in a flood hazard zone as defined by the National Flood Insurance Plan, the Homeowner shall keep in full force and effect flood insurance in the maximum amount available.

The Homeowner shall also, at its sole expense, maintain in full force and effect public liability insurance using ISO Form HO 00 03 or its equivalent in the amount of \$300,000 per occurrence and in the aggregate. The CLT shall be named as an additional insured using ISO Form HO 04 41 or its equivalent, and certificates of insurance shall be delivered to the CLT prior to the commencement of the Lease and at each anniversary date thereof.

The dollar amounts of such coverage may be increased from time to time at the CLT's request but not more often than once in any one-year period. CLT shall inform the Homeowner of such required increase in coverage at least 30 days prior to the next date on which the insurance policy is to be renewed, and the Homeowner shall assure that the renewal includes such change. The amount of

such increase in coverage shall be based on current trends in homeowner's liability insurance coverage in the area in which the Home is located.

9.5 HOME IS DAMAGED OR DESTROYED. Except as provided below, in the event of fire or other damage to the Home, Homeowner shall take all steps necessary to assure the repair of such damage and the restoration of the Home to its condition immediately prior to the damage. All such repairs and restoration shall be completed as promptly as possible. Homeowner shall also promptly take all steps necessary to assure that the Leased Land is safe and that the damaged Home does not constitute a danger to persons or property.

If Homeowner, based on professional estimates, determines either (a) that full repair and restoration is physically impossible, or (b) that the available insurance proceeds will pay for less than the full cost of necessary repairs and that Homeowner cannot otherwise afford to cover the balance of the cost of repairs, then Homeowner shall notify CLT of this problem, and CLT may then help to resolve the problem. Methods used to resolve the problem may include efforts to increase the available insurance proceeds, efforts to reduce the cost of necessary repairs, efforts to arrange affordable financing covering the costs of repair not covered by insurance proceeds, and any other methods agreed upon by both Homeowner and CLT.

If Homeowner and CLT cannot agree on a way of restoring the Home in the absence of adequate insurance proceeds, then Homeowner may give CLT written notice of intent to terminate the Lease. The date of actual termination shall be no less than 60 days after the date of Homeowner's notice of intent to terminate. Upon termination, any insurance proceeds payable to Homeowner for damage to the Home shall be paid as follows.

FIRST, to the expenses of their collection;

SECOND, to any Permitted Mortgagee(s), to the extent required by the Permitted Mortgage(s);

THIRD, to the expenses of enclosing or razing the remains of the Home and clearing debris;

FOURTH, to the CLT for any amounts owed under this Lease;

FIFTH, to the Homeowner, up to an amount equal to the Purchase Option Price, as of the day prior to the loss, less any amounts paid with respect to the second, third, and fourth clauses above; and

SIXTH, the balance, if any, to the CLT.

9.6 SOME OR ALL OF THE LAND IS TAKEN FOR PUBLIC USE. If all of the Leased Land is taken by eminent domain or otherwise for public purposes, or if so much of the Leased Land is taken that the Home is lost or damaged beyond repair, the Lease shall terminate as of the date when Homeowner is required to give up possession of the Leased Land. Upon such termination, the entire amount of any award(s) paid shall be allocated in the way described in Section 9.5 above for insurance proceeds.

In the event of a taking of a portion of the Leased Land that does not result in damage to the Home or significant reduction in the usefulness or desirability of the Leased Land for residential purposes, then any monetary compensation for such taking shall be allocated entirely to CLT.

In the event of a taking of a portion of the Leased Land that results in damage to the Home only to such an extent that the Home can reasonably be restored to a residential use consistent with this Lease, then the damage shall be treated as damage is treated in Section 9.5 above, and monetary compensation shall be allocated as insurance proceeds are to be allocated under Section 9.5.

9.7 IF PART OF THE LAND IS TAKEN, THE LEASE FEE MAY BE REDUCED. In the event of any taking that reduces the size of the Leased Land but does not result in the termination of the Lease, CLT shall reassess the fair rental value of the remaining Land and shall adjust the Lease Fee if necessary to assure that the monthly fee does not exceed the monthly fair rental value of the Land for use as restricted by the Lease.

9.8 IF LEASE IS TERMINATED BY DAMAGE, DESTRUCTION OR TAKING, CLT WILL TRY TO HELP HOMEOWNER BUY ANOTHER CLT HOME. If this Lease is terminated as a result of damage, destruction or taking, CLT shall take reasonable steps to allow Homeowner to purchase another home on another parcel of leased land owned by CLT if such home can reasonably be made available. If Homeowner purchases such a home, Homeowner agrees to apply any proceeds or award received by Homeowner to the purchase of the home. Homeowner understands that there are numerous reasons why it may not be possible to make such a home available, and shall have no claim against CLT if such a home is not made available.

ARTICLE 10: Transfer of the Home

10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY: Homeowner and CLT agree that the provisions of this Article 10 are intended to preserve the affordability of the Home for lower income households and expand access to homeownership opportunities for such households.

10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO CLT OR QUALIFIED PERSONS: Homeowner may transfer the Home only to the CLT or an Income-Qualified Person as defined below or otherwise only as explicitly permitted by the provisions of this Article 10. All such transfers are to be completed only in strict compliance with this Article 10. Any purported transfer that does not follow the procedures set forth below, except in the case of a transfer to a Permitted Mortgagee in lieu of foreclosure, shall be null and void.

“Income-Qualified Person” shall mean a person or group of persons whose household income falls between 80%-120% of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor.

10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER: If Homeowner dies (or if the last surviving co-owner of the Home dies), the executor or personal representative of Homeowner’s estate shall notify CLT within ninety (90) days of the date of the death. Upon receiving such notice CLT shall consent to a transfer of the Home and Homeowner’s rights to the Leased Land to one or more of the possible heirs of Homeowner listed below as “a,” “b,” or “c,” provided that (i) as to the heirs listed in subsection “c” below, such heir(s) demonstrate that they meet the standard of an “Income-Qualified Person” as defined above, and (ii) “a Letter of Agreement and a Letter of Attorney’s Acknowledgment” (as described in Article 1 above) are submitted to CLT to be attached to the Lease when it is transferred to the heirs.

- a) the spouse of the Homeowner; or
- b) the child or children of the Homeowner; or
- c) member(s) of the Homeowner’s household who have resided in the Home for at least one year immediately prior to Homeowner’s death.

Any other heirs, legatees or devisees of Homeowner, in addition to submitting Letters of Agreement and Attorney’s Acknowledgment as provided above, must demonstrate to CLT’s satisfaction that they are Income-Qualified Persons as

defined above. If they cannot demonstrate that they are Income-Qualified Persons, they shall not be entitled to possession of the Home but must transfer the Home in accordance with the provisions of this Article.

10.4 HOMEOWNER MUST GIVE NOTICE OF INTENT TO SELL: In the event that Homeowner wishes to sell Homeowner's Property, Homeowner shall notify CLT, in writing, of such wish (the Intent-to-Sell Notice). This Notice shall include a statement as to whether Homeowner wishes to recommend a prospective buyer as of the date of the Notice.

10.5 AFTER RECEIVING NOTICE, CLT SHALL COMMISSION AN APPRAISAL: No later than ten (10) days after CLT's receipt of Homeowner's Intent-to-Sell Notice, CLT shall commission a market valuation of the Leased Land and the Home (the "Appraisal") to be performed by a duly licensed appraiser who is acceptable to the Homeowner. CLT shall pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though title to Land and Home were held in fee simple absolute by a single party, disregarding all of the restrictions of this Lease on the use, occupancy and transfer of the property. Copies of the Appraisal are to be provided to both CLT and Homeowner.

10.6 CLT HAS AN OPTION TO PURCHASE THE HOME. Upon receipt of an Intent-to-Sell Notice from Homeowner, CLT shall have the option to purchase the Home at the Purchase Option Price calculated as set forth below. The Purchase Option is designed to further the purpose of preserving the affordability of the Home for succeeding Income-Qualified Persons while taking fair account of the investment by the Homeowner.

If CLT elects to purchase the Home, CLT shall exercise the Purchase Option by notifying Homeowner, in writing, of such election (the Notice of Exercise of Option) within forty-five (45) days of the receipt of the Appraisal, or the Option shall expire. Having given such notice, CLT may either proceed to purchase the Home directly or may assign the Purchase Option to an Income-Qualified Person.

The purchase (by CLT or CLT's assignee) must be completed within sixty (60) days of CLT's Notice of Exercise of Option. At closing, Homeowner shall execute a Special Warranty Deed conveying the Home to the CLT. The warranties in the Special Warranty Deed shall be limited to items arising by, through or under Homeowner and the Permitted Mortgage(s). If CLT fails to complete the purchase, Homeowner may sell the Home and Homeowner's rights to the Leased Land as provided in Section 10.7 below. The time permitted for the completion of the purchase may be extended by mutual agreement of CLT and Homeowner.

Homeowner may recommend to CLT a prospective buyer who is an Income-Qualified Person and is prepared to submit Letters of Agreement and Attorney's Acknowledgement indicating informed acceptance of the terms of this Lease. CLT shall make reasonable efforts to arrange for the assignment of the Purchase Option to such person, unless CLT determines that its charitable mission is better served by retaining the Home for another purpose or transferring the Home to another Income-Qualified Person.

10.7 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS: If the Purchase Option has expired or if CLT has failed to complete the purchase within the sixty-day period allowed by Section 10.6 above, Homeowner may sell the Home to any Income-Qualified Person for not more than the then applicable Purchase Option Price.

10.8 AFTER ONE YEAR CLT SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE: If CLT does not exercise its option and complete the purchase

of Homeowner's Property as described above, and if Homeowner (a) is not then residing in the Home and (b) continues to hold Homeowner's Property out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of the date of the Intent to Sell Notice, Homeowner does hereby appoint CLT its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Lease, sell the property, and pay to the Homeowner the proceeds of sale, minus CLT's costs of sale and any other sums owed CLT by Homeowner.

10.9 PURCHASE OPTION PRICE EQUALS LESSER OF APPRAISED VALUE OF HOMEOWNER'S OWNERSHIP INTEREST OR FORMULA PRICE: In no event may the Home be sold for a price that exceeds the Purchase Option Price. The Purchase Option Price shall be the lesser of (a) the Appraised Value of Homeowner's Ownership Interest at Resale as calculated in line "d" of Section 10.10 below or (b) the Formula Price calculated in accordance with Section 10.10 below.

10.10 HOW THE FORMULA PRICE IS CALCULATED: The Formula Price shall be equal to ("a") the amount of Homeowner's Base Price (as stated below), plus a maximum of 25% of any increase in the appraised value of Homeowner's Ownership Interest (as calculated below).

a. Homeowner's Base Price: The Parties agree that the price paid by Homeowner upon the execution of this lease (Homeowner's Base Price) is \$____. (Homeowner's Base Price equals Homeowner's Ownership Interest at time of purchase.)

b. Initial Appraised Value of Home and Leased Land: The parties agree that the total appraised value of Home and Leased Land at the time of Homeowner's purchase (the Initial Appraised Value) is \$____ as documented by the appraiser's report attached to this Lease as Exhibit INITIAL APPRAISAL,

c. Ratio of Homeowner's Base Price to Initial Appraised Value: The parties agree that the Ratio of Homeowner's Base Price to Initial Appraised Value, expressed as a percentage, is a maximum of ____%.

d. Appraised Value of Homeowner's Ownership Interest at Resale: The appraised value of Homeowner's Ownership Interest at time of resale equals the appraised value of Home and Leased Land at resale, determined in accordance with Section 10.5, multiplied by the Ratio of Homeowner's Base Price to Initial Appraised Value (____%) as calculated in ("c") above.

e. Increase in Appraised Value of Homeowner's Ownership Interest: The increase in appraised value of Homeowner's Ownership Interest equals the appraised value of Homeowner's Ownership Interest at resale determined in accordance with ("d") above minus the Homeowner's Base Price stated in ("a") above.

f. Homeowner's share of Increase in Appraised Value of Homeowner's Ownership Interest: Homeowner's share of the increase in the appraised value of the Homeowner's Ownership Interest shall be determined by multiplying the Increase in Market Value as calculated in ("e") above by the "Shared Appreciation Factor." The "Shared Appreciation Factor" shall be tied to the length of ownership as follows:

- If the property is sold following purchase prior to the completion of the 2nd year of ownership, the "Shared Appreciation Factor" shall be 5%
- If the property is sold within the 3rd to the 5th year of ownership, the "Shared Appreciation Factor" shall be 10%
- If the property is sold in the 6th through 10th year of ownership, the Shared Appreciation Factor shall be 20%

- If the property is sold at any time during or after the 11th year of ownership, the Shared Appreciation Factor shall be 25%

g. Formula Price: The Formula Price equals Homeowner's Base Price ("a") plus Homeowner's share of Increase in the appraised value of the Homeowner's Ownership Interest ("f").

10.11 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE: The CLT shall issue a new lease to any person who purchases the Home in accordance with the terms of this Article 10. The terms of such lease shall be the same as those of new leases issued to homebuyers at that time for land not previously leased by the CLT.

10.12 PURCHASER MAY BE CHARGED A TRANSFER FEE. In the event that Homeowner sells the Home to a party other than the CLT (whether directly to such party or as a result of CLT's assignment of its Purchase Option to such party), the price to be paid by such purchaser shall include in addition to the Purchase Option Price, at the discretion of the CLT, a transfer fee to compensate the CLT for carrying out its responsibilities with regard to the transaction. The amount of the transfer fee shall be no more than ____% of the Purchase Option Price.

10.13 HOMEOWNER REQUIRED TO MAKE NECESSARY REPAIRS AT TRANSFER: The Homeowner is required to make necessary repairs when the Homeowner voluntarily transfers the Home as follows:

- a) The person purchasing the Home ("Buyer") shall, prior to purchasing the Home, hire at her sole expense a duly licensed building inspector to assess the condition of the Home and prepare a written report of the condition ("Inspection Report"). The Homeowner shall cooperate fully with the inspection.
- b) The Buyer shall provide a copy of the Inspection Report to Buyer's lender (if any), the Homeowner, and the CLT within 10 days after receiving the Inspection Report.
- c) Homeowner shall repair specific reported defects or conditions necessary to bring the Home into full compliance with Sections 4.2 and 7.5 above prior to transferring the Home.
- d) Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner's written request, the CLT may allow the Homeowner to pay all or a portion of the repair costs after transfer, from Homeowner's proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In such event, either (i) 150% of the unpaid estimated cost of repairs or (ii) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner's proceeds of sale in a CLT-approved escrow account.
- e) Homeowner shall allow CLT, Buyer, and Buyer's building inspector and lender's representative to inspect the repairs prior to closing to determine that the repairs have been satisfactorily completed.
- f) Upon sale or other transfer, Homeowner shall either (i) transfer the Home with all originally purchased appliances or replacements in the Home in good working order or (ii) reduce the Purchase Option Price by the market value of any such appliances that are not left with the Home in good working order.

ARTICLE 11: RESERVED

ARTICLE 12: DEFAULT

12.1 HOMEOWNER FAILS TO MAKE PAYMENTS TO THE CLT THAT ARE REQUIRED BY THE LEASE: It shall be an event of default if Homeowner fails to pay the Lease Fee or other charges required by the terms of this Lease and such failure is not cured by Homeowner or a Permitted Mortgagee within thirty (30) days after notice of such failure is given by CLT to Homeowner and Permitted Mortgagee. However, if Homeowner makes a good faith partial payment of at least two-thirds (2/3) of the amount owed during the 30-day cure period, then the cure period shall be extended by an additional 30 days.

12.2 HOMEOWNER VIOLATES OTHER (NONMONETARY) TERMS OF THE LEASE: It shall be an event of default if Homeowner fails to abide by any other requirement or restriction stated in this Lease, and such failure is not cured by Homeowner or a Permitted Mortgagee within sixty (60) days after notice of such failure is given by CLT to Homeowner and Permitted Mortgagee. However, if Homeowner or Permitted Mortgagee has begun to cure such default within the 60-day cure period and is continuing such cure with due diligence but cannot complete the cure within the 60-day cure period, the cure period shall be extended for as much additional time as may be reasonably required to complete the cure.

12.3 HOMEOWNER DEFAULTS AS A RESULT OF JUDICIAL PROCESS: It shall be an event of default if the leasehold estate hereby created is taken on execution or by other process of law, or if Homeowner is judicially declared bankrupt or insolvent according to law, or if any assignment is made of the property of Homeowner for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of the Home or Homeowner's interest in the Leased Land by a court of competent jurisdiction, or if a petition is filed for the reorganization of Homeowner under any provisions of the Bankruptcy Act now or hereafter enacted, or if Homeowner files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.

12.4 A DEFAULT (UNCURED VIOLATION) GIVES CLT THE RIGHT TO TERMINATE THE LEASE OR EXERCISE ITS PURCHASE OPTION:

a) **TERMINATION:** In the case of any of the events of default described above, CLT may terminate this lease at which time Homeowner shall execute a Special Warranty Deed conveying the Home to the CLT. The warranties in the Special Warranty Deed shall be limited to items arising by, through or under Homeowner and the Permitted Mortgage(s). If Homeowner fails to relinquish possession of the Home and deed the Home to the CLT, the CLT may initiate summary proceedings under applicable law against Homeowner, and CLT shall have all the rights and remedies consistent with such laws and resulting court orders to enter the Leased Land and Home and repossess the entire Leased Land and Home, and expel Homeowner and those claiming rights through Homeowner. In addition, CLT shall have such additional rights and remedies to recover from Homeowner arrears of rent and damages from any preceding breach of any covenant of this Lease. If this Lease is terminated by CLT pursuant to an Event of Default, then, as provided in Section 7.7 above, upon thus assuming title to the Home, CLT shall pay to Homeowner and any Permitted Mortgagee an amount equal to the Purchase Option Price calculated in accordance with Section 10.9 above, as of the time of reversion of ownership, less the total amount of any unpaid Lease Fee and any other amounts owed to the CLT under the terms of this Lease and all reasonable costs (including reasonable attorneys' fees) incurred by CLT in pursuit of its remedies under this Lease.

If CLT elects to terminate the Lease, then the Permitted Mortgagee shall have the right (subject to Article 8 above and the attached Exhibit: Permitted Mortgages) to postpone and extend the specified date for the termination of the Lease for a period sufficient to enable the Permitted Mortgagee or its designee to acquire Homeowner's interest in the Home and the Leased Land by foreclosure of its mortgage or otherwise.

b) **EXERCISE OF OPTION:** In the case of any of the events of default described above, Homeowner hereby grants to the CLT (or its assignee) the option to purchase the Home for the Purchase Option Price as such price is defined in Article 10 above. Within thirty (30) days after the expiration of any applicable cure period as established in Sections 12.1 or 12.2 above or within 30 days after any of the events constituting an Event of Default under Section 12.3 above, CLT shall notify the Homeowner and the Permitted Mortgagee(s) of its decision to exercise its option to purchase under this Section 12.4(b). Not later than ninety (90) days after the CLT gives notice to the Homeowner of the CLT's intent to exercise its option under this Section 12.4(a), the CLT or its assignee shall purchase the Home for the Purchase Option Price.

12.5 WHAT HAPPENS IF CLT DEFAULTS: CLT shall in no event be in default in the performance of any of its obligations under the Lease unless and until CLT has failed to perform such obligations within sixty (60) days, or such additional time as is reasonably required to correct any default, after notice by Homeowner to CLT properly specifying CLT's failure to perform any such obligation.

ARTICLE 13: Mediation and Arbitration

13.1 Nothing in this Lease shall be construed as preventing the parties from utilizing any process of mediation or arbitration in which the parties agree to engage for the purpose of resolving a dispute.

13.2 Homeowner and CLT shall each pay one half (50%) of any costs incurred in carrying out mediation or arbitration in which the parties have agreed to engage.

ARTICLE 14: GENERAL PROVISIONS

14.1 **HOMEOWNER'S MEMBERSHIP IN CLT:** CLT Homeowners shall have representation on the CLT Committee.

14.2 **NOTICES:** Whenever this Lease requires either party to give notice to the other, the notice shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice:

If to CLT: Northwest Florida Community Land Trust, LLC
Attn: Sam Young
300A W. Leonard St.
Pensacola, FL 32501

with a copy to: Moorhead Law Group, PLLC
Attn: Robert J. Powell
127 Palafox Pl, Suite 200
Pensacola, FL 32502

If to Homeowner: _____ (name/address of Homeowner)

All notices, demands and requests shall be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

14.3 NO BROKERAGE: Homeowner warrants that it has not dealt with any real estate broker other than _____ in connection with the purchase of the Home. If any claim is made against CLT regarding dealings with brokers other than _____, Homeowner shall defend CLT against such claim with counsel of CLT's selection and shall reimburse CLT for any loss, cost or damage which may result from such claim.

14.4 SEVERABILITY AND DURATION OF LEASE: If any part of this Lease is unenforceable or invalid, such material shall be read out of this Lease and shall not affect the validity of any other part of this Lease or give rise to any cause of action of Homeowner or CLT against the other, and the remainder of this Lease shall be valid and enforced to the fullest extent permitted by law. It is the intention of the parties that CLT's option to purchase and all other rights of both parties under this Lease shall continue in effect for the full term of this Lease and any renewal thereof, and shall be considered to be coupled with an interest. In the event any such option or right shall be construed to be subject to any rule of law limiting the duration of such option or right, the time period for the exercising of such option or right shall be construed to expire twenty (20) years after the death of the last survivor of the following persons:

NOTE: List an identifiable group of small children, e.g., the children living as of the date of this Lease of any of the directors or employees of a specified corporation.

14.5 RIGHT OF FIRST REFUSAL IN LIEU OF OPTION: If the provisions of the purchase option set forth in Article 10 of this Lease shall, for any reason, become unenforceable, CLT shall nevertheless have a right of first refusal to purchase the Home at the highest documented bona fide purchase price offer made to Homeowner. Such right shall be as specified in Exhibit FIRST REFUSAL. Any sale or transfer contrary to this Section, when applicable, shall be null and void.

14.6 WAIVER: The waiver by CLT at any time of any requirement or restriction in this Lease, or the failure of CLT to take action with respect to any breach of any such requirement or restriction, shall not be deemed to be a waiver of such requirement or restriction with regard to any subsequent breach of such requirement or restriction, or of any other requirement or restriction in the Lease. CLT may grant waivers in the terms of this Lease, but such waivers must be in writing and signed by CLT before being effective.

The subsequent acceptance of Lease Fee payments by CLT shall not be deemed to be a waiver of any preceding breach by Homeowner of any requirement or restriction in this Lease, other than the failure of the Homeowner to pay the particular Lease Fee so accepted, regardless of CLT's knowledge of such preceding breach at the time of acceptance of such Lease Fee payment.

14.7 CLT'S RIGHT TO PROSECUTE OR DEFEND: CLT shall have the right, but shall have no obligation, to prosecute or defend, in its own or the Homeowner's name, any actions or proceedings appropriate to the protection of its own or Homeowner's interest in the Leased Land. Whenever requested by CLT, Homeowner shall give CLT all reasonable aid in any such action or proceeding.

14.8 CONSTRUCTION: Whenever in this Lease a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand.

14.9 HEADINGS AND TABLE OF CONTENTS: The headings, subheadings and table of contents appearing in this Lease are for convenience only, and are not

a part of this Lease and do not in any way limit or amplify the terms or conditions of this Lease.

14.10 PARTIES BOUND: This Lease sets forth the entire agreement between CLT and Homeowner with respect to the leasing of the Land; it is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Lease, their respective successors in interest. This Lease may be altered or amended only in a writing executed by CLT and Homeowner or their legal representatives or, in accordance with the provisions of this Lease, their successors in interest.

14.11 GOVERNING LAW: This Lease shall be interpreted in accordance with and governed by the laws of Florida. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against CLT or Homeowner.

14.12 RECORDING: The parties agree, as an alternative to the recording of this Lease, to execute a so-called Notice of Lease or Short Form Lease in form recordable and complying with applicable law and reasonably satisfactory to CLT’s attorneys. In no event shall such document state the rent or other charges payable by Homeowner under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.

IN WITNESS WHEREOF, the parties have executed this lease at _____ on the day and year first above written.

NAME OF CLT

Witness By: _____
Its duly authorized agent

Witness _____ (Homeowner):

[notarize signatures]

**Exhibit LETTERS OF AGREEMENT AND ATTORNEY'S
ACKNOWLEDGMENT**

**Sample
Letter of Agreement**

To _____ Community Land Trust ("the CLT")

Date: _____

This letter is given to the CLT to become an exhibit to a Lease between the CLT and me. I will be leasing a parcel of land from the CLT and will be buying the home that sits on that parcel of land. I will therefore become what is described in the Lease as a "the Homeowner."

My legal counsel, _____, has explained to me the terms and conditions of the Lease and other legal documents that are part of this transaction. I understand the way these terms and conditions will affect my rights as a CLT homeowner, now and in the future.

In particular I understand and agree with the following points.

One of the goals of the CLT is to keep CLT homes affordable for lower income households from one CLT homeowner to the next. I support this goal as a CLT homeowner and as a member of the CLT.

The terms and conditions of my Lease will keep my home affordable for future "income-qualified persons" (as defined in the Lease). If and when I want to sell my home, the lease requires that I sell it either to the CLT or to another income-qualified person. The terms and conditions of the lease also limit the price for which I can sell the home, in order to keep it affordable for such income-qualified persons.

It is also a goal of the CLT to promote resident ownership of CLT homes. For this reason, my Lease requires that, if I and my family move out of our home permanently, we must sell it. We cannot continue to own it as absentee owners.

I understand that I can leave my home to my child or children or other members of my household and that, after my death, they can own the home for as long as they want to live in it and abide by the terms of the Lease, or they can sell it on the terms permitted by the Lease.

As a CLT homeowner and a member of the CLT, it is my desire to see the terms of the Lease and related documents honored. I consider these terms fair to me and others.

Sincerely

Sample
Letter of Attorney’s Acknowledgment

I, _____, have been independently employed by _____ (hereinafter “the Client”) who intends to purchase a house and other improvements (the “Home”) on land to be leased from Community Land Trust. The house and land are located at _____.

In connection with the contemplated purchase of the Home and the leasing of the land, I reviewed with the Client the following documents:

- a) this Letter of Attorney’s Acknowledgment and a Letter of Agreement from the Client;
- b) a proposed Deed conveying the Home to the Client;
- c) a proposed Ground Lease conveying the “Leased Land” to the Client;
- d) other written materials provided by the CLT.

The Client has received full and complete information and advice regarding this conveyance and the foregoing documents. In my review of these documents my purpose has been to reasonably inform the Client of the present and foreseeable risks and legal consequences of the contemplated transaction.

The Client is entering the aforesaid transaction in reliance on her own judgment and upon her investigation of the facts. The advice and information provided by me was an integral element of such investigation.

Name

Date

Title

Firm/Address

Exhibit DEED

Sample
Deed

Between

LOCAL LAND TRUST (Grantor), a not-for-profit corporation having its principal offices at _____, _____, _____, and

JOHN AND MARY DOE (Grantees), residing at _____, _____, _____.

Witnesseth

That Grantor, in consideration of one dollar and other good and valuable consideration paid by Grantees, does hereby grant and release unto Grantees, their heirs, or successors and assigns forever,

THE BUILDINGS AND OTHER IMPROVEMENTS ONLY, as presently erected on the Land described in Schedule “A” attached hereto and made a part hereof.

It is the intention of the parties that the real property underlying the buildings and other improvements conveyed herein remain vested in Grantor and that this warranty deed convey only such buildings and other improvements as are presently erected upon the subject Land.

In witness whereof, as authorized agent of Grantor, I hereunto set my hand this ____day of _____, A.D. 20__.

signature

[notarize signature]

Exhibit: PERMITTED MORTGAGES

The rights and provisions set forth in this Exhibit shall be understood to be provisions of Section 8.2 of the of the Lease. All terminology used in this Exhibit shall have the meaning assigned to it in the Lease.

A. OBLIGATIONS OF PERMITTED MORTGAGEE. Any Permitted Mortgagee shall be bound by each of the following requirements unless the particular requirement is removed, contradicted or modified by a rider to this Lease signed by the Homeowner and the CLT to modify the terms of the Lease during the term of the Permitted Mortgage.

1. If Permitted Mortgagee sends a notice of default to the Homeowner because the Homeowner has failed to comply with the terms of the Permitted Mortgage, the Permitted Mortgagee shall, at the same time, send a copy of that notice to the CLT. Upon receiving a copy of the notice of default and within that period of time in which the Homeowner has a right to cure such default (the “cure period”), the CLT shall have the right to cure the default on the Homeowner’s behalf, provided that all current payments due the Permitted Mortgagee since the notice of default was given are made to the Permitted Mortgagee.
2. If, after the cure period has expired, the Permitted Mortgagee intends to accelerate the note secured by the Permitted Mortgage or begin foreclosure proceedings under the Permitted Mortgage, the Permitted Mortgagee shall first notify CLT of its intention to do so, and CLT shall then have the right, upon notifying the Permitted Mortgagee within thirty (30) days of receipt of such notice, to acquire the Permitted Mortgage by paying off the debt secured by the Permitted Mortgage.
3. If the Permitted Mortgagee acquires title to the Home through foreclosure or acceptance of a deed in lieu of foreclosure, the Permitted Mortgagee shall give CLT written notice of such acquisition and CLT shall then have an option to purchase the Home from the Permitted Mortgagee for the full amount owing to the Permitted Mortgagee under the Permitted Mortgage. To exercise this option to purchase, CLT must give written notice to the Permitted Mortgagee of CLT’s intent to purchase the Home within thirty (30) days following CLT’s receipt of the Permitted Mortgagee’s notice. CLT must then complete the purchase of the Home within sixty (60) days of having given written notice of its intent to purchase. If CLT does not complete the purchase within this 60-day period, the Permitted Mortgagee shall be free to sell the Home to another person.
4. Nothing in the Permitted Mortgage or related documents shall be construed as giving Permitted Mortgagee a claim on CLT’s interest in the Leased Land, or as assigning any form of liability to the CLT with regard to the Leased Land, the Home, or the Permitted Mortgage.
5. Nothing in the Permitted Mortgage or related documents shall be construed as rendering CLT or any subsequent Mortgagee of CLT’s interest in this Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt secured by the Permitted Mortgage or any part thereof.
6. The Permitted Mortgagee shall not look to CLT or CLT’s interest in the Leased Land, but will look solely to Homeowner, Homeowner’s interest in the Leased Land, and the Home for the payment of the debt secured thereby or any part thereof. (It is the intention of the parties hereto that CLT’s consent to such the Permitted Mortgage shall be without any liability on the part of CLT for any deficiency judgment.)

7. In the event any part of the Security is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the Permitted Mortgagee in accordance with the provisions of ARTICLE 9 hereof.

8. CLT shall not be obligated to execute an assignment of the Lease Fee or other rent payable by Homeowner under the terms of this Lease.

B. RIGHTS OF PERMITTED MORTGAGEE. The rights of a Permitted Mortgagee as referenced under Section 8.6 of the Lease to which this Exhibit is attached shall be as set forth below.

1. Any Permitted Mortgagee shall, without further consent by CLT, have the right to (a) cure any default under this Lease, and perform any obligation required under this Lease, such cure or performance being effective as if it had been performed by Homeowner; (b) acquire and convey, assign, transfer and exercise any right, remedy or privilege granted to Homeowner by this Lease or otherwise by law, subject to the provisions, if any, in the Permitted Mortgage, which may limit any exercise of any such right, remedy or privilege; and (c) rely upon and enforce any provisions of the Lease to the extent that such provisions are for the benefit of a Permitted Mortgagee.

2. A Permitted Mortgagee shall not be required, as a condition to the exercise of its rights under the Lease, to assume personal liability for the payment and performance of the obligations of the Homeowner under the Lease. Any such payment or performance or other act by Permitted Mortgagee under the Lease shall not be construed as an agreement by Permitted Mortgagee to assume such personal liability except to the extent Permitted Mortgagee actually takes possession of the Home and Leased Land. In the event Permitted Mortgagee does take possession of the Home and Leased Land and thereupon transfers such property, any such transferee shall be required to enter into a written agreement assuming such personal liability and upon any such assumption the Permitted Mortgagee shall automatically be released from personal liability under the Lease.

3. In the event that title to the estates of both CLT and Homeowner are acquired at any time by the same person or persons, no merger of these estates shall occur without the prior written declaration of merger by Permitted Mortgagee, so long as Permitted Mortgagee owns any interest in the Security or in a Permitted Mortgage.

4. If the Lease is terminated for any reason, or in the event of the rejection or disaffirmance of the Lease pursuant to bankruptcy law or other law affecting creditors' rights, CLT shall enter into a new lease for the Leased Land with the Permitted Mortgagee (or with any party designated by the Permitted Mortgagee, subject to CLT's approval, which approval shall not be unreasonably withheld), not more than thirty (30) days after the request of the Permitted Mortgagee. Such lease shall be for the remainder of the term of the Lease, effective as of the date of such termination, rejection or disaffirmance, and upon all the terms and provisions contained in the Lease. However, the Permitted Mortgagee shall make a written request to CLT for such new lease within sixty (60) days after the effective date of such termination, rejection or disaffirmance, as the case may be. Such written request shall be accompanied by a copy of such new lease, duly executed and acknowledged by the Permitted Mortgagee or the party designated by the Permitted Mortgagee to be the Homeowner thereunder. Any new lease made pursuant to this Section shall have the same priority with respect to other interests in the Land as the Lease. The provisions of this Section shall survive the termination, rejection or disaffirmance of the Lease and shall continue in full effect thereafter to the same extent as if this Section were independent and an independent contract made by CLT, Homeowner and the Permitted Mortgagee.

5. The CLT shall have no right to terminate the Lease during such time as the Permitted Mortgagee has commenced foreclosure in accordance with the provisions of the Lease and is diligently pursuing the same.
6. In the event that CLT sends a notice of default under the Lease to Homeowner, CLT shall also send a notice of Homeowner's default to Permitted Mortgagee. Such notice shall be given in the manner set forth in Section 14.2 of the Lease to the Permitted Mortgagee at the address which has been given by the Permitted Mortgagee to CLT by a written notice to CLT sent in the manner set forth in said Section 14.2 of the Lease.
7. In the event of foreclosure sale by a Permitted Mortgagee or the delivery of a deed to a Permitted Mortgagee in lieu of foreclosure in accordance with the provisions of the Lease, at the election of the Permitted Mortgagee the provisions of Article 10, Sections 10.1 through 10.11 shall be deleted and thereupon shall be of no further force or effect as to only so much of the Security so foreclosed upon or transferred.
8. Before becoming effective, any amendments to this Lease must be approved in writing by Permitted Mortgagee, which approval shall not be unreasonably withheld. If Permitted Mortgagee has neither approved nor rejected a proposed amendment within 60 days of its submission to Permitted Mortgagee, then the proposed amendment shall be deemed to be approved.
- C. STANDARD PERMITTED MORTGAGE AGREEMENT. A Standard Permitted Mortgage Agreement, as identified in Section 8.4 of this Lease, shall be written as follows, and shall be signed by Mortgagee and Homeowner.

This Agreement is made by and among:

_____ (Mortgagee) and
_____ ("Homeowner"),

Whereas:

- a) _____ CLT (the "CLT") and Homeowner have entered, or are entering, into a ground lease ("the Lease"), conveying to Homeowner a leasehold interest in the Land located at _____ ("the Leased Land"); and Homeowner has purchased, or is purchasing, the Home located on the Leased Land ("the Home").
- b) The Mortgagee has been asked to provide certain financing to the Homeowner, and is being granted concurrently herewith a mortgage and security interest (the "Mortgage") in the Leased Land and Home, all as more particularly set forth in the Mortgage, attached hereto as Schedule A.
- c) The Ground Lease states that the Homeowner may mortgage the Leased Land only with the written consent of CLT. The Ground Lease further provides that CLT is required to give such consent only if the Mortgagee signs this Standard Permitted Mortgage Agreement and thereby agrees to certain conditions that are stipulated herein ("the Stipulated Conditions").

Now, therefore, the Homeowner/Mortgagor and the Mortgagee hereby agree that the terms and conditions of the Mortgage shall include the Stipulated Conditions stated below.

Stipulated Conditions:

1) If Mortgagee sends a notice of default to the Homeowner because the Homeowner has failed to comply with the terms of the Mortgage, the Mortgagee shall, at the same time, send a copy of that notice to the CLT. Upon receiving a copy of the notice of default and within that period of time in which

the Homeowner has a right to cure such default (the “cure period”), the CLT shall have the right to cure the default on the Homeowner’s behalf, provided that all current payments due the Permitted Mortgagee since the notice of default was given are made to the Mortgagee.

2) If, after such cure period, the Mortgagee intends to accelerate the note secured by the Mortgage or initiate foreclosure proceedings under the Mortgage, in accordance with the provisions of the Lease, the Mortgagee shall first notify CLT of its intention to do so and CLT shall have the right, but not the obligation, upon notifying the Mortgagee within thirty (30) days of receipt of said notice, to purchase the Mortgagee loans and to take assignment of the Mortgage.

3) If the Mortgagee acquires title to the Home and Homeowner’s interest in the Leased Land through foreclosure or acceptance of a deed in lieu of foreclosure, the Mortgagee shall give the CLT written notice of such acquisition and the CLT shall have an option to purchase the Home and Homeowner’s interest in the Leased Land from the Mortgagee for the full amount owing to the Mortgagee; provided, however, that the CLT notifies the Mortgagee in writing of the CLT’s intent to make such purchase within thirty (30) days following the CLT’s receipt of the Mortgagee’s notice of such acquisition of the Home and Homeowner’s interest in the Leased Land; further provided that CLT shall complete such purchase within sixty (60) days of having given written notice of its intent to purchase; and provided that, if the CLT does not complete the purchase within such period, the Mortgagee shall be free to sell the Home and Homeowner’s interest in the Leased Land to another person;

4) Nothing in the Mortgage or related documents shall be construed as giving the Mortgagee a claim on CLT’s interest in the Leased Land, or as assigning any form of liability to the CLT with regard to the Leased Land, the Home, or the Mortgage.

5) Nothing in the Mortgage shall be construed as rendering CLT or any subsequent holder of the CLT’s interest in and to the Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt evidenced by such note and such Mortgage or any part thereof.

6) The Mortgagee shall not look to CLT or CLT’s interest in the Leased Land, but will look solely to Homeowner and Homeowner’s interest in the Leased Land and the Home for the payment of the debt secured by the Mortgage. (It is the intention of the parties hereto that CLT’s consent to the Mortgage shall be without any liability on the part of CLT for any deficiency judgment.)

7) In the event that any part of the Leased Land is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the Mortgagee in accordance with the provisions of Article 9 of the Lease.

8) Nothing in the Mortgage shall obligate CLT to execute an assignment of the Lease Fee or other rent payable by Homeowner under the terms of this Lease.

By:

_____ *for Mortgagee*

Date:

_____ *for Homeowner/Mortgagor* *Date:*

Exhibit FIRST REFUSAL

Whenever any party under the Lease shall have a right of first refusal as to certain property, the following procedures shall apply. If the owner of the property offering it for sale ("Offering Party") shall within the term of the Lease receive a bona fide third party offer to purchase the property which such Offering Party is willing to accept, the holder of the right of first refusal (the "Holder") shall have the following rights:

- a) Offering Party shall give written notice of such offer ("the Notice of Offer") to Holder setting forth (a) the name and address of the prospective purchaser of the property, (b) the purchase price offered by the prospective purchaser and (c) all other terms and conditions of the sale. Holder shall have a period of forty-five (45) days after the receipt of the Notice of Offer ("the Election Period") within which to exercise the right of first refusal by giving notice of intent to purchase the property ("the Notice of Intent to Purchase") for the same price and on the same terms and conditions set forth in the Notice of Offer. Such Notice of Intent to Purchase shall be given in writing to the Offering Party within the Election Period.
- b) If Holder exercises the right to purchase the property, such purchase shall be completed within sixty (60) days after the Notice of Intent to Purchase is given by Holder (or if the Notice of Offer shall specify a later date for closing, such date) by performance of the terms and conditions of the Notice of Offer, including payment of the purchase price provided therein.
- c) Should Holder fail to exercise the right of first refusal within the Election Period, then the Offering Party shall have the right (subject to any other applicable restrictions in the Lease) to go forward with the sale which the Offering Party desires to accept, and to sell the property within one (1) year following the expiration of the Election Period on terms and conditions which are not materially more favorable to the purchaser than those set forth in the Notice. If the sale is not consummated within such one-year period, the Offering Party's right so to sell shall end, and all of the foregoing provisions of this section shall be applied again to any future offer, all as aforesaid. If a sale is consummated within such one-year period, the purchaser shall purchase subject to the Holder having a renewed right of first refusal in said property.

Other Exhibits to be Attached as Appropriate

Exhibit LAND *[Correct legal description of area of Leased Land and appurtenant title rights and obligations.]*
Exhibit INITIAL APPRAISAL *[To be attached if Lease contains an “appraisal-based” resale formula]*

Exhibit RESTRICTIONS
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

State of Florida
County of _____

_____ This Declaration of Covenants, Conditions and Restrictions ("Declaration") is made **DATE**, by **BUYER** ("Owner"). (Whenever the context so requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine, or neuter form thereof, and the singular form of any noun or pronoun herein may be deemed the corresponding plural thereof and vice versa.)

WITNESSETH:

Whereas, contemporaneously with the execution of this Declaration, Owner is acquiring title to the following described property (the "Property"):

ADD LEGAL DESCRIPTION.

from Northwest Florida Community Land Trust., a Florida not-for-profit corporation ("CLT");

Whereas, as a condition of the purchase CLT requires Owner to encumber the Property with the covenants, conditions and restrictions set forth hereinbelow.

NOW THEREFORE, Owner hereby establishes this Declaration of Covenants, Conditions and Restrictions which will run with the Property in accordance with the terms, provisions and conditions set forth as follows:

1. Residential Use Only. The Property shall be occupied and used exclusively as a principal residence for one single family (defined as the members of the family listed with CLT, plus after-adopted or after-born children of those family members). No structure may be erected, placed or permitted to remain on the Property other than one single-family dwelling, a garage, a swimming pool or a detached structure. No detached structure may be constructed prior to the completion of the construction of the primary structure. No business or commercial building may be erected on the Property and no business or commercial activity may be conducted on the Property.
2. Maintenance of Exteriors. The Owner shall at all times maintain the exterior of all structures on the Property including all improvements, facilities, furnishings, landscaping on the Property in an attractive and sightly manner. No waste, impairment or deterioration of the Property shall be permitted.
3. No Fire Hazard. Nothing which would or could increase the risk of fire or other hazard to the Property or any part thereof or to the areas surrounding the Property will be allowed.

4. **Pets.** No animals of any kind shall be kept, had or maintained on the Property except a total of no more than two (2) dogs, cats or other customary household pets, provided that they are duly licensed, if applicable; that they do not constitute any annoyance or nuisance; that they are well groomed and maintained in a sanitary condition; that they are not kept or bred for any commercial purposes; and that such pets are not permitted to be present beyond the boundaries of the Property without being leashed or caged. Rottweilers, pit bulls and chows, or breeds similar, and any other dangerous pets are not permitted at any time.
5. **Compliance with Regulations.** All present and future laws, ordinances, rules and regulations of any governmental authority affecting the Property or any part thereof shall be complied with.
6. **No Offensive Activity.** No unreasonable noises or odors shall be caused or permitted on the Property and no nuisance, immoral or illegal activity, or anything that may be an annoyance or a noxious or offensive activity to surrounding property owners or their guests shall be caused or permitted on the Property.
7. **No Convicted Residents.** No resident of the Property shall be convicted of a felony or be identified by the Escambia County or Santa Rosa County Sheriff's Office or other State law enforcement agency as a gang member or gang affiliate.
8. **Remodeling or Other Construction.** No construction, improvements, remodeling, or modification on or to the Property, except interior alterations not affecting the external appearance of the Property or improvements thereon, is permitted without advance written approval of CLT. This specifically includes, but is not limited to, painting or other alteration of a home or any building situated on the Property (including doors, windows, and trim); replacement of roof or other parts of a building other than with duplicates of the original material; installation of antennas, satellite dishes or receivers, solar panels, or other devices; construction of fountains, swimming pools, whirlpools, or other pools; construction of privacy walls or other fences or gates; addition of awnings, flower boxes, shelves, statues, or other outdoor ornamentation; addition of window coverings, installation of a well; and any material alteration of landscaping. CLT, in making its decisions, may consider purely aesthetic matters that in its sole opinion will affect the desirability or suitability of the construction. If any construction or modification is undertaken that has not been approved, CLT may bring an action for specific performance, declaratory decree, or injunction, and will be entitled to recover all costs of such action including attorney fees at trial or on appeal. CLT may, in its sole and absolute discretion, waive in writing violations and/or grant deviations or variances. However, the waiver of a particular violation or violations will not be deemed a waiver to enforce these provisions as to future or continuing violations.
9. **Exterior Color and Materials.** The color and materials of all exterior surfaces will be subject to approval of CLT. CLT may promulgate a list of approved colors and materials for this purpose. This restriction includes window tints and films.
10. **Air Conditioning Units.** No window or through-the-wall air conditioning unit will be permitted on the home situated on the Property.
11. **Antennae, Aerials, and Satellite Dishes.** No antennae or aerial may be placed on the Property or affixed to the exterior of any building, and no antennae or aerial placed or affixed within a building may extend or protrude beyond the exterior of such building or in any way be visible from outside the building. Under no circumstances shall any satellite dish exceed 39 inches in diameter. Satellite dishes may only be affixed to the rear of a home and must not be visible from the street in front of the building.
12. **Clothes Drying Area.** No clotheslines or other facilities or apparatus for the drying of clothes outside of a dwelling shall be constructed or maintained on the Property if viewable from the front of the home.
13. **Signs.** No sign of any kind shall be displayed to general view on the Property (whether freestanding, attached to a Building, or displayed in a window) except one "For Sale" sign not more than two square feet (as measured on each side of the sign) may be displayed on Property by the Owner or the agent for the Owner.
14. **Fences.** No fences may be erected on the Property without prior written approval of CLT. All fences, hedges, walls or the like constructed upon the Property shall comply with all applicable governmental regulations. No fence, hedge, wall or the like shall be constructed closer to the street than the front of the structure constituting the front of the home situated on the Property.
15. **Completion of Construction and Repairs.** Any repair or remodeling to the home built on the Property must be diligently and continuously pursued once begun, and promptly completed, shall be sightly and of good workmanship. Other than original new home construction, all construction of improvements on the Property and the construction, repair, or remodeling of any improvement must be completed within four (4) months after commencement. All waste shall be contained during construction and any debris that becomes scattered shall

be picked up and disposed of immediately by the person or company performing the construction.

16. Lot Drainage. No elevation or topography changes shall be permitted on the Property which materially affects the surface grade or drainage on any adjoining property.

17. Litter, Trash, Garbage. No garbage, trash, refuse, or rubbish may be deposited, dumped, or kept on the Property except in closed sanitary containers appropriately screened from view. Trash containers must be placed at the front of the Property on the day designated for pickup, but only if promptly returned to the proper storage area as soon as possible.

18. Parking of Wheeled Vehicles, Boats and Water Vessels. Boats, water vessels and trailers must be kept at all times parked in the rear yard behind a fence not readily visible from the street and are not permitted to be parked elsewhere on the Property. Private cars or private trucks owned by an Owner or an Owner's guest may only be parked in the Owner's driveway. Commercial vehicles may be parked in a street or driveway when necessary for providing services to an Owner, or for pickup and delivery service, but only while undertaking this activity and never overnight. Recreational vehicles, travel trailers, trailers, and campers may not be parked in the driveway on the Property or on the street adjacent to the Property. No Vehicles may be repaired or maintained on or adjacent to the Property.

19. Permanent Outside Storage Building. No outside storage building of any nature whatsoever will be permitted on the Property unless approved by CLT. The total area of the building shall not exceed 170 square feet and shall be located no closer than 5 feet from the side and rear property lines of the Property. No building or design shall violate the applicable governmental regulations.

20. Further Subdivision Property. The Property shall not be re-subdivided except that the Owner shall have the right to modify boundary lines in the event of a dispute regarding the location of such boundary lines.

21. Waiver of or Release from Violations. CLT may, in its absolute discretion, waive or release the Property or the Owner from any requirements and/or violations of this Declaration.

22. Enforcement. The covenants and restrictions contained in this Declaration may be enforced by CLT and/or its successors or assigns, in any judicial proceeding seeking any remedy recognizable at law or in equity, including an action or lawsuit seeking damages, injunction, specific performance, or any other form of relief, against any person, firm or entity violating or attempting to violate any covenant or restriction contained herein. The failure by any party to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of such covenant or restriction or of the right of such party to thereafter enforce such covenant or restriction. The prevailing party in any such litigation shall be entitled to reasonable attorneys' fees and court costs at all trial and appellate levels.

23. Assignment. CLT shall have the right, from time to time, to assign any of its rights or obligations pursuant hereto in part or in whole.

24. Notices. Notices shall be given as to Owner by posting at the Owner's dwelling on the Property, or mailing first class postage prepaid to the Owner's address as maintained by CLT. It shall be the Owner's sole responsibility to notify CLT in writing of any change of mailing address.

25. Captions and Statement of Purpose. Captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only, and in no way shall such captions or headings define, limit, or in any way affect any of the terms or provisions of this Declaration. The Statement of Purpose is a summary of general information only and in no way shall such statement define, limit, or in any way affect any of the terms or provisions of this Declaration.

26. Gender and Plural Terms. Whenever the context so requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine, or neuter form thereof, and the singular form of any noun or pronoun herein may be deemed the corresponding plural form thereof and vice versa.

27. Severability; Amendments to Laws. If any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, that judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Without limitation of the foregoing, the invalidation of any of the covenants, restrictions, terms, or conditions of this Declaration, or a reduction in the term of the same by reason of the legal rule against perpetuities, shall in no way affect any other provision, which shall remain in full force and effect for such period of time as may be permitted by law. Any amendment to applicable law that has the effect of reducing the rights of Owner or increasing the liabilities of or duties imposed on Owner will not be incorporated into this Declaration by reference. All other references to applicable laws and regulations will incorporate amendments to those laws and regulations.

28. Duration and Renewal. This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens, and liens contained herein, shall run with and bind all of the Lots and inure to the benefit of CLT and its successors, and assigns, for a term of 90 years from the date hereof. Notwithstanding the foregoing, CLT shall, at any time, have the right to waive, release, cancel or extinguish any of the covenants or restrictions contained herein.

29. Venue. This Declaration shall be governed by and enforced and construed under the laws of the State of Florida, without regard to its conflicts of laws provisions. Venue in any proceeding involving this Declaration will be in the county in which the property is situated.

DISCLAIMER OF REPRESENTATIONS OR WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS DECLARATION, NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, HAS BEEN GIVEN OR MADE BY CLT IN CONNECTION WITH THE PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. IF ANY SUCH WARRANTY CANNOT BE DISCLAIMED, AND AS TO ANY CLAIMS WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

Dated this **DATE**.

IN WITNESS WHEREOF, the parties have caused this Declaration to be executed as of the day and year first written above.

BUYER

The foregoing instrument was acknowledged before me on this **DATE** by **BUYER**.

State of Florida
County of _____

Signature: _____

Notary Public

Prepared By and Return To:
Adam C. Cobb
City of Pensacola Attorney's Office
222 W Main Street
Pensacola, FL 32502
(850) 435-1615

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, dated this _____ day of _____, 2024, given by _____, a/an [State] [Entity Type], whose mailing address is _____ (hereinafter called the "Grantor"), to _____, a/an [State] [Entity Type], whose mailing address is _____ (hereinafter called the "Grantee"). (Wherever used herein the terms "Grantor" and "Grantee" include all parties to this instrument and the successors and assigns of entities.)

WITNESSETH: That Grantor, for and in consideration of the sum of \$10.00 and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto Grantee, all that certain land situate in _____ County, Florida, to-wit ("Property"):

SUBJECT TO covenants, conditions, restrictions, reservations, limitations, easements and agreements of record, if any; taxes and assessments for the current year and subsequent years; all applicable zoning ordinances and/or restrictions and prohibitions imposed by governmental authorities, if any; Grantor's right of first refusal described below; and to the covenants, terms and conditions of that certain Land Donation Agreement between Grantor and Grantee with an effective date of _____, 20____ (the Land Donation Agreement is a publicly available document, available upon request to Grantor pursuant to Chapter 119 Florida Statutes).

TOGETHER WITH all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To have and to hold the same in fee simple forever.

And the said Grantor will only warrant and forever defend the right and title to the above-described Property unto the said Grantee against the claims of those persons claiming by, through or under Grantor, but not otherwise.

Grantor reserves unto itself a right of first refusal with respect to any conveyance by Grantee of Grantee's rights in and to the Property (including, in each instance, all of Grantee's right, title and interest in and to any improvements upon the Property), as follows: at such time as Grantee receives an offer which it desires to accept from any third party to purchase or otherwise acquire Grantee's interest in the Property, prior to consummating any such sale or conveyance Grantee shall first offer Grantee's interest in the Property to Grantor at the same

price offered by the third party by giving written notice to Grantor of the offer, the name and address of the purchaser, the price and other terms of the purchase. The giving of such notice shall constitute a representation and warranty to Grantor that the proposed transaction is bona fide in all respects. Grantor shall have 60 days from its receipt of such notice to notify Grantee that Grantor has elected to acquire Grantee's interest in the Property, or portion thereof if the offer is for said portion only, at the same price and terms offered by the third party (except that the closing date shall be at a time mutually agreeable to Grantor and Grantee, and in no event shall be required to be before the date that is 60 days following delivery of Grantor's notice of election, above). If Grantor waives such right of first refusal, either expressly or by failing to act within the 60-day period, the Landlord shall execute and deliver to Grantee a written waiver in recordable form. No sale or other transfer of title of Grantee's interest in the Property by Grantee shall be valid unless and until the written waiver by Grantor shall be recorded in the Official Records of Escambia County, Florida or until the 60-day period has elapsed without action by Grantor and Grantee records a certificate of that fact in the Official Records, together with a copy of the notice sent to Grantor, along with proof of delivery. If Grantor waives its right of first refusal either expressly or by failing to act within the 60-day period, Grantee shall be free within the one-year period following the notice to Grantor, to conclude the proposed sale with the original third party at the same or higher price (but not a lower price) as set forth in its original notice to Grantor. If Grantee does not conclude a sale within one year from the date of its notice to Grantor or if Grantee lowers the price at which it proposes to sell or if Grantee proposes to sell to a different party or if Grantee proposes to grant terms more favorable to a purchaser than was previously communicated to Grantor in a notice under this paragraph, then this paragraph shall remain applicable and Grantee must submit a new notice to Grantor and comply with the provisions of this provision before concluding the sale. Grantee shall not be required to give notice to Grantor under this paragraph if Grantee accepts an offer more favorable to Grantee than was previously communicated to Grantor in a notice under this paragraph.

[Signature page follows]

IN WITNESS WHEREOF, Grantor has signed and sealed these presents the date set forth above.

Signed, sealed and delivered in the presence of the following witnesses:

_____, a

Printed Name:_____ By:_____ (_____
Seal)
Address: _____, [Title]

Printed Name:_____

Address: _____

STATE OF FLORIDA)
COUNTY OF ESCAMBIA)

The foregoing instrument was sworn to, subscribed and acknowledged before me this _____ day of _____, 2024, by means of () physical presence or () online notarization, by _____, as _____ corporation who is personally known to me or has produced _____ as identification.

Notary Public
Print Name:_____

My Commission Expires:



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-511

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

DISPOSITION OF REAL PROPERTY - THREE RESIDENTIAL INFILL LOTS (COMMUNITY LAND TRUST)

RECOMMENDATION:

That City Council authorize the Mayor to dispose of each of three previously-surplused residential infill parcels located at 1491 North E Street (formerly addressed as 901 West Blount Street), 2300 West Jackson Street, and 113 North Spring Street via a land donation agreement in direct negotiation with Northwest Florida Community Land Trust LLC, as selected using the criteria of the required public notice, pursuant to Florida Statute 163.380. Also, that City Council authorize the Mayor to take all action necessary to execute and administer the transactions consistent with the Mayor's Executive Powers as granted by the City Charter.

HEARING REQUIRED: Public Hearing Required

SUMMARY:

Each of these residential infill parcels were declared surplus with disposition to other methods of attainable/affordable housing in 2022. In April 2024, the CRA Board approved the required public notice period for these three residential infill properties, and this action seeks to authorize the new method of disposition of this real property to a community land trust (CLT). This action is one of the steps required in the disposition of real property owned by the City or Community Redevelopment Agency. Northwest Florida Community Land Trust LLC was selected at the expiration of the required notice period, using the criteria established therein. Northwest Florida Community Land Trust submitted the only valid response to the Notice of Intent to Dispose prior to its expiration, though one other company did email their intention to submit, however; their response was incomplete. City Attorney and staff have negotiated a land donation agreement which maintains the tenets of affordability as established in the notice and prior actions.

Pursuant to Section 163.380 Florida Statutes which governs the disposal of real property by a city or redevelopment agency when the property is located in a community redevelopment area and was acquired for redevelopment purposes; and subsection 163.380(3)(a) which includes a requirement that prior to the sale or lease of such property to a private party, the city

or agency must advertise for and invite competing proposals for the property, The intent is and has been to redevelop the three lots for attainable/workforce housing. After receiving approval in April, staff advertised for the required notice period, which expired in late May. A community land trust model is a mechanism that ensures affordable housing by separating ownership of land from ownership of structures on the land, keeping housing costs low and maintaining affordability in perpetuity. Common in both urban and rural areas, CLTs are increasing in popularity as a proven tool to address affordable housing challenges. The number of community land trusts has grown significantly in recent years, with hundreds now operating across the United States.

The three lots - 1491 N. E St. (formerly addressed as 901 W. Blount St.), 2300 W. Jackson St., and 113 N. Spring St. - are all located within a CRA district. While both the E St. and the Jackson St. properties are shown as owned by the CRA, the Spring St. property is owned by the City and houses an obsolete Pensacola Energy low-pressure natural gas regulator. When previously declared surplus in 2022, the method of disposition for all three was to attainable infill housing programs. Per the Council policy for surplus and disposition of real property, property owners within a 300-ft radius of each of the parcels were again mailed notices of the pending disposition of the property on June 3, 2024.

PRIOR ACTION:

July 18, 2022 - CRA declared 2300 W. Jackson St., 901 W. Blount St. (now 1491 N. E St.), and two other parcels as surplus and authorized disposition to the City of Pensacola Attainable Infill Housing Program

August 18, 2022 - City of Pensacola approved surplus and disposition of 2300 W. Jackson St., 901 W. Blount St. (now 1491 N. E St.), and two other parcels to the City of Pensacola Attainable Infill Housing Program and held a public hearing regarding their disposition pursuant to F.S. 163.380

September 29, 2022 - City Council declared 113 N. Spring St. as surplus and authorized its disposition to the Attainable Housing Infill Program

April 8, 2024 - CRA approved the issuance of the required public notice for the three residential infill lots

FUNDING:

N/A

FINANCIAL IMPACT:

The addition of these parcels to a CLT will eventually generate modest ad valorem tax revenue to the City and CRA Fund after redevelopment is actualized. This income will be dependent upon the number of homes constructed and sold.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

5/29/2024

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Lovoy, Finance Director
Victoria D'Angelo, CRA Manager
Deana Stallworth, Property Lease Manager

ATTACHMENTS:

1. Land Donation Agreement with NWFL CLT - June 2024

PRESENTATION: No

LAND DONATION AGREEMENT

This Land Donation Agreement (the “**Agreement**”) is made and entered into this ____ day of _____, 2024 by and between Northwest Florida Community Land Trust, LLC, a Florida limited liability company (“**Land Trust**”), and the City of Pensacola, Florida, a Florida municipal corporation (“**City**”) and the Community Redevelopment Agency of the City of Pensacola, a public body, corporate and politic, of the State of Florida (“**CRA**”) (each of the City and CRA may hereinafter be referred to individually as a “**Donor**” and collectively as “**Donors**”).

W I T N E S S E T H:

WHEREAS, the CRA is the owner of certain real property located at 1491 N. E Street, Pensacola, Florida, as more particularly depicted and described in the attached Exhibit A (“**Parcel 1**”);

WHEREAS, the CRA is the owner of certain real property located at 2300 W. Jackson Street, A, Pensacola, Florida, as more particularly depicted and described in the attached Exhibit B (“**Parcel 2**”);

WHEREAS, the City is the owner of certain real property located on Spring Street in Pensacola, Florida, Parcel ID #000S009003001462, as more particularly depicted in the attached Exhibit C (“**Parcel 3**”) (Parcel 1, Parcel 2 and Parcel 3 are hereinafter sometimes referred to individually as a “**Parcel**”, and, collectively as the “**Property**”);

WHEREAS, Land Trust is a not-for-profit charitable organization engaged in the development and provision of housing opportunities for low to moderate income people and families in the greater Pensacola metropolitan area;

WHEREAS, Donors desire to donate the Property to Land Trust, to be developed, improved, and used by, through or under the Land Trust in perpetuity for the sole purpose of provision of housing for low to moderate income people and families in Pensacola, Florida; and

WHEREAS, Land Trust agrees to accept the donation of the Property from Donors, subject to the terms and conditions and covenants further set forth in this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt whereof is hereby acknowledged, and in consideration of the mutual covenants, conditions and promises herein contained, the parties hereto, hereby agree as follows:

1. **Recitals and Exhibits.** The foregoing recitations are true and correct and are hereby incorporated herein by reference. All Exhibits annexed to this Agreement are hereby incorporated herein and by reference made a part hereof.

2. **Donation of the Property.** Donors agree to donate and Land Trust agrees to accept donation of the Property upon the terms and conditions hereafter set forth.

3. **Conditions Precedent to the Land Trust's Obligation.** Unless waived in whole or in part in writing by Land Trust (which Land Trust shall have the right to do), this Agreement and Land Trust's obligations hereunder are subject to and conditioned upon the satisfaction of each and all of the following (hereinafter sometimes collectively referred to as the "**Conditions Precedent**" and singularly as "**Condition Precedent**"):

(a) **Title Status.** After the execution of the Agreement, Land Trust shall obtain from a closing agent selected by Land Trust, at Land Trust's cost and expense, a commitment to issue title insurance by a licensed title insurer. Such commitment shall be for the issuance of an ALTA Form Owner's Title Insurance Policy on the Property without exception other than the standard pre-printed exceptions normally contained therein, and those exceptions acceptable to Land Trust in its sole and absolute discretion (collectively, the "**Permitted Exceptions**"). Further:

(i) Donors shall supply such standard sellers' affidavits and other documentation as is reasonably required and satisfactory to Donors to cause the standard printed exception for parties in possession to be deleted;

(ii) Donors shall supply such standard sellers' affidavits and other documentation as may be reasonably required and satisfactory to Donors so as to permit the standard printed exception for construction liens to be deleted;

(iii) Land Trust may cause a survey or surveys to be prepared by a Florida licensed land surveyor from being sufficient to permit the title insurance company in question to delete the standard printed exception regarding matters which would be reflected by an accurate field survey; and

(iv) Land Trust shall determine whether the Property has legal, appropriate and practicable access for Land Trust's use of the Property which determination shall be made at Land Trust's sole discretion.

Land Trust shall, on or before the Closing Date (as defined below), notify Donors of any objections which Land Trust may have to Donors' title or to the other matters listed above, which matters shall be treated as title defects if unsatisfactory to Land Trust. If Donors are unable or unwilling to cure the defect(s) of which Land Trust gave notice, then Land Trust shall have the right, but not the obligation, for an additional sixty (60) days, to itself cure such defect(s) in title (and, if applicable, to extend the Closing Date contemplated hereby). If, after expiration of the above-referenced time periods, Donor has not cured the defect(s) in title and Land Trust either does not exercise its right to attempt to cure or is unable to cure such defect(s) within the time period heretofore specified, and Land Trust does not choose, at its option, to accept title to the Property in its then existing conditions, thereby waiving such objections to title then this Agreement shall terminate.

(b) **Due Diligence, Feasibility.** On or before sixty (60) days following the effective date of this Agreement (the "**Due Diligence Period**"), Land Trust shall determine whether the development or re-development of the Property for the purposes stated

herein is feasible. In so doing, Land Trust shall, among other things, determine: (i) whether there are any zoning restrictions or other prohibitions, codes, regulations, ordinances or requirements imposed by any governmental or quasi-governmental authority which will prevent Land Trust from development or re-development of the Property in the manner contemplated by Land Trust or otherwise impact Land Trust or the Property in any way; and (ii) whether the Property is free from hazardous materials and does not constitute an environmental hazard under federal, state or local law.

In the event: (i) Land Trust is unable to use the Property as contemplated by this Agreement or such use of the Property is not feasible, in Land Trust's sole and absolute discretion; or (ii) Land Trust's due diligence reveals the existence of a regulatory or environmental concern, then this Agreement shall, at Land Trust's request, made during the Due Diligence Period, be cancelled at which time it will be null and void, and Donors and Land Trust shall be released and relieved of any and all further obligations hereunder or in connection herewith. In the event Land Trust cancels the Agreement due to the failure of any of the Conditions Precedent, Land Trust will provide the Donors with copies of any engineering reports, plans, inspection reports or other documentation obtained by Land Trust during the due diligence process which pertain to the Property. Land Trust's officers, agents, employees and contractors will have the right to enter upon the Property to conduct any surveys, inspections and investigations at Land Trust's risk. Land Trust shall hold harmless Donors and indemnify them against loss, cause, damage or claim arising from entry onto the Property by Land Trust's officers, agents, employees and contractors.

4. **Donors' Representations and Warranties.** As an inducement to Land Trust to execute this Agreement and to close the transaction contemplated hereby, each Donor represents and warrants to Land Trust that, as to itself:

(a) Such Donor has the full right, power and authority to enter into this Agreement, to perform under this Agreement, and to consummate the transactions contemplated by this Agreement and the consummation of the transactions contemplated by this Agreement will not violate any other agreement to which such Donor is a party.

(b) This Agreement has been duly authorized, executed and delivered by such Donor, creates legal, valid and binding obligations of said Donor, and does not violate and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any judicial order, agreement, arrangements, understanding, accord, document or instrument by which such Donor or its portion of the Property is bound.

(c) No consent, waiver, approval or authorization is required from any person or entity in connection with the execution, delivery and performance of this Agreement by such Donor (other than those that have been obtained or will be obtained on or prior to the Closing).

(d) **DISCLAIMERS.** SUBJECT TO THE REPRESENTATIONS AND WARRANTIES OF DONORS SET FORTH IN THIS AGREEMENT AND ANY MATTERS SET FORTH IN THE DOCUMENTS TO BE DELIVERED IN CONNECTION WITH THE

CLOSING, IT IS UNDERSTOOD AND AGREED THAT DONORS ARE NOT MAKING AND HAVE NOT AT ANY TIME MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, AS TO HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. SUBJECT TO THE REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN THIS AGREEMENT, LAND TRUST ACKNOWLEDGES AND AGREES THAT UPON CLOSING, DONORS SHALL DONATE AND CONVEY TO LAND TRUST AND LAND TRUST SHALL ACCEPT THE PROPERTY “AS IS, WHERE IS, WITH ALL FAULTS.”

(e) Donors’ representations and warranties set forth in this Section 4 shall survive the Closing and thereafter shall be fully effective and enforceable.

5. **Land Trust’s Representations and Warranties.**

(a) Land Trust has the full right, power and authority to enter into this Agreement, to perform under this Agreement, and to consummate the transactions contemplated by this Agreement and the consummation of the transactions contemplated by this Agreement will not violate any other agreement to which Land Trust is a party.

(b) This Agreement has been duly authorized, executed and delivered by Land Trust, creates legal, valid and binding obligations of Land Trust, and does not violate and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any judicial order, agreement, arrangements, understanding, accord, document or instrument by which Land Trust is bound.

(c) No consent, waiver, approval or authorization is required from any person or entity in connection with the execution, delivery and performance of this Agreement by Land Trust (other than those that have been obtained or will be obtained on or prior to the Closing).

(d) Land Trust’s representations and warranties set forth in this Section 5 shall survive the Closing and thereafter shall be fully effective and enforceable.

6. **Land Trust’s Covenants.**

(a) Within 12 months from the Effective Date (“**Construction Deadline**”), Land Trust shall:

- i. Cause a single-family home to be constructed upon each of Parcel 2 and Parcel 3 (each a “**Home**”). Each such Home shall be constructed in accordance with all applicable law, and issuance of a certificate of occupancy related to each such Home by the Construction Deadline shall be evidence of satisfaction of this subsection.
- ii. Cause the single-family home existing upon Parcel 1 to be remodeled to substantially like-new condition (“**Remodel**”). The Remodel shall

be completed in accordance with all applicable law, and issuance of a certificate of occupancy related to such Remodel by the Construction Deadline shall be evidence of satisfaction of this subsection.

(b) As to each Parcel and within 18 months following the Effective Date (“**Lease Deadline**”), Land Trust shall enter into, and deliver a fully-executed copy to the applicable Donor, a ground lease in substantially the form attached hereto as Exhibit D (the “**Ground Lease**”) with an “Income-Qualified Person” as defined in said Ground Lease. The form of Ground Lease shall not be changed without the prior written consent of the applicable Donor, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Following the Lease Deadline, each Parcel shall at all times be used for the provision of housing for low to moderate income people and families and used and occupied only pursuant to the terms of a duly executed Ground Lease and to an “Income-Qualified Person” as defined in the Ground Lease. Without limiting the forgoing and understanding there may be transitional periods between tenants under the Ground Lease, in no event shall any Parcel be vacant or unoccupied for a period of longer than three consecutive months following the Lease Deadline, unless the reason for the vacancy is beyond the control of the Land Trust and the Land Trust is exercising reasonable diligence in enforcing its rights..

(d) Land Trust shall diligently and in good-faith monitor and enforce compliance with the terms of any Ground Lease. To that end, Land Trust agrees to promptly provide such information and documentation as may be requested by Donors to ensure Land Trust’s compliance with this provision, including, without limitation, such financial documentation and information of counterparties to any Ground Lease as reasonably sufficient to enable verification that such counterparty meets the standards of an “Income-Qualified Person” as defined in the Ground Lease. Land Trust further agrees that within 10 business days after a written request from any Donor, Land Trust shall deliver a duly executed and acknowledged written certification, in form and substance reasonably acceptable to the requesting Donor(s), as to the validity and force and effect of any Ground Lease, the existence of any default on the part of any party to a Ground Lease, and the existence of any offset, counterclaim or defense thereto on the part of Land Trust, as well as to any other matters as may be reasonably requested by Donors.

(e) Land Trust will not amend any Ground Lease without Donors’ prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(f) Land Trust will not allow any assignment or subletting of any interest in any Ground Lease by the counterparty thereto without Donors’ prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(g) Land Trust’s covenants set forth in this Section 6 shall survive the Closing and thereafter shall be fully effective and enforceable.

7. **Land Trust’s Breach of Covenants.**

(a) Default. The occurrence of either of the following shall constitute an "Event of Default" under this Agreement:

- i. Should Land Trust at any time be in breach of the timely performance of its covenants set forth in Sections 6(e) or 6(f) above, and such breach remains un-remedied after expiration of a period of 30 days after delivery of a written notice from Donors to Land Trust specifying the breach in question; or
- ii. Should Land Trust be in breach of the timely performance of its covenants set forth in Sections 6(a)-6(d), above, and should such breach of performance remain un-remedied, after expiration of a period of thirty (30) days after delivery of a written notice from Donors to Land Trust specifying the breach in question, or, in the case of a breach that cannot reasonably be remedied within a thirty (30) day period, then such breach remains un-remedied after expiration of such longer period of time after delivery of such written notice from Donors as is reasonably required by Land Trust to fulfill or perform such obligations, provided that Land Trust commences to fulfill such obligations or remedy such breach within thirty (30) days after notice from Donors and thereafter diligently prosecutes such curative efforts in a commercially reasonable manner to completion.

(b) Remedies of Donors. Upon any Event of Default, Donors shall have the right to buy back any Parcel affected by said Event of Default and all improvements thereon, including, without limitation, any Home or Remodel ("**Repurchase Option**"). Any such Repurchase Option shall be exercised by the Donor that conveyed the Parcel pursuant to this Agreement, by delivering written notice to Land Trust within 90 days following the Event of Default ("**Repurchase Notice**"). With the Repurchase Notice, Donors shall include a then-current appraisal issued by a Florida-licensed real estate appraiser appraising the value of a fee simple interest in the applicable Parcel and all improvements thereon ("**Appraisal**"), along with the identity and contact information for the closing agent selected by Donors that will conduct the closing of the transaction contemplated by the Repurchase Option ("**Repurchase Agent**"). The Appraisal shall include a separate valuation of the unimproved Parcel (the "**Vacant Parcel Value**") and the improvements upon said Parcel (the "**Improvement Value**"), all as if unencumbered, vacant, and fee-simple interests. For clarity, Land Trust will ensure that, within seven days following request, Donors and their respective appraiser(s) will have access to the Property and all improvements thereon sufficient to facilitate and enable the timely preparation and delivery of any Appraisal. As soon as possible and in any event within no later than 180 days following delivery of the Repurchase Notice ("**Repurchase Closing Date**"), Land Trust shall execute and deliver to the applicable Donor a special warranty deed for the applicable Parcel(s) and all improvements thereon ("**Repurchase Deed**") free and clear of any and all encumbrance or right, title, claim or interest of any person or entity other than the Permitted Exceptions. For avoidance of doubt, any Ground Lease will be considered a Permitted Exception if and only if no event of default exists under that Ground Lease on (i) the date of delivery of the Repurchase Notice, and (ii) the Repurchase Closing Date. . On the Repurchase

Closing Date, Land Trust shall likewise execute and deliver to the applicable Donor such customary seller's affidavits and other documents as are reasonably necessary or requested to enable the conveyance to Donor(s) contemplated hereby and the deletion of the standard title policy exceptions from any owner's policy of title insurance to issue in favor of Donors, along with an assignment and assumption of any Ground Lease affecting the repurchased Parcel(s), in form and substance reasonably satisfactory to Land Trust and the applicable Donor (collectively, such affidavit along with the deed from Land Trust are the "**Repurchase Documents**"). On the Repurchase Closing Date, Donor(s) will deliver to Land Trust the Improvement Value. Land Trust will pay any documentary stamp taxes and recording fees due in relation to any Repurchase Deed; otherwise, the parties will bear their own fees and costs associated with the exercise of any Repurchase Option. Land Trust's obligations under this Section 7(b) shall be enforceable by Grantors via an action for specific performance and by such other remedies available under applicable law.

(c) Following the exercise of any Repurchase Option, Donors agree to recognize and not disturb the rights of any tenant under a Ground Lease in place in relation to the repurchased Parcel(s), for so long as such tenant is not in default under the terms of said Ground Lease.

8. **Brokers.** The parties hereto represent and warrant unto the other party that there are no real estate brokers involved with respect to this transaction and there are no brokerage fees, finders fees or broker's commissions due as a result of their respective executions of this Agreement or which will be due as a result of the Closing by virtue of their respective acts, inactions, conduct or otherwise. Each party hereto does hereby agree to indemnify and hold the other harmless from any breach of their respective representations and warranties as set forth in this paragraph.

9. **Closing.** The closing of the transaction contemplated by this Agreement (execution and delivery of the statutory warranty deed, as well as the execution and delivery of all other documents required pursuant to this Agreement and the payment of all sums required to be paid) ("**Closing**") shall take place, if at all, at the time, place and manner hereinafter set forth.

(a) **Closing Date.** The Closing shall take place on such date as the parties may agree, but no later than sixty (60) days following the date of this Agreement, unless extended by the parties (the "**Closing Date**").

(b) **Place of Closing.** The Closing shall take place at closing agent determined by Land Trust ("**Closing Escrow Agent**"), on the Closing Date at such time as mutually is agreed to between Donor and Land Trust.

(c) **Closing Documents.** At Closing, each applicable Donor shall deliver to Land Trust a Special Warranty Deed for each of the Parcels, in the substantially the form attached hereto as **Exhibit E**.

(d) **Closing Expenses.** Land Trust shall be responsible for payment of the costs of Closing, including, but not limited to, the cost of any owner's title insurance premium and related title insurance costs, documentary stamp tax and recording fees on the deed and Land Trust's attorney's fees. Donor shall be responsible for Donor's attorney's fees and tax advisor fees, if any. Property taxes for the year of closing shall be prorated to the Closing Date.

10. **Governing Law/Venue/Waiver of Trial by Jury.** This Agreement shall be governed by and enforced and construed under the laws of the State of Florida (without regard to its conflicts of laws provisions). Venue will be in Escambia County, Florida. Neither Land Trust nor Donors shall seek a jury trial on any lawsuit, proceeding or counterclaim based upon or arising out of this Agreement, or the relationship between the parties hereto. The provisions of this paragraph shall survive the termination or consummation of this Agreement.

11. **Captions.** All captions or title of paragraphs used in this Agreement are for convenience only and are not intended to construe, limit, define or describe the scope or intent of any paragraph of this Agreement nor in any way affect this Agreement.

12. **Counterparts.** This Agreement and any amendments hereto may be executed in counterparts, each of which shall be deemed an original and such counterparts shall constitute but one and the same instrument.

13. **Binding Effects.** All covenants, agreements, warranties and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors, and permitted assigns.

14. **Further Acts.** In addition to the acts and deeds recited herein and contemplated to be performed, executed, and/or delivered by Donors and Land Trust, Donor and Land Trust agree to perform, execute, and/or deliver or cause to be performed, executed and/or delivered at Closing or after Closing any and all such further acts, deeds, and assurances as may be necessary to consummate the transaction contemplated hereby.

15. **Construction of Terms.** Where appropriate, any word denoting the singular shall be deemed to denote the plural, and vice versa. Where appropriate, any word denoting or referring to one gender shall be deemed to include the other gender.

16. **Time of the Essence.** Time is of the essence of this Agreement.

17. **Effective Date.** Whenever used herein the "date hereof," the "effective date" and the "date of the execution of this Agreement" shall be deemed to mean the date the last of the parties hereto has executed this Agreement.

18. **Entire Agreement.** This contract contains the sole and entire agreement of Donors and Land Trust with respect to the transaction contemplated hereunder and no representation, inducement, promise or agreement, parole or written, between Donors and Land

Trust and not incorporated or referred to herein shall be of any force or effect. Any amendment to this Agreement shall be in writing and executed by both Donors and Land Trust.

19. **Survival.** It is understood and agreed that the ongoing and perpetual enforceability of the parties' respective covenants, representations and warranties contained herein are material to the parties' willingness and ability to consummate the transactions contemplated hereby. As a result, all of the terms, covenants, conditions, representations, warranties, and agreements of this Agreement shall survive and continue in full force and effect and shall be enforceable after Closing and shall not be merged with the documents delivered in connection therewith.

20. **Florida Public Records Law.** The Florida Public Records Law, as contained in Chapter 119, Florida Statutes, is very broad. As a result, any written communication created or received by Donors will be made available to the public and media, upon request, unless a statutory exemption from such disclosure exists. Land Trust shall comply with the Florida Public Records Law in effect from time to time if and to the extent that the Florida Public Records Law is applicable to Land Trust.

21. **Relationship.** Nothing herein shall be construed to create or imply the existence of a partnership, joint venture or other relationship of any kind or nature between Land Trust and either Donor.

22. **Radon.** In accordance with Florida law, the following disclosure is hereby made:

RADON GAS: Radon gas is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed over time. Levels of radon that exceed Federal and State Guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

23. **Notices.** All notices which are required or permitted under this Agreement must be in writing and shall be deemed to have been given, delivered or made, as the case may be (notwithstanding lack of actual receipt by the addressee), (a) when delivered by personal delivery, or (b) one business day after having been deposited with an expedited, overnight courier service, in each case addressed to the party to whom notice is intended to be given at the address set forth below:

If to City:

City of Pensacola
Attn: City Administrator
222 West Main Street
Pensacola, Florida 32502

With a copy to:

City of Pensacola
Attn: City Attorney
222 West Main Street
Pensacola, Florida 32502

If to CRA:

Community Redevelopment Agency of the City of Pensacola
Attn: CRA Division Manager
222 West Main Street
Pensacola, Florida 32502

With a copy to:

City of Pensacola
Attn: City Attorney
222 West Main Street
Pensacola, Florida 32502

If to Land Trust:

Northwest Florida Community Land Trust, LLC
300A W. Leonard Street
Pensacola, Florida 32501

With a copy to:

Moorhead Law Group
Attn: Stephen R. Moorhead
127 Palafox Place, Suite 200
Pensacola, Florida 32502

or to such other address as any party may from time to time designate by notice in writing to the other. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section 23 shall constitute delivery.

24. **Waiver.** The failure of any party to exercise any right given hereunder or to insist upon strict compliance with any term, condition or covenant specified herein, shall not constitute a waiver of such party's right to exercise such right or to demand strict compliance with such term, condition, or covenant.

25. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all

respects as if such invalid or unenforceable provision were omitted.

26. **Amendment.** Neither this Agreement nor any provision hereof may be changed, amended, modified, waived, or discharged either orally or by any course of dealing, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

(end of text – signature page to follow)

IN WITNESS WHEREOF, Donors and Land Trust have executed this Agreement and have hereunto set their hands and seals as of the dates of their respective signatures below.

CITY OF PENSACOLA
a Florida municipal corporation

By: _____
D.C. Reeves, Mayor

Date: _____

(AFFIX CITY SEAL)

Attest:

Ericka L. Burnett, City Clerk

Approved as to form:

By: _____
Adam C. Cobb, City Attorney

[Separate signature pages follow.]

Land Donation Agreement – signature page

COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF PENSACOLA, a public body,
corporate and politic

By: _____
Jennifer Brahier, Chairperson

Date: _____

[A separate signature page follows.]

Land Donation Agreement – signature page

NORTHWEST FLORIDA COMMUNITY LAND
TRUST, LLC, a Florida limited liability company

Sign: _____

Print: _____

Title: _____

Date: _____

EXHIBIT "A"

Parcel 1

Parcel ID: 000S009050016054

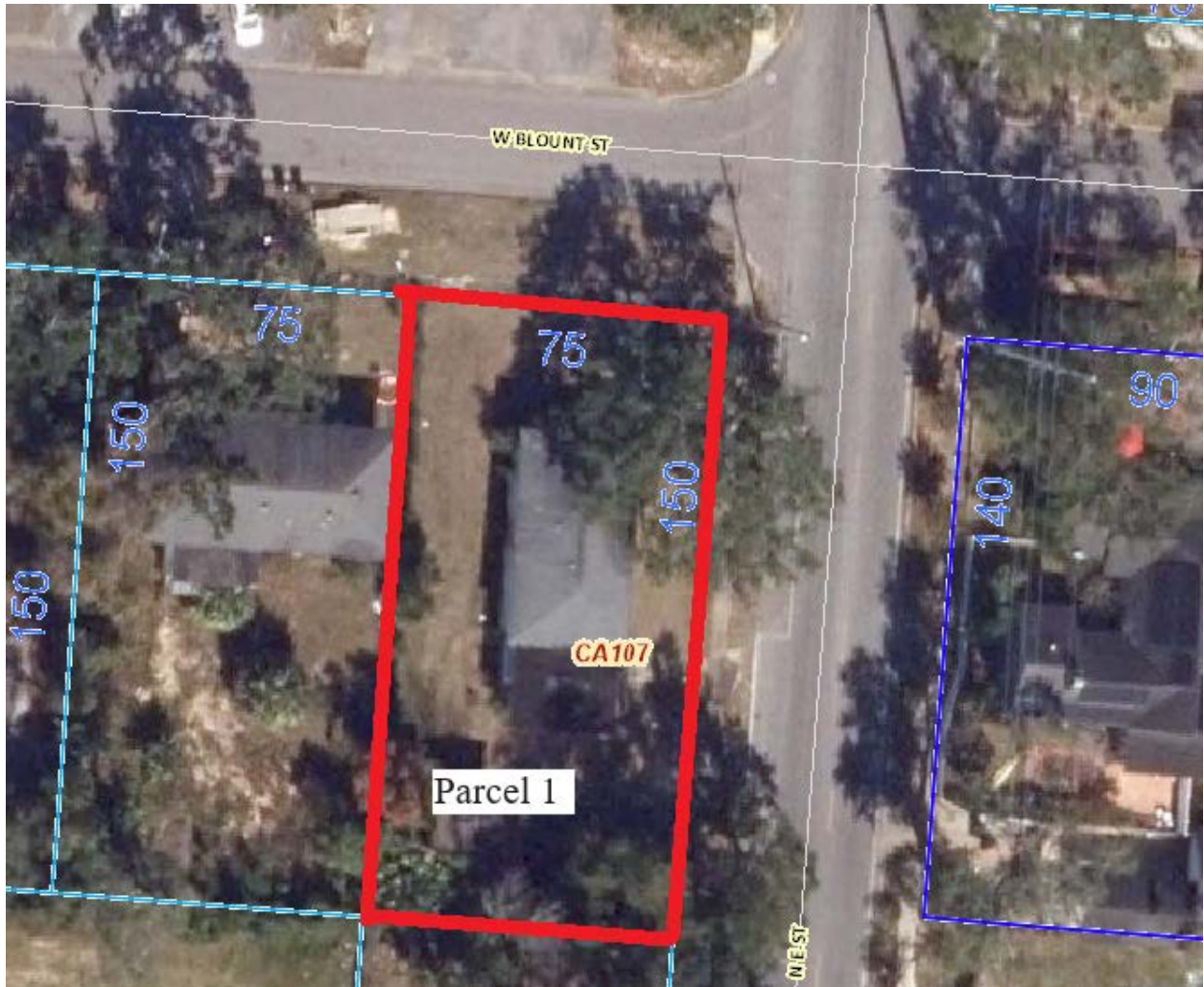


EXHIBIT "B"

Parcel 2

Parcel ID: 000S009060020172



EXHIBIT "C"

Parcel 3

Parcel ID: 000S009003001462



Ground Lease

between

NORTHWEST FLORIDA COMMUNITY LAND TRUST

and

[Name], Homeowner

dated as of
the ____ day of _____, 20____

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- 14.6 WAIVER
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- 14.8 CONSTRUCTION
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- 14.11 GOVERNING LAW

14.12 RECORDING

Exhibits That Must Be Attached

Exhibit LETTERS OF AGREEMENT AND ATTORNEY'S ACKNOWLEDGMENT
Exhibit LEASED LAND
Exhibit DEED
Exhibit PERMITTED MORTGAGES
Exhibit FIRST REFUSAL

Other Exhibits to be Attached as Appropriate

Exhibit RESTRICTIONS
Exhibit INITIAL APPRAISAL

DRAFT

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (the “Lease”) entered into this _____ day of _____, 20____, by and between Northwest Florida Community Land Trust, LLC, a Florida limited liability company, having an office at 300 W Leonard St, Pensacola, FL 32501 (“CLT”), and _____ (“Homeowner”).

RECITALS

- A. CLT is organized exclusively for charitable purposes, including the purpose of providing homeownership opportunities for low and moderate income (30 – 120% AMI) people who would otherwise be unable to afford homeownership.
- B. A goal of CLT is to preserve affordable homeownership opportunities through the long-term leasing of land under owner-occupied homes.
- C. The Leased Land described in this Lease has been acquired and is being leased by CLT in furtherance of this goal.
- D. The Homeowner shares the purposes of CLT and has agreed to enter into this Lease not only to obtain the benefits of homeownership, but also to further the charitable purposes of CLT.
- E. Homeowner and CLT recognize the special nature of the terms of this Lease, and each of them accepts these terms, including those terms that affect the marketing and resale price of the property now being purchased by the Homeowner.
- F. Homeowner and CLT agree that the terms of this Lease further their shared goals over an extended period of time and through a succession of owners.

NOW THEREFORE, Homeowner and CLT agree on all of the terms and conditions of this Lease as set forth below.

DEFINITIONS: Homeowner and CLT agree on the following definitions of key terms used in this Lease.

Leased Land: the parcel of land, described in Exhibit: LEASED LAND, that is leased to the Homeowner.

Home: the residential structure and other permanent improvements located on the Leased Land and owned by the Homeowner, including both the original Home described in Exhibit: DEED, and all permanent improvements added thereafter by Homeowner at Homeowner’s expense.

Area Median Income (AMI): Area median income is defined as the midpoint of a specific area’s income distribution and is calculated on an annual basis by the Department of Housing and Urban Development.

Base Price: the total price that is paid for the Home by the Homeowner (including the amount provided by a first mortgage loan but not including subsidy in the form of deferred loans to the Homeowner).

Purchase Option Price: the maximum price the Homeowner is allowed to receive for the sale of the Home and the Homeowner’s right to possess, occupy and use the Leased Land, as defined in Article 10 of this Lease.

Lease Fee: The monthly fee that the Homeowner pays to the CLT for the continuing use of the Leased Land and any additional amounts that the CLT charges to the Homeowner for reasons permitted by this Lease.

Permitted Mortgage: A mortgage or deed of trust on the Home and the Homeowner's right to possess, occupy and use the Leased Land granted to a lender by the Homeowner with the CLT's Permission. The Homeowner may not mortgage the CLT's interest in the Leased Land, and may not grant any mortgage or deed of trust without CLT's Permission.

Event of Default: Any violation of the terms of the Lease unless it has been corrected ("cured") by Homeowner or the holder of a Permitted Mortgage in the specified period of time after a written notice of default has been given by CLT.

Due Date: With respect to: (a) the Lease Fee, the date on which such Lease Fee is due as provided in this Lease; and (b) any Imposition, the last date on which such Imposition can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the non-payment thereof. The time cutoff is 5:00 p.m. for all Due Dates.

ARTICLE 1: Homeowner's Letter of Agreement and Attorney's Letter of Acknowledgment are Attached as Exhibits.

Attached as Exhibit HOMEOWNER'S LETTER OF AGREEMENT AND ATTORNEY'S LETTER OF ACKNOWLEDGMENT and made part of this Lease by reference are a Letter of Agreement from the Homeowner, describing the Homeowner's understanding and acceptance of this Lease (including the parts of the Lease that affect the resale of the Home), and a Letter of Acknowledgment from the Homeowner's attorney, describing the attorney's review of the Lease with the Homeowner.

ARTICLE 2: Leasing of Rights to the Land

2.1 CLT LEASES THE LAND TO HOMEOWNER: The CLT hereby leases to the Homeowner, and Homeowner hereby accepts, the right to possess, occupy and use the Leased Land in accordance with the terms of this Lease. CLT has furnished to Homeowner a copy of the most current title report, if any, obtained by CLT for the Leased Land, and Homeowner accepts title to the Leased Land in its condition "as is" as of the signing of this Lease.

2.2 MINERAL RIGHTS NOT LEASED TO HOMEOWNER: CLT does not lease to Homeowner the right to remove from the Leased Land any minerals lying beneath the Leased Land's surface. Ownership of such minerals remains with the CLT (or may be owned by prior owners), but the CLT shall not remove any such minerals from the Leased Land without the Homeowner's written permission.

ARTICLE 3: Term of Lease, Change of Land Owner

3.1 TERM OF LEASE IS 99 YEARS: This Lease shall remain in effect for 99 years, beginning on the ____ day of _____, 20____, and ending on the _____ day of _____, 21____, unless ended sooner or renewed as provided below.

3.2 HOMEOWNER CAN RENEW LEASE FOR ANOTHER 99 YEARS: Homeowner may renew this Lease for one additional period of 99 years. The CLT may change the terms of the Lease for the renewal period prior to the beginning of the renewal period but only if these changes do not materially and adversely interfere with the rights possessed by Homeowner under the Lease. Not more than 365 nor less than 180 days before the last day of the first 99-year period, CLT shall give Homeowner a written notice that states the date of the expiration of the first 99-year period and the conditions for renewal as set forth in the following paragraph (the "Expiration Notice"). The Expiration Notice shall also describe any

changes that CLT intends to make in the Lease for the renewal period as permitted above.

The Homeowner shall then have the right to renew the Lease only if the following conditions are met: (a) within 60 days of receipt of the Expiration Notice, the Homeowner shall give CLT written notice stating the Homeowner's desire to renew (the "Renewal Notice"); (b) this Lease shall be in effect on the last day of the original 99-year term, and (c) the Homeowner shall not be in default under this Lease or under any Permitted Mortgage on the last day of the original 99-year term.

When Homeowner has exercised the option to renew, Homeowner and CLT shall sign a memorandum stating that the option has been exercised. The memorandum shall comply with the requirements for a notice of lease as stated in Section 14.12 below. CLT shall record this memorandum in accordance with the requirements of law promptly after the beginning of the renewal period.

3.3 WHAT HAPPENS IF CLT DECIDES TO SELL THE LEASED LAND: If ownership of the Leased Land is ever transferred by CLT (whether voluntarily or involuntarily) to any other person or institution, this Lease shall not cease, but shall remain binding on the new land-owner as well as the Homeowner. If CLT agrees to transfer the Leased Land to any person or institution other than a non-profit corporation, charitable trust, government agency or other similar institution sharing the goals described in the Recitals above, the Homeowner shall have a right of first refusal to purchase the Leased Land. The details of this right shall be as stated in the attached Exhibit FIRST REFUSAL. Any sale or other transfer contrary to this Section 3.3 shall be null and void. Notwithstanding the forgoing or anything herein to the contrary, any right of first refusal granted hereby shall be subordinate and inferior to that held by the City of Pensacola and/or the Community Redevelopment Agency of the City of Pensacola, as reflected in that certain Special Warranty Deed recorded at Book _____, Page _____ of the Official Records of Escambia County, Florida.

ARTICLE 4: Use of Leased Land

4.1 HOMEOWNER MAY USE THE HOME ONLY FOR RESIDENTIAL AND RELATED PURPOSES: Homeowner shall use, and allow others to use, the Home and Leased Land only for residential purposes and any activities related to residential use that were permitted by local zoning law when the Lease was signed, as indicated in the attached Exhibit ZONING.

Use of the Leased Land shall be further limited by the restrictions described in the attached Exhibit RESTRICTIONS.]

4.2 HOMEOWNER MUST USE THE HOME AND LEASED LAND RESPONSIBLY AND IN COMPLIANCE WITH THE LAW: Homeowner shall use the Home and Leased Land in a way that will not cause harm to others or create any public nuisance. Homeowner shall dispose of all waste in a safe and sanitary manner. Homeowner shall maintain all parts of the Home and Leased Land in safe, sound and habitable condition, in full compliance with all laws and regulations, and in the condition that is required to maintain the insurance coverage required by Section 9.4 of this Lease.

4.3 HOMEOWNER IS RESPONSIBLE FOR USE BY OTHERS: Homeowner shall be responsible for the use of the Home and Leased Land by all residents and visitors and anyone else using the Leased Land with Homeowner's permission and shall make all such people aware of the restrictions on use set forth in this Lease.

4.4 HOMEOWNER MUST OCCUPY THE HOME FOR AT LEAST 11 MONTHS EACH YEAR: Homeowner shall occupy the Home for at least

11 months of each year of this Lease, unless otherwise agreed by CLT. Occupancy by Homeowner's child, spouse, domestic partner, or other persons approved by CLT shall be considered occupancy by Homeowner. Neither compliance with the occupancy requirement nor CLT's permission for an extended period of non-occupancy constitutes permission to sublease the Leased Land and Home, which is addressed in Section 4.5 below.

4.5 LEASED LAND MAY NOT BE ASSIGNED OR SUBLEASED WITHOUT CLT'S PERMISSION. Except as otherwise provided in Article 8 and Article 10, Homeowner shall not sublease, assign, sell or otherwise convey any of Homeowner's rights under this Lease, for any period of time, without the written permission of CLT. Homeowner agrees that CLT shall have the right to withhold such consent in order to further the purposes of this Lease.

If permission for subleasing is granted, the sublease shall be subject to the following conditions.

- a) Any sublease shall be subject to all of the terms of this Lease.
- b) The rental or occupancy fee charged the sub-lessee shall not be more than the amount of the Lease Fee charged the Homeowner by the CLT, plus an amount approved by CLT to cover Homeowner's costs in owning the Home, including but not limited to the cost of taxes, insurance and mortgage interest.

4.6 CLT HAS A RIGHT TO INSPECT THE LEASED LAND: The CLT may inspect any part of the Leased Land except the interiors of fully enclosed buildings, at any reasonable time, after notifying the Homeowner at least 48 hours before the planned inspection. No more than 4 regular inspections may be carried out in a single year, except in the case of an emergency. In an emergency, the CLT may inspect any part of the Leased Land except the interiors of fully enclosed buildings, after making reasonable efforts to inform the Homeowner before the inspection.

If the CLT has received an Intent-To-Sell Notice (as described in Section 10.4 below), then the CLT has the right to inspect the interiors of all fully enclosed buildings to determine their condition prior to the sale. The CLT must notify the Homeowner at least 24 hours before carrying out such inspection.

4.7 HOMEOWNER HAS A RIGHT TO QUIET ENJOYMENT: Homeowner has the right to quiet enjoyment of the Leased Land. The CLT has no desire or intention to interfere with the personal lives, associations, expressions, or actions of the Homeowner in any way not permitted by this Lease.

ARTICLE 5: Lease Fee

5.1 AMOUNT OF LEASE FEE: The Homeowner shall pay a monthly Lease Fee in an amount equal to the sum of \$_____ to be paid in return for the continuing right to possess, occupy, and use the Leased Land.

5.2 WHEN THE LEASE FEE IS TO BE PAID: The Lease Fee shall be payable to CLT on the first day of each month for as long as this Lease remains in effect, unless the Lease Fee is to be escrowed and paid by a Permitted Mortgagee, in which case payment shall be made as directed by such mortgagee.

5.3 HOW THE AMOUNT OF THE LEASE FEE HAS BEEN DETERMINED: The amount of the Lease Fee stated in Section 5.1 above has been determined as follows. First, the approximate monthly fair rental value of the Leased Land has been established, as of the beginning of the Lease term, recognizing that use of the Leased Land is restricted by certain provisions imposed by this Lease. Then the affordability of this monthly amount for the Homeowner has been analyzed and, if necessary, the Lease Fee has been reduced to an amount considered to be affordable for Homeowner.

5.4 CLT MAY REDUCE OR SUSPEND THE LEASE FEE TO IMPROVE AFFORDABILITY: CLT may reduce, in its sole discretion, or suspend the total amount of the Lease Fee for a period of time for the purpose of improving the affordability of the Homeowner's monthly housing costs. Any such reduction or suspension must be in writing and signed by CLT.

5.5 FEES MAY BE INCREASED FROM TIME TO TIME: The CLT may increase the amount of the Lease Fee and/or the Repair Reserve Fee from time to time, but not more often than once every 3 years. Each time such amounts are increased, the total percentage of increase since the date this Lease was signed shall not be greater than the percentage of increase, over the same period of time, in the Consumer Price Index for urban wage earners and clerical workers for the urban area in which the Leased Land is located, or, if none, for urban areas the size of Escambia County, Florida.

5.6 LEASE FEE WILL BE INCREASED IF RESTRICTIONS ARE REMOVED: If, for any reason, the provisions of Article 10 regarding transfers of the Home or Sections 4.4 and 4.5 regarding occupancy and subleasing are suspended or invalidated for any period of time, then during that time the Lease Fee shall be increased to an amount calculated by CLT to equal the fair rental value of the Leased Land for use not restricted by the suspended provisions, but initially an amount not exceeding \$_____ dollars. Such increase shall become effective upon CLT's written notice to Homeowner. Thereafter, for so long as these restrictions are not reinstated in the Lease, the CLT may, from time to time, further increase the amount of such Lease Fee, provided that the amount of the Lease Fee does not exceed the fair rental value of the Leased Land, and provided that such increases do not occur more often than once in every 5 years.

5.7 IF PAYMENT IS LATE, A LATE FEE CAN BE CHARGED: If the CLT has not received any monthly installment of the Lease Fee on or before the date on which such installment first becomes payable under this Lease (the "Due Date"), the CLT may require Homeowner to pay a late fee from the Due Date through and including the date such payment or installment is received by CLT, at a fee not to exceed \$10 per day payment is late. Such late fee shall be deemed additional Lease Fee and shall be paid by Homeowner to CLT upon demand; provided, however, that CLT shall waive any such late fee that would otherwise be payable to CLT if such payment of the Lease Fee is received by CLT on or before the thirtieth (30th) day after the Due Date.

5.8 CLT CAN COLLECT UNPAID FEES WHEN HOME IS SOLD: In the event that any amount of payable Lease Fee remains unpaid when the Home is sold, the outstanding amount of payable Lease Fee, including any interest as provided above, shall be paid to CLT out of any proceeds from the sale that would otherwise be due to Homeowner. The CLT shall have, and the Homeowner hereby consents to, a lien upon the Home for any unpaid Lease Fee. Such lien shall be prior to all other liens and encumbrances on the Home except (a) liens and encumbrances recorded before the recording of this Lease, (b) Permitted Mortgages as defined in section 8.1 below; and (c) liens for real property taxes and other governmental assessments or charges against the Home.

ARTICLE 6: Taxes and Assessments

6.1 HOMEOWNER IS RESPONSIBLE FOR PAYING ALL TAXES AND ASSESSMENTS: Homeowner shall pay directly, when due, all taxes and governmental assessments that relate to the Home and the Leased Land (including any taxes relating to the CLT's interest in the Leased Land).

6.2 CLT WILL FORWARD ANY TAX BILLS IT RECEIVES TO HOMEOWNER: In the event that the local taxing authority bills CLT for any portion of the taxes on the Home or Leased Land, CLT shall pass the bill to Homeowner and Homeowner shall promptly pay this bill.

6.3 HOMEOWNER HAS A RIGHT TO CONTEST TAXES: Homeowner shall have the right to contest the amount or validity of any taxes relating to the Home and Leased Land. Upon receiving a reasonable request from Homeowner for assistance in this matter, CLT shall join in contesting such taxes. All costs of such proceedings shall be paid by Homeowner.

6.4 IF HOMEOWNER FAILS TO PAY TAXES, CLT MAY INCREASE LEASE FEE: In the event that Homeowner fails to pay the taxes or other charges described in Section 6.1 above, CLT may increase Homeowner's Lease Fee to offset the amount of taxes and other charges owed by Homeowner. Upon collecting any such amount, CLT shall pay the amount collected to the taxing authority in a timely manner. CLT shall have the right but not the obligation to advance taxes and then charge such taxes to the Homeowner.

6.5 PARTY THAT PAYS TAXES MUST SHOW PROOF: When either party pays taxes relating to the Home or Leased Land, that party shall furnish satisfactory evidence of the payment to the other party. A photocopy of a receipt shall be the usual method of furnishing such evidence.

ARTICLE 7: The Home

7.1 HOMEOWNER OWNS THE HOUSE AND ALL OTHER IMPROVEMENTS ON THE LEASED LAND: All structures, including the house, fixtures, and other improvements purchased, constructed, or installed by the Homeowner on any part of the Leased Land at any time during the term of this Lease (collectively, the "Home") shall be property of the Homeowner. However, Homeowner's rights of ownership are limited by certain provisions of this Lease, including provisions regarding the sale or leasing of the Home by the Homeowner and the CLT's option to purchase the Home. In addition, Homeowner shall not remove any part of the Home from the Leased Land without CLT's prior written consent.

7.2 HOMEOWNER PURCHASES HOME WHEN SIGNING LEASE: Upon the signing of this Lease, Homeowner is simultaneously purchasing the Home located at that time on the Leased Land.

7.3 CONSTRUCTION CARRIED OUT BY HOMEOWNER MUST COMPLY WITH CERTAIN REQUIREMENTS: Any construction in connection with the Home is permitted only if the following requirements are met: (a) all costs shall be paid for by the Homeowner; (b) all construction shall be performed in a professional manner and shall comply with all applicable laws and regulations; (c) all changes in the Home shall be consistent with the permitted uses described in Article 4; (d) the footprint, square-footage, or height of the Home shall not be increased and new structures shall not be built or installed on the Leased Land without the prior written consent of CLT.

For any construction requiring CLT's prior written consent, Homeowner shall submit a written request to the CLT. Such request shall include:

- a) a written statement of the reasons for undertaking the construction;
- b) a set of drawings (floor plan and elevations) showing the dimensions of the proposed construction;
- c) a list of the necessary materials, with quantities needed;
- d) a statement of who will do the work;

If the CLT finds it needs additional information it shall request such information from Homeowner within two weeks of receipt of Homeowner's request. The CLT then, within two weeks of receiving all necessary information (including any additional information it may have requested) shall give Homeowner either its written consent or a written statement of its reasons for not consenting. Before construction can begin, Homeowner shall provide CLT with copies of all necessary building permits, if not previously provided.

7.4 HOMEOWNER MAY NOT ALLOW LIENS TO REMAIN AGAINST LEASED LAND OR HOME: No lien of any type shall attach to the CLT's title to the Leased Land. Homeowner shall not permit any statutory or similar lien to be filed against the Leased Land or the Home which remains more than 60 days after it has been filed. Homeowner shall take action to discharge such lien, whether by means of payment, deposit, bond, court order, or other means permitted by law. If Homeowner fails to discharge such lien within the 60-day period, then Homeowner shall immediately notify CLT of such failure. CLT shall have the right to discharge the lien by paying the amount in question. Homeowner may, at Homeowner's expense, contest the validity of any such asserted lien, provided Homeowner has furnished a bond or other acceptable surety in an amount sufficient to release the Leased Land from such lien. Any amounts paid by CLT to discharge such liens shall be treated as an additional Lease Fee payable by Homeowner upon demand.

7.5 HOMEOWNER IS RESPONSIBLE FOR SERVICES, MAINTENANCE AND REPAIRS: Homeowner hereby assumes responsibility for furnishing all services or facilities on the Leased Land, including but not limited to heat, electricity, air conditioning and water. CLT shall not be required to furnish any services or facilities or to make any repairs to the Home. Homeowner shall maintain the Home and Leased Land as required by Section 4.2 above and shall see that all necessary repairs and replacements are accomplished in a reasonable time not to exceed thirty (30) days following written notice by the CLT.

7.6 RESERVED

7.7 WHEN LEASE ENDS, OWNERSHIP REVERTS TO CLT, WHICH SHALL REIMBURSE HOMEOWNER: Upon the expiration or termination of this Lease, ownership of the Home shall revert to CLT. Upon thus assuming title to the Home, CLT shall promptly pay Homeowner and Permitted Mortgagee(s), as follows:

FIRST, CLT shall pay any Permitted Mortgagee(s) the full amount owed to such mortgagee(s) by Homeowner;

SECOND, CLT shall pay the Homeowner the balance of the Purchase Option Price calculated in accordance with Article 10 below, as of the time of reversion of ownership, less the total amount of any unpaid Lease Fee and any other amounts owed to the CLT under the terms of this Lease. The Homeowner shall be responsible for any costs necessary to clear any additional liens or other charges related to the Home which may be assessed against the Home. If the Homeowner fails to clear such liens or charges, the balance due the Homeowner shall also be reduced by the amount necessary to release such liens or charges, including reasonable attorneys fees incurred by the CLT.

ARTICLE 8: Financing

8.1 HOMEOWNER CANNOT MORTGAGE THE HOME WITHOUT CLT's PERMISSION: The Homeowner may mortgage the Home only with the written permission of CLT. Any mortgage permitted in writing by the CLT is defined as a

Permitted Mortgage, and the holder of such a mortgage is defined as a Permitted Mortgagee.

8.2 BY SIGNING LEASE, CLT GIVES PERMISSION FOR ORIGINAL MORTGAGE. By signing this Lease, CLT gives written permission for any mortgage or deed of trust signed by the Homeowner effective on the day this Lease is signed for the purpose of financing Homeowner's purchase of the Home.

8.3 HOMEOWNER MUST GET SPECIFIC PERMISSION FOR REFINANCING OR OTHER SUBSEQUENT MORTGAGES. If, at any time subsequent to the purchase of the Home and signing of the Lease, the Homeowner seeks a loan that is to be secured by a mortgage on the Home (to refinance an existing Permitted Mortgage or to finance home repairs or for any other purpose), Homeowner must inform CLT, in writing, of the proposed terms and conditions of such mortgage loan at least 15 business days prior to the expected closing of the loan. The information to be provided to the CLT must include:

- a. the name of the proposed lender;
- b. Homeowner's reason for requesting the loan;
- c. the principal amount of the proposed loan and the total mortgage debt that will result from the combination of the loan and existing mortgage debt, if any;
- d. expected closing costs;
- e. the rate of interest;
- f. the repayment schedule; and
- g. a copy of the appraisal commissioned in connection with the loan request.

CLT may also require Homeowner to submit additional information. CLT will not permit such a mortgage loan if the loan increases Homeowner's total mortgage debt to an amount greater than 90% of the then current Purchase Option Price, calculated in accordance with Article 10 below, or if the terms of the transaction otherwise threaten the interests of either the Homeowner or the CLT.

8.4 CLT IS REQUIRED TO PERMIT A "STANDARD PERMITTED MORTGAGE." The CLT shall be required to permit any mortgage for which the mortgagee has signed a "Standard Permitted Mortgage Agreement" as set forth in "Exhibit: Permitted Mortgages, Part C," and for which the loan secured thereby does not increase Homeowner's total mortgage debt to an amount greater than 90% of the then current Purchase Option Price, calculated in accordance with Article 10 below.

8.5 A PERMITTED MORTGAGEE HAS CERTAIN OBLIGATIONS UNDER THE LEASE. Any Permitted Mortgagee shall be bound by each of the requirements stated in "Exhibit: Permitted Mortgages, Part A, Obligations of Permitted Mortgagee," which is made a part of this Lease by reference, unless the particular requirement is removed, contradicted or modified by a Rider to this Lease signed by the Homeowner and the CLT to modify the terms of the Lease during the term of the Permitted Mortgage.

8.6 A PERMITTED MORTGAGEE HAS CERTAIN RIGHTS UNDER THE LEASE. Any Permitted Mortgagee shall have all of the rights and protections stated in "Exhibit: Permitted Mortgages, Part B, Rights of Permitted Mortgagee," which is made a part of this Lease by reference.

8.7 IN THE EVENT OF FORECLOSURE, ANY PROCEEDS IN EXCESS OF THE PURCHASE OPTION PRICE WILL GO TO CLT. Homeowner and CLT recognize that it would be contrary to the purposes of this agreement if Homeowner could receive more than the Purchase Option Price as the result of the foreclosure of a mortgage. Therefore, Homeowner hereby irrevocably assigns to

CLT all net proceeds of sale of the Home that would otherwise have been payable to Homeowner and that exceed the amount of net proceeds that Homeowner would have received if the property had been sold for the Purchase Option Price, calculated as described in Section 10.10 below. Homeowner authorizes and instructs the Permitted Mortgagee, or any party conducting any sale, to pay such excess amount directly to CLT. If, for any reason, such excess amount is paid to Homeowner, Homeowner hereby agrees to promptly pay such amount to CLT.

ARTICLE 9: Liability, Insurance, Damage and Destruction, Eminent Domain

9.1 HOMEOWNER ASSUMES ALL LIABILITY. Homeowner assumes all responsibility and liability related to Homeowner's possession, occupancy and use of the Leased Land.

9.2 HOMEOWNER MUST DEFEND CLT AGAINST ALL CLAIMS OF LIABILITY. Homeowner shall defend, indemnify and hold CLT harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Land. Homeowner waives all claims against CLT for injury or damage on or about the Leased Land. However, CLT shall remain liable for injury or damage due to the grossly negligent or intentional acts or omissions of CLT or CLT's agents or employees.

9.3 HOMEOWNER MUST REIMBURSE CLT. In the event the CLT shall be required to pay any sum that is the Homeowner's responsibility or liability, the Homeowner shall reimburse the CLT for such payment and for reasonable expenses caused thereby.

9.4 HOMEOWNER MUST INSURE THE HOME AGAINST LOSS AND MUST MAINTAIN LIABILITY INSURANCE ON HOME AND LEASED LAND.

Homeowner shall, at Homeowner's expense, keep the Home continuously insured against "all risks" of physical loss, using Insurance Services Office (ISO) Form HO 00 03, or its equivalent, for the full replacement value of the Home, and in any event in an amount that will not incur a coinsurance penalty. The amount of such insured replacement value must be approved by the CLT prior to the commencement of the Lease. Thereafter, if the CLT determines that the replacement value to be insured should be increased, the CLT shall inform the Homeowner of such required increase at least 30 days prior to the next date on which the insurance policy is to be renewed, and the Homeowner shall assure that the renewal includes such change. If Homeowner wishes to decrease the amount of replacement value to be insured, Homeowner shall inform the CLT of the proposed change at least 30 days prior to the time such change would take effect. The change shall not take effect without CLT's approval.

Should the Home lie in a flood hazard zone as defined by the National Flood Insurance Plan, the Homeowner shall keep in full force and effect flood insurance in the maximum amount available.

The Homeowner shall also, at its sole expense, maintain in full force and effect public liability insurance using ISO Form HO 00 03 or its equivalent in the amount of \$300,000 per occurrence and in the aggregate. The CLT shall be named as an additional insured using ISO Form HO 04 41 or its equivalent, and certificates of insurance shall be delivered to the CLT prior to the commencement of the Lease and at each anniversary date thereof.

The dollar amounts of such coverage may be increased from time to time at the CLT's request but not more often than once in any one-year period. CLT shall inform the Homeowner of such required increase in coverage at least 30 days prior to the next date on which the insurance policy is to be renewed, and the Homeowner shall assure that the renewal includes such change. The amount of

such increase in coverage shall be based on current trends in homeowner's liability insurance coverage in the area in which the Home is located.

9.5 HOME IS DAMAGED OR DESTROYED. Except as provided below, in the event of fire or other damage to the Home, Homeowner shall take all steps necessary to assure the repair of such damage and the restoration of the Home to its condition immediately prior to the damage. All such repairs and restoration shall be completed as promptly as possible. Homeowner shall also promptly take all steps necessary to assure that the Leased Land is safe and that the damaged Home does not constitute a danger to persons or property.

If Homeowner, based on professional estimates, determines either (a) that full repair and restoration is physically impossible, or (b) that the available insurance proceeds will pay for less than the full cost of necessary repairs and that Homeowner cannot otherwise afford to cover the balance of the cost of repairs, then Homeowner shall notify CLT of this problem, and CLT may then help to resolve the problem. Methods used to resolve the problem may include efforts to increase the available insurance proceeds, efforts to reduce the cost of necessary repairs, efforts to arrange affordable financing covering the costs of repair not covered by insurance proceeds, and any other methods agreed upon by both Homeowner and CLT.

If Homeowner and CLT cannot agree on a way of restoring the Home in the absence of adequate insurance proceeds, then Homeowner may give CLT written notice of intent to terminate the Lease. The date of actual termination shall be no less than 60 days after the date of Homeowner's notice of intent to terminate. Upon termination, any insurance proceeds payable to Homeowner for damage to the Home shall be paid as follows.

FIRST, to the expenses of their collection;

SECOND, to any Permitted Mortgagee(s), to the extent required by the Permitted Mortgage(s);

THIRD, to the expenses of enclosing or razing the remains of the Home and clearing debris;

FOURTH, to the CLT for any amounts owed under this Lease;

FIFTH, to the Homeowner, up to an amount equal to the Purchase Option Price, as of the day prior to the loss, less any amounts paid with respect to the second, third, and fourth clauses above; and

SIXTH, the balance, if any, to the CLT.

9.6 SOME OR ALL OF THE LAND IS TAKEN FOR PUBLIC USE. If all of the Leased Land is taken by eminent domain or otherwise for public purposes, or if so much of the Leased Land is taken that the Home is lost or damaged beyond repair, the Lease shall terminate as of the date when Homeowner is required to give up possession of the Leased Land. Upon such termination, the entire amount of any award(s) paid shall be allocated in the way described in Section 9.5 above for insurance proceeds.

In the event of a taking of a portion of the Leased Land that does not result in damage to the Home or significant reduction in the usefulness or desirability of the Leased Land for residential purposes, then any monetary compensation for such taking shall be allocated entirely to CLT.

In the event of a taking of a portion of the Leased Land that results in damage to the Home only to such an extent that the Home can reasonably be restored to a residential use consistent with this Lease, then the damage shall be treated as damage is treated in Section 9.5 above, and monetary compensation shall be allocated as insurance proceeds are to be allocated under Section 9.5.

9.7 IF PART OF THE LAND IS TAKEN, THE LEASE FEE MAY BE REDUCED. In the event of any taking that reduces the size of the Leased Land but does not result in the termination of the Lease, CLT shall reassess the fair rental value of the remaining Land and shall adjust the Lease Fee if necessary to assure that the monthly fee does not exceed the monthly fair rental value of the Land for use as restricted by the Lease.

9.8 IF LEASE IS TERMINATED BY DAMAGE, DESTRUCTION OR TAKING, CLT WILL TRY TO HELP HOMEOWNER BUY ANOTHER CLT HOME. If this Lease is terminated as a result of damage, destruction or taking, CLT shall take reasonable steps to allow Homeowner to purchase another home on another parcel of leased land owned by CLT if such home can reasonably be made available. If Homeowner purchases such a home, Homeowner agrees to apply any proceeds or award received by Homeowner to the purchase of the home. Homeowner understands that there are numerous reasons why it may not be possible to make such a home available, and shall have no claim against CLT if such a home is not made available.

ARTICLE 10: Transfer of the Home

10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY: Homeowner and CLT agree that the provisions of this Article 10 are intended to preserve the affordability of the Home for lower income households and expand access to homeownership opportunities for such households.

10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO CLT OR QUALIFIED PERSONS: Homeowner may transfer the Home only to the CLT or an Income-Qualified Person as defined below or otherwise only as explicitly permitted by the provisions of this Article 10. All such transfers are to be completed only in strict compliance with this Article 10. Any purported transfer that does not follow the procedures set forth below, except in the case of a transfer to a Permitted Mortgagee in lieu of foreclosure, shall be null and void.

“Income-Qualified Person” shall mean a person or group of persons whose household income falls between 80%-120% of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor.

10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER: If Homeowner dies (or if the last surviving co-owner of the Home dies), the executor or personal representative of Homeowner’s estate shall notify CLT within ninety (90) days of the date of the death. Upon receiving such notice CLT shall consent to a transfer of the Home and Homeowner’s rights to the Leased Land to one or more of the possible heirs of Homeowner listed below as “a,” “b,” or “c,” provided that (i) as to the heirs listed in subsection “c” below, such heir(s) demonstrate that they meet the standard of an “Income-Qualified Person” as defined above, and (ii) “a Letter of Agreement and a Letter of Attorney’s Acknowledgment” (as described in Article 1 above) are submitted to CLT to be attached to the Lease when it is transferred to the heirs.

- a) the spouse of the Homeowner; or
- b) the child or children of the Homeowner; or
- c) member(s) of the Homeowner’s household who have resided in the Home for at least one year immediately prior to Homeowner’s death.

Any other heirs, legatees or devisees of Homeowner, in addition to submitting Letters of Agreement and Attorney’s Acknowledgment as provided above, must demonstrate to CLT’s satisfaction that they are Income-Qualified Persons as

defined above. If they cannot demonstrate that they are Income-Qualified Persons, they shall not be entitled to possession of the Home but must transfer the Home in accordance with the provisions of this Article.

10.4 HOMEOWNER MUST GIVE NOTICE OF INTENT TO SELL: In the event that Homeowner wishes to sell Homeowner's Property, Homeowner shall notify CLT, in writing, of such wish (the Intent-to-Sell Notice). This Notice shall include a statement as to whether Homeowner wishes to recommend a prospective buyer as of the date of the Notice.

10.5 AFTER RECEIVING NOTICE, CLT SHALL COMMISSION AN APPRAISAL: No later than ten (10) days after CLT's receipt of Homeowner's Intent-to-Sell Notice, CLT shall commission a market valuation of the Leased Land and the Home (the "Appraisal") to be performed by a duly licensed appraiser who is acceptable to the Homeowner. CLT shall pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though title to Land and Home were held in fee simple absolute by a single party, disregarding all of the restrictions of this Lease on the use, occupancy and transfer of the property. Copies of the Appraisal are to be provided to both CLT and Homeowner.

10.6 CLT HAS AN OPTION TO PURCHASE THE HOME. Upon receipt of an Intent-to-Sell Notice from Homeowner, CLT shall have the option to purchase the Home at the Purchase Option Price calculated as set forth below. The Purchase Option is designed to further the purpose of preserving the affordability of the Home for succeeding Income-Qualified Persons while taking fair account of the investment by the Homeowner.

If CLT elects to purchase the Home, CLT shall exercise the Purchase Option by notifying Homeowner, in writing, of such election (the Notice of Exercise of Option) within forty-five (45) days of the receipt of the Appraisal, or the Option shall expire. Having given such notice, CLT may either proceed to purchase the Home directly or may assign the Purchase Option to an Income-Qualified Person.

The purchase (by CLT or CLT's assignee) must be completed within sixty (60) days of CLT's Notice of Exercise of Option. At closing, Homeowner shall execute a Special Warranty Deed conveying the Home to the CLT. The warranties in the Special Warranty Deed shall be limited to items arising by, through or under Homeowner and the Permitted Mortgage(s). If CLT fails to complete the purchase, Homeowner may sell the Home and Homeowner's rights to the Leased Land as provided in Section 10.7 below. The time permitted for the completion of the purchase may be extended by mutual agreement of CLT and Homeowner.

Homeowner may recommend to CLT a prospective buyer who is an Income-Qualified Person and is prepared to submit Letters of Agreement and Attorney's Acknowledgement indicating informed acceptance of the terms of this Lease. CLT shall make reasonable efforts to arrange for the assignment of the Purchase Option to such person, unless CLT determines that its charitable mission is better served by retaining the Home for another purpose or transferring the Home to another Income-Qualified Person.

10.7 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS: If the Purchase Option has expired or if CLT has failed to complete the purchase within the sixty-day period allowed by Section 10.6 above, Homeowner may sell the Home to any Income-Qualified Person for not more than the then applicable Purchase Option Price.

10.8 AFTER ONE YEAR CLT SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE: If CLT does not exercise its option and complete the purchase

of Homeowner's Property as described above, and if Homeowner (a) is not then residing in the Home and (b) continues to hold Homeowner's Property out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of the date of the Intent to Sell Notice, Homeowner does hereby appoint CLT its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Lease, sell the property, and pay to the Homeowner the proceeds of sale, minus CLT's costs of sale and any other sums owed CLT by Homeowner.

10.9 PURCHASE OPTION PRICE EQUALS LESSER OF APPRAISED VALUE OF HOMEOWNER'S OWNERSHIP INTEREST OR FORMULA PRICE: In no event may the Home be sold for a price that exceeds the Purchase Option Price. The Purchase Option Price shall be the lesser of (a) the Appraised Value of Homeowner's Ownership Interest at Resale as calculated in line "d" of Section 10.10 below or (b) the Formula Price calculated in accordance with Section 10.10 below.

10.10 HOW THE FORMULA PRICE IS CALCULATED: The Formula Price shall be equal to ("a") the amount of Homeowner's Base Price (as stated below), plus a maximum of 25% of any increase in the appraised value of Homeowner's Ownership Interest (as calculated below).

a. Homeowner's Base Price: The Parties agree that the price paid by Homeowner upon the execution of this lease (Homeowner's Base Price) is \$____. (Homeowner's Base Price equals Homeowner's Ownership Interest at time of purchase.)

b. Initial Appraised Value of Home and Leased Land: The parties agree that the total appraised value of Home and Leased Land at the time of Homeowner's purchase (the Initial Appraised Value) is \$____ as documented by the appraiser's report attached to this Lease as Exhibit INITIAL APPRAISAL,

c. Ratio of Homeowner's Base Price to Initial Appraised Value: The parties agree that the Ratio of Homeowner's Base Price to Initial Appraised Value, expressed as a percentage, is a maximum of ____%.

d. Appraised Value of Homeowner's Ownership Interest at Resale: The appraised value of Homeowner's Ownership Interest at time of resale equals the appraised value of Home and Leased Land at resale, determined in accordance with Section 10.5, multiplied by the Ratio of Homeowner's Base Price to Initial Appraised Value (____%) as calculated in ("c") above.

e. Increase in Appraised Value of Homeowner's Ownership Interest: The increase in appraised value of Homeowner's Ownership Interest equals the appraised value of Homeowner's Ownership Interest at resale determined in accordance with ("d") above minus the Homeowner's Base Price stated in ("a") above.

f. Homeowner's share of Increase in Appraised Value of Homeowner's Ownership Interest: Homeowner's share of the increase in the appraised value of the Homeowner's Ownership Interest shall be determined by multiplying the Increase in Market Value as calculated in ("e") above by the "Shared Appreciation Factor." The "Shared Appreciation Factor" shall be tied to the length of ownership as follows:

- If the property is sold following purchase prior to the completion of the 2nd year of ownership, the "Shared Appreciation Factor" shall be 5%
- If the property is sold within the 3rd to the 5th year of ownership, the "Shared Appreciation Factor" shall be 10%
- If the property is sold in the 6th through 10th year of ownership, the Shared Appreciation Factor shall be 20%

- If the property is sold at any time during or after the 11th year of ownership, the Shared Appreciation Factor shall be 25%

g. Formula Price: The Formula Price equals Homeowner's Base Price ("a") plus Homeowner's share of Increase in the appraised value of the Homeowner's Ownership Interest ("f").

10.11 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE: The CLT shall issue a new lease to any person who purchases the Home in accordance with the terms of this Article 10. The terms of such lease shall be the same as those of new leases issued to homebuyers at that time for land not previously leased by the CLT.

10.12 PURCHASER MAY BE CHARGED A TRANSFER FEE. In the event that Homeowner sells the Home to a party other than the CLT (whether directly to such party or as a result of CLT's assignment of its Purchase Option to such party), the price to be paid by such purchaser shall include in addition to the Purchase Option Price, at the discretion of the CLT, a transfer fee to compensate the CLT for carrying out its responsibilities with regard to the transaction. The amount of the transfer fee shall be no more than ____% of the Purchase Option Price.

10.13 HOMEOWNER REQUIRED TO MAKE NECESSARY REPAIRS AT TRANSFER: The Homeowner is required to make necessary repairs when the Homeowner voluntarily transfers the Home as follows:

- a) The person purchasing the Home ("Buyer") shall, prior to purchasing the Home, hire at her sole expense a duly licensed building inspector to assess the condition of the Home and prepare a written report of the condition ("Inspection Report"). The Homeowner shall cooperate fully with the inspection.
- b) The Buyer shall provide a copy of the Inspection Report to Buyer's lender (if any), the Homeowner, and the CLT within 10 days after receiving the Inspection Report.
- c) Homeowner shall repair specific reported defects or conditions necessary to bring the Home into full compliance with Sections 4.2 and 7.5 above prior to transferring the Home.
- d) Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner's written request, the CLT may allow the Homeowner to pay all or a portion of the repair costs after transfer, from Homeowner's proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In such event, either (i) 150% of the unpaid estimated cost of repairs or (ii) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner's proceeds of sale in a CLT-approved escrow account.
- e) Homeowner shall allow CLT, Buyer, and Buyer's building inspector and lender's representative to inspect the repairs prior to closing to determine that the repairs have been satisfactorily completed.
- f) Upon sale or other transfer, Homeowner shall either (i) transfer the Home with all originally purchased appliances or replacements in the Home in good working order or (ii) reduce the Purchase Option Price by the market value of any such appliances that are not left with the Home in good working order.

ARTICLE 11: RESERVED

ARTICLE 12: DEFAULT

12.1 HOMEOWNER FAILS TO MAKE PAYMENTS TO THE CLT THAT ARE REQUIRED BY THE LEASE: It shall be an event of default if Homeowner fails to pay the Lease Fee or other charges required by the terms of this Lease and such failure is not cured by Homeowner or a Permitted Mortgagee within thirty (30) days after notice of such failure is given by CLT to Homeowner and Permitted Mortgagee. However, if Homeowner makes a good faith partial payment of at least two-thirds (2/3) of the amount owed during the 30-day cure period, then the cure period shall be extended by an additional 30 days.

12.2 HOMEOWNER VIOLATES OTHER (NONMONETARY) TERMS OF THE LEASE: It shall be an event of default if Homeowner fails to abide by any other requirement or restriction stated in this Lease, and such failure is not cured by Homeowner or a Permitted Mortgagee within sixty (60) days after notice of such failure is given by CLT to Homeowner and Permitted Mortgagee. However, if Homeowner or Permitted Mortgagee has begun to cure such default within the 60-day cure period and is continuing such cure with due diligence but cannot complete the cure within the 60-day cure period, the cure period shall be extended for as much additional time as may be reasonably required to complete the cure.

12.3 HOMEOWNER DEFAULTS AS A RESULT OF JUDICIAL PROCESS: It shall be an event of default if the leasehold estate hereby created is taken on execution or by other process of law, or if Homeowner is judicially declared bankrupt or insolvent according to law, or if any assignment is made of the property of Homeowner for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of the Home or Homeowner's interest in the Leased Land by a court of competent jurisdiction, or if a petition is filed for the reorganization of Homeowner under any provisions of the Bankruptcy Act now or hereafter enacted, or if Homeowner files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.

12.4 A DEFAULT (UNCURED VIOLATION) GIVES CLT THE RIGHT TO TERMINATE THE LEASE OR EXERCISE ITS PURCHASE OPTION:

a) **TERMINATION:** In the case of any of the events of default described above, CLT may terminate this lease at which time Homeowner shall execute a Special Warranty Deed conveying the Home to the CLT. The warranties in the Special Warranty Deed shall be limited to items arising by, through or under Homeowner and the Permitted Mortgage(s). If Homeowner fails to relinquish possession of the Home and deed the Home to the CLT, the CLT may initiate summary proceedings under applicable law against Homeowner, and CLT shall have all the rights and remedies consistent with such laws and resulting court orders to enter the Leased Land and Home and repossess the entire Leased Land and Home, and expel Homeowner and those claiming rights through Homeowner. In addition, CLT shall have such additional rights and remedies to recover from Homeowner arrears of rent and damages from any preceding breach of any covenant of this Lease. If this Lease is terminated by CLT pursuant to an Event of Default, then, as provided in Section 7.7 above, upon thus assuming title to the Home, CLT shall pay to Homeowner and any Permitted Mortgagee an amount equal to the Purchase Option Price calculated in accordance with Section 10.9 above, as of the time of reversion of ownership, less the total amount of any unpaid Lease Fee and any other amounts owed to the CLT under the terms of this Lease and all reasonable costs (including reasonable attorneys' fees) incurred by CLT in pursuit of its remedies under this Lease.

If CLT elects to terminate the Lease, then the Permitted Mortgagee shall have the right (subject to Article 8 above and the attached Exhibit: Permitted Mortgages) to postpone and extend the specified date for the termination of the Lease for a period sufficient to enable the Permitted Mortgagee or its designee to acquire Homeowner's interest in the Home and the Leased Land by foreclosure of its mortgage or otherwise.

b) **EXERCISE OF OPTION:** In the case of any of the events of default described above, Homeowner hereby grants to the CLT (or its assignee) the option to purchase the Home for the Purchase Option Price as such price is defined in Article 10 above. Within thirty (30) days after the expiration of any applicable cure period as established in Sections 12.1 or 12.2 above or within 30 days after any of the events constituting an Event of Default under Section 12.3 above, CLT shall notify the Homeowner and the Permitted Mortgagee(s) of its decision to exercise its option to purchase under this Section 12.4(b). Not later than ninety (90) days after the CLT gives notice to the Homeowner of the CLT's intent to exercise its option under this Section 12.4(a), the CLT or its assignee shall purchase the Home for the Purchase Option Price.

12.5 WHAT HAPPENS IF CLT DEFAULTS: CLT shall in no event be in default in the performance of any of its obligations under the Lease unless and until CLT has failed to perform such obligations within sixty (60) days, or such additional time as is reasonably required to correct any default, after notice by Homeowner to CLT properly specifying CLT's failure to perform any such obligation.

ARTICLE 13: Mediation and Arbitration

13.1 Nothing in this Lease shall be construed as preventing the parties from utilizing any process of mediation or arbitration in which the parties agree to engage for the purpose of resolving a dispute.

13.2 Homeowner and CLT shall each pay one half (50%) of any costs incurred in carrying out mediation or arbitration in which the parties have agreed to engage.

ARTICLE 14: GENERAL PROVISIONS

14.1 **HOMEOWNER'S MEMBERSHIP IN CLT:** CLT Homeowners shall have representation on the CLT Committee.

14.2 **NOTICES:** Whenever this Lease requires either party to give notice to the other, the notice shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice:

If to CLT: Northwest Florida Community Land Trust, LLC
Attn: Sam Young
300A W. Leonard St.
Pensacola, FL 32501

with a copy to: Moorhead Law Group, PLLC
Attn: Robert J. Powell
127 Palafox Pl, Suite 200
Pensacola, FL 32502

If to Homeowner: _____ (name/address of Homeowner)

All notices, demands and requests shall be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

14.3 NO BROKERAGE: Homeowner warrants that it has not dealt with any real estate broker other than _____ in connection with the purchase of the Home. If any claim is made against CLT regarding dealings with brokers other than _____, Homeowner shall defend CLT against such claim with counsel of CLT's selection and shall reimburse CLT for any loss, cost or damage which may result from such claim.

14.4 SEVERABILITY AND DURATION OF LEASE: If any part of this Lease is unenforceable or invalid, such material shall be read out of this Lease and shall not affect the validity of any other part of this Lease or give rise to any cause of action of Homeowner or CLT against the other, and the remainder of this Lease shall be valid and enforced to the fullest extent permitted by law. It is the intention of the parties that CLT's option to purchase and all other rights of both parties under this Lease shall continue in effect for the full term of this Lease and any renewal thereof, and shall be considered to be coupled with an interest. In the event any such option or right shall be construed to be subject to any rule of law limiting the duration of such option or right, the time period for the exercising of such option or right shall be construed to expire twenty (20) years after the death of the last survivor of the following persons:

NOTE: List an identifiable group of small children, e.g., the children living as of the date of this Lease of any of the directors or employees of a specified corporation.

14.5 RIGHT OF FIRST REFUSAL IN LIEU OF OPTION: If the provisions of the purchase option set forth in Article 10 of this Lease shall, for any reason, become unenforceable, CLT shall nevertheless have a right of first refusal to purchase the Home at the highest documented bona fide purchase price offer made to Homeowner. Such right shall be as specified in Exhibit FIRST REFUSAL. Any sale or transfer contrary to this Section, when applicable, shall be null and void.

14.6 WAIVER: The waiver by CLT at any time of any requirement or restriction in this Lease, or the failure of CLT to take action with respect to any breach of any such requirement or restriction, shall not be deemed to be a waiver of such requirement or restriction with regard to any subsequent breach of such requirement or restriction, or of any other requirement or restriction in the Lease. CLT may grant waivers in the terms of this Lease, but such waivers must be in writing and signed by CLT before being effective.

The subsequent acceptance of Lease Fee payments by CLT shall not be deemed to be a waiver of any preceding breach by Homeowner of any requirement or restriction in this Lease, other than the failure of the Homeowner to pay the particular Lease Fee so accepted, regardless of CLT's knowledge of such preceding breach at the time of acceptance of such Lease Fee payment.

14.7 CLT'S RIGHT TO PROSECUTE OR DEFEND: CLT shall have the right, but shall have no obligation, to prosecute or defend, in its own or the Homeowner's name, any actions or proceedings appropriate to the protection of its own or Homeowner's interest in the Leased Land. Whenever requested by CLT, Homeowner shall give CLT all reasonable aid in any such action or proceeding.

14.8 CONSTRUCTION: Whenever in this Lease a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand.

14.9 HEADINGS AND TABLE OF CONTENTS: The headings, subheadings and table of contents appearing in this Lease are for convenience only, and are not

a part of this Lease and do not in any way limit or amplify the terms or conditions of this Lease.

14.10 PARTIES BOUND: This Lease sets forth the entire agreement between CLT and Homeowner with respect to the leasing of the Land; it is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Lease, their respective successors in interest. This Lease may be altered or amended only in a writing executed by CLT and Homeowner or their legal representatives or, in accordance with the provisions of this Lease, their successors in interest.

14.11 GOVERNING LAW: This Lease shall be interpreted in accordance with and governed by the laws of Florida. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against CLT or Homeowner.

14.12 RECORDING: The parties agree, as an alternative to the recording of this Lease, to execute a so-called Notice of Lease or Short Form Lease in form recordable and complying with applicable law and reasonably satisfactory to CLT’s attorneys. In no event shall such document state the rent or other charges payable by Homeowner under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.

IN WITNESS WHEREOF, the parties have executed this lease at _____ on the day and year first above written.

NAME OF CLT

Witness By: _____
Its duly authorized agent

Witness _____ (Homeowner):

[notarize signatures]

**Exhibit LETTERS OF AGREEMENT AND ATTORNEY’S
ACKNOWLEDGMENT**

**Sample
Letter of Agreement**

To _____ Community Land Trust (“the CLT”)

Date: _____

This letter is given to the CLT to become an exhibit to a Lease between the CLT and me. I will be leasing a parcel of land from the CLT and will be buying the home that sits on that parcel of land. I will therefore become what is described in the Lease as a “the Homeowner.”

My legal counsel, _____, has explained to me the terms and conditions of the Lease and other legal documents that are part of this transaction. I understand the way these terms and conditions will affect my rights as a CLT homeowner, now and in the future.

In particular I understand and agree with the following points.

One of the goals of the CLT is to keep CLT homes affordable for lower income households from one CLT homeowner to the next. I support this goal as a CLT homeowner and as a member of the CLT.

The terms and conditions of my Lease will keep my home affordable for future “income-qualified persons” (as defined in the Lease). If and when I want to sell my home, the lease requires that I sell it either to the CLT or to another income-qualified person. The terms and conditions of the lease also limit the price for which I can sell the home, in order to keep it affordable for such income-qualified persons.

It is also a goal of the CLT to promote resident ownership of CLT homes. For this reason, my Lease requires that, if I and my family move out of our home permanently, we must sell it. We cannot continue to own it as absentee owners.

I understand that I can leave my home to my child or children or other members of my household and that, after my death, they can own the home for as long as they want to live in it and abide by the terms of the Lease, or they can sell it on the terms permitted by the Lease.

As a CLT homeowner and a member of the CLT, it is my desire to see the terms of the Lease and related documents honored. I consider these terms fair to me and others.

Sincerely

Sample
Letter of Attorney’s Acknowledgment

I, _____, have been independently employed by _____ (hereinafter “the Client”) who intends to purchase a house and other improvements (the “Home”) on land to be leased from Community Land Trust. The house and land are located at _____.

In connection with the contemplated purchase of the Home and the leasing of the land, I reviewed with the Client the following documents:

- a) this Letter of Attorney’s Acknowledgment and a Letter of Agreement from the Client;
- b) a proposed Deed conveying the Home to the Client;
- c) a proposed Ground Lease conveying the “Leased Land” to the Client;
- d) other written materials provided by the CLT.

The Client has received full and complete information and advice regarding this conveyance and the foregoing documents. In my review of these documents my purpose has been to reasonably inform the Client of the present and foreseeable risks and legal consequences of the contemplated transaction.

The Client is entering the aforesaid transaction in reliance on her own judgment and upon her investigation of the facts. The advice and information provided by me was an integral element of such investigation.

Name	Date
Title	
Firm/Address	

Exhibit DEED

Sample
Deed

Between

LOCAL LAND TRUST (Grantor), a not-for-profit corporation having its principal offices at _____, _____, _____, and

JOHN AND MARY DOE (Grantees), residing at _____, _____, _____.

Witnesseth

That Grantor, in consideration of one dollar and other good and valuable consideration paid by Grantees, does hereby grant and release unto Grantees, their heirs, or successors and assigns forever,

THE BUILDINGS AND OTHER IMPROVEMENTS ONLY, as presently erected on the Land described in Schedule “A” attached hereto and made a part hereof.

It is the intention of the parties that the real property underlying the buildings and other improvements conveyed herein remain vested in Grantor and that this warranty deed convey only such buildings and other improvements as are presently erected upon the subject Land.

In witness whereof, as authorized agent of Grantor, I hereunto set my hand this _____day of _____, A.D. 20__.

signature

[notarize signature]

Exhibit: PERMITTED MORTGAGES

The rights and provisions set forth in this Exhibit shall be understood to be provisions of Section 8.2 of the of the Lease. All terminology used in this Exhibit shall have the meaning assigned to it in the Lease.

A. OBLIGATIONS OF PERMITTED MORTGAGEE. Any Permitted Mortgagee shall be bound by each of the following requirements unless the particular requirement is removed, contradicted or modified by a rider to this Lease signed by the Homeowner and the CLT to modify the terms of the Lease during the term of the Permitted Mortgage.

1. If Permitted Mortgagee sends a notice of default to the Homeowner because the Homeowner has failed to comply with the terms of the Permitted Mortgage, the Permitted Mortgagee shall, at the same time, send a copy of that notice to the CLT. Upon receiving a copy of the notice of default and within that period of time in which the Homeowner has a right to cure such default (the “cure period”), the CLT shall have the right to cure the default on the Homeowner’s behalf, provided that all current payments due the Permitted Mortgagee since the notice of default was given are made to the Permitted Mortgagee.
2. If, after the cure period has expired, the Permitted Mortgagee intends to accelerate the note secured by the Permitted Mortgage or begin foreclosure proceedings under the Permitted Mortgage, the Permitted Mortgagee shall first notify CLT of its intention to do so, and CLT shall then have the right, upon notifying the Permitted Mortgagee within thirty (30) days of receipt of such notice, to acquire the Permitted Mortgage by paying off the debt secured by the Permitted Mortgage.
3. If the Permitted Mortgagee acquires title to the Home through foreclosure or acceptance of a deed in lieu of foreclosure, the Permitted Mortgagee shall give CLT written notice of such acquisition and CLT shall then have an option to purchase the Home from the Permitted Mortgagee for the full amount owing to the Permitted Mortgagee under the Permitted Mortgage. To exercise this option to purchase, CLT must give written notice to the Permitted Mortgagee of CLT’s intent to purchase the Home within thirty (30) days following CLT’s receipt of the Permitted Mortgagee’s notice. CLT must then complete the purchase of the Home within sixty (60) days of having given written notice of its intent to purchase. If CLT does not complete the purchase within this 60-day period, the Permitted Mortgagee shall be free to sell the Home to another person.
4. Nothing in the Permitted Mortgage or related documents shall be construed as giving Permitted Mortgagee a claim on CLT’s interest in the Leased Land, or as assigning any form of liability to the CLT with regard to the Leased Land, the Home, or the Permitted Mortgage.
5. Nothing in the Permitted Mortgage or related documents shall be construed as rendering CLT or any subsequent Mortgagee of CLT’s interest in this Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt secured by the Permitted Mortgage or any part thereof.
6. The Permitted Mortgagee shall not look to CLT or CLT’s interest in the Leased Land, but will look solely to Homeowner, Homeowner’s interest in the Leased Land, and the Home for the payment of the debt secured thereby or any part thereof. (It is the intention of the parties hereto that CLT’s consent to such the Permitted Mortgage shall be without any liability on the part of CLT for any deficiency judgment.)

7. In the event any part of the Security is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the Permitted Mortgagee in accordance with the provisions of ARTICLE 9 hereof.

8. CLT shall not be obligated to execute an assignment of the Lease Fee or other rent payable by Homeowner under the terms of this Lease.

B. RIGHTS OF PERMITTED MORTGAGEE. The rights of a Permitted Mortgagee as referenced under Section 8.6 of the Lease to which this Exhibit is attached shall be as set forth below.

1. Any Permitted Mortgagee shall, without further consent by CLT, have the right to (a) cure any default under this Lease, and perform any obligation required under this Lease, such cure or performance being effective as if it had been performed by Homeowner; (b) acquire and convey, assign, transfer and exercise any right, remedy or privilege granted to Homeowner by this Lease or otherwise by law, subject to the provisions, if any, in the Permitted Mortgage, which may limit any exercise of any such right, remedy or privilege; and (c) rely upon and enforce any provisions of the Lease to the extent that such provisions are for the benefit of a Permitted Mortgagee.

2. A Permitted Mortgagee shall not be required, as a condition to the exercise of its rights under the Lease, to assume personal liability for the payment and performance of the obligations of the Homeowner under the Lease. Any such payment or performance or other act by Permitted Mortgagee under the Lease shall not be construed as an agreement by Permitted Mortgagee to assume such personal liability except to the extent Permitted Mortgagee actually takes possession of the Home and Leased Land. In the event Permitted Mortgagee does take possession of the Home and Leased Land and thereupon transfers such property, any such transferee shall be required to enter into a written agreement assuming such personal liability and upon any such assumption the Permitted Mortgagee shall automatically be released from personal liability under the Lease.

3. In the event that title to the estates of both CLT and Homeowner are acquired at any time by the same person or persons, no merger of these estates shall occur without the prior written declaration of merger by Permitted Mortgagee, so long as Permitted Mortgagee owns any interest in the Security or in a Permitted Mortgage.

4. If the Lease is terminated for any reason, or in the event of the rejection or disaffirmance of the Lease pursuant to bankruptcy law or other law affecting creditors' rights, CLT shall enter into a new lease for the Leased Land with the Permitted Mortgagee (or with any party designated by the Permitted Mortgagee, subject to CLT's approval, which approval shall not be unreasonably withheld), not more than thirty (30) days after the request of the Permitted Mortgagee. Such lease shall be for the remainder of the term of the Lease, effective as of the date of such termination, rejection or disaffirmance, and upon all the terms and provisions contained in the Lease. However, the Permitted Mortgagee shall make a written request to CLT for such new lease within sixty (60) days after the effective date of such termination, rejection or disaffirmance, as the case may be. Such written request shall be accompanied by a copy of such new lease, duly executed and acknowledged by the Permitted Mortgagee or the party designated by the Permitted Mortgagee to be the Homeowner thereunder. Any new lease made pursuant to this Section shall have the same priority with respect to other interests in the Land as the Lease. The provisions of this Section shall survive the termination, rejection or disaffirmance of the Lease and shall continue in full effect thereafter to the same extent as if this Section were independent and an independent contract made by CLT, Homeowner and the Permitted Mortgagee.

5. The CLT shall have no right to terminate the Lease during such time as the Permitted Mortgagee has commenced foreclosure in accordance with the provisions of the Lease and is diligently pursuing the same.

6. In the event that CLT sends a notice of default under the Lease to Homeowner, CLT shall also send a notice of Homeowner's default to Permitted Mortgagee. Such notice shall be given in the manner set forth in Section 14.2 of the Lease to the Permitted Mortgagee at the address which has been given by the Permitted Mortgagee to CLT by a written notice to CLT sent in the manner set forth in said Section 14.2 of the Lease.

7. In the event of foreclosure sale by a Permitted Mortgagee or the delivery of a deed to a Permitted Mortgagee in lieu of foreclosure in accordance with the provisions of the Lease, at the election of the Permitted Mortgagee the provisions of Article 10, Sections 10.1 through 10.11 shall be deleted and thereupon shall be of no further force or effect as to only so much of the Security so foreclosed upon or transferred.

8. Before becoming effective, any amendments to this Lease must be approved in writing by Permitted Mortgagee, which approval shall not be unreasonably withheld. If Permitted Mortgagee has neither approved nor rejected a proposed amendment within 60 days of its submission to Permitted Mortgagee, then the proposed amendment shall be deemed to be approved.

C. STANDARD PERMITTED MORTGAGE AGREEMENT. A Standard Permitted Mortgage Agreement, as identified in Section 8.4 of this Lease, shall be written as follows, and shall be signed by Mortgagee and Homeowner.

This Agreement is made by and among:

____ (Mortgagee) and
____ (“Homeowner”),

Whereas:

- a) _____ CLT (the “CLT”) and Homeowner have entered, or are entering, into a ground lease (“the Lease”), conveying to Homeowner a leasehold interest in the Land located at _____ (“the Leased Land”); and Homeowner has purchased, or is purchasing, the Home located on the Leased Land (“the Home”).
- b) The Mortgagee has been asked to provide certain financing to the Homeowner, and is being granted concurrently herewith a mortgage and security interest (the “Mortgage”) in the Leased Land and Home, all as more particularly set forth in the Mortgage, attached hereto as Schedule A.
- c) The Ground Lease states that the Homeowner may mortgage the Leased Land only with the written consent of CLT. The Ground Lease further provides that CLT is required to give such consent only if the Mortgagee signs this Standard Permitted Mortgage Agreement and thereby agrees to certain conditions that are stipulated herein (“the Stipulated Conditions”).

Now, therefore, the Homeowner/Mortgagor and the Mortgagee hereby agree that the terms and conditions of the Mortgage shall include the Stipulated Conditions stated below.

Stipulated Conditions:

1) If Mortgagee sends a notice of default to the Homeowner because the Homeowner has failed to comply with the terms of the Mortgage, the Mortgagee shall, at the same time, send a copy of that notice to the CLT. Upon receiving a copy of the notice of default and within that period of time in which

the Homeowner has a right to cure such default (the “cure period”), the CLT shall have the right to cure the default on the Homeowner’s behalf, provided that all current payments due the Permitted Mortgagee since the notice of default was given are made to the Mortgagee.

2) If, after such cure period, the Mortgagee intends to accelerate the note secured by the Mortgage or initiate foreclosure proceedings under the Mortgage, in accordance with the provisions of the Lease, the Mortgagee shall first notify CLT of its intention to do so and CLT shall have the right, but not the obligation, upon notifying the Mortgagee within thirty (30) days of receipt of said notice, to purchase the Mortgagee loans and to take assignment of the Mortgage.

3) If the Mortgagee acquires title to the Home and Homeowner’s interest in the Leased Land through foreclosure or acceptance of a deed in lieu of foreclosure, the Mortgagee shall give the CLT written notice of such acquisition and the CLT shall have an option to purchase the Home and Homeowner’s interest in the Leased Land from the Mortgagee for the full amount owing to the Mortgagee; provided, however, that the CLT notifies the Mortgagee in writing of the CLT’s intent to make such purchase within thirty (30) days following the CLT’s receipt of the Mortgagee’s notice of such acquisition of the Home and Homeowner’s interest in the Leased Land; further provided that CLT shall complete such purchase within sixty (60) days of having given written notice of its intent to purchase; and provided that, if the CLT does not complete the purchase within such period, the Mortgagee shall be free to sell the Home and Homeowner’s interest in the Leased Land to another person;

4) Nothing in the Mortgage or related documents shall be construed as giving the Mortgagee a claim on CLT’s interest in the Leased Land, or as assigning any form of liability to the CLT with regard to the Leased Land, the Home, or the Mortgage.

5) Nothing in the Mortgage shall be construed as rendering CLT or any subsequent holder of the CLT’s interest in and to the Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt evidenced by such note and such Mortgage or any part thereof.

6) The Mortgagee shall not look to CLT or CLT’s interest in the Leased Land, but will look solely to Homeowner and Homeowner’s interest in the Leased Land and the Home for the payment of the debt secured by the Mortgage. (It is the intention of the parties hereto that CLT’s consent to the Mortgage shall be without any liability on the part of CLT for any deficiency judgment.)

7) In the event that any part of the Leased Land is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the Mortgagee in accordance with the provisions of Article 9 of the Lease.

8) Nothing in the Mortgage shall obligate CLT to execute an assignment of the Lease Fee or other rent payable by Homeowner under the terms of this Lease.

By:

_____ *for Mortgagee*

Date:

_____ *for Homeowner/Mortgagor* *Date:*

Exhibit FIRST REFUSAL

Whenever any party under the Lease shall have a right of first refusal as to certain property, the following procedures shall apply. If the owner of the property offering it for sale (“Offering Party”) shall within the term of the Lease receive a bona fide third party offer to purchase the property which such Offering Party is willing to accept, the holder of the right of first refusal (the “Holder”) shall have the following rights:

- a) Offering Party shall give written notice of such offer (“the Notice of Offer”) to Holder setting forth (a) the name and address of the prospective purchaser of the property, (b) the purchase price offered by the prospective purchaser and (c) all other terms and conditions of the sale. Holder shall have a period of forty-five (45) days after the receipt of the Notice of Offer (“the Election Period”) within which to exercise the right of first refusal by giving notice of intent to purchase the property (“the Notice of Intent to Purchase”) for the same price and on the same terms and conditions set forth in the Notice of Offer. Such Notice of Intent to Purchase shall be given in writing to the Offering Party within the Election Period.
- b) If Holder exercises the right to purchase the property, such purchase shall be completed within sixty (60) days after the Notice of Intent to Purchase is given by Holder (or if the Notice of Offer shall specify a later date for closing, such date) by performance of the terms and conditions of the Notice of Offer, including payment of the purchase price provided therein.
- c) Should Holder fail to exercise the right of first refusal within the Election Period, then the Offering Party shall have the right (subject to any other applicable restrictions in the Lease) to go forward with the sale which the Offering Party desires to accept, and to sell the property within one (1) year following the expiration of the Election Period on terms and conditions which are not materially more favorable to the purchaser than those set forth in the Notice. If the sale is not consummated within such one-year period, the Offering Party's right so to sell shall end, and all of the foregoing provisions of this section shall be applied again to any future offer, all as aforesaid. If a sale is consummated within such one-year period, the purchaser shall purchase subject to the Holder having a renewed right of first refusal in said property.

Other Exhibits to be Attached as Appropriate

Exhibit LAND *[Correct legal description of area of Leased Land and appurtenant title rights and obligations.]*

Exhibit INITIAL APPRAISAL *[To be attached if Lease contains an “appraisal-based” resale formula]*

Exhibit RESTRICTIONS
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

State of Florida
County of _____

_____ This Declaration of Covenants, Conditions and Restrictions ("Declaration") is made **DATE**, by **BUYER** ("Owner"). (Whenever the context so requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine, or neuter form thereof, and the singular form of any noun or pronoun herein may be deemed the corresponding plural thereof and vice versa.)

WITNESSETH:

Whereas, contemporaneously with the execution of this Declaration, Owner is acquiring title to the following described property (the "Property"):

ADD LEGAL DESCRIPTION.

from Northwest Florida Community Land Trust., a Florida not-for-profit corporation ("CLT");

Whereas, as a condition of the purchase CLT requires Owner to encumber the Property with the covenants, conditions and restrictions set forth hereinbelow.

NOW THEREFORE, Owner hereby establishes this Declaration of Covenants, Conditions and Restrictions which will run with the Property in accordance with the terms, provisions and conditions set forth as follows:

1. Residential Use Only. The Property shall be occupied and used exclusively as a principal residence for one single family (defined as the members of the family listed with CLT, plus after-adopted or after-born children of those family members). No structure may be erected, placed or permitted to remain on the Property other than one single-family dwelling, a garage, a swimming pool or a detached structure. No detached structure may be constructed prior to the completion of the construction of the primary structure. No business or commercial building may be erected on the Property and no business or commercial activity may be conducted on the Property.
2. Maintenance of Exteriors. The Owner shall at all times maintain the exterior of all structures on the Property including all improvements, facilities, furnishings, landscaping on the Property in an attractive and sightly manner. No waste, impairment or deterioration of the Property shall be permitted.
3. No Fire Hazard. Nothing which would or could increase the risk of fire or other hazard to the Property or any part thereof or to the areas surrounding the Property will be allowed.

4. **Pets.** No animals of any kind shall be kept, had or maintained on the Property except a total of no more than two (2) dogs, cats or other customary household pets, provided that they are duly licensed, if applicable; that they do not constitute any annoyance or nuisance; that they are well groomed and maintained in a sanitary condition; that they are not kept or bred for any commercial purposes; and that such pets are not permitted to be present beyond the boundaries of the Property without being leashed or caged. Rottweilers, pit bulls and chows, or breeds similar, and any other dangerous pets are not permitted at any time.
5. **Compliance with Regulations.** All present and future laws, ordinances, rules and regulations of any governmental authority affecting the Property or any part thereof shall be complied with.
6. **No Offensive Activity.** No unreasonable noises or odors shall be caused or permitted on the Property and no nuisance, immoral or illegal activity, or anything that may be an annoyance or a noxious or offensive activity to surrounding property owners or their guests shall be caused or permitted on the Property.
7. **No Convicted Residents.** No resident of the Property shall be convicted of a felony or be identified by the Escambia County or Santa Rosa County Sheriff's Office or other State law enforcement agency as a gang member or gang affiliate.
8. **Remodeling or Other Construction.** No construction, improvements, remodeling, or modification on or to the Property, except interior alterations not affecting the external appearance of the Property or improvements thereon, is permitted without advance written approval of CLT. This specifically includes, but is not limited to, painting or other alteration of a home or any building situated on the Property (including doors, windows, and trim); replacement of roof or other parts of a building other than with duplicates of the original material; installation of antennas, satellite dishes or receivers, solar panels, or other devices; construction of fountains, swimming pools, whirlpools, or other pools; construction of privacy walls or other fences or gates; addition of awnings, flower boxes, shelves, statues, or other outdoor ornamentation; addition of window coverings, installation of a well; and any material alteration of landscaping. CLT, in making its decisions, may consider purely aesthetic matters that in its sole opinion will affect the desirability or suitability of the construction. If any construction or modification is undertaken that has not been approved, CLT may bring an action for specific performance, declaratory decree, or injunction, and will be entitled to recover all costs of such action including attorney fees at trial or on appeal. CLT may, in its sole and absolute discretion, waive in writing violations and/or grant deviations or variances. However, the waiver of a particular violation or violations will not be deemed a waiver to enforce these provisions as to future or continuing violations.
9. **Exterior Color and Materials.** The color and materials of all exterior surfaces will be subject to approval of CLT. CLT may promulgate a list of approved colors and materials for this purpose. This restriction includes window tints and films.
10. **Air Conditioning Units.** No window or through-the-wall air conditioning unit will be permitted on the home situated on the Property.
11. **Antennae, Aerials, and Satellite Dishes.** No antennae or aerial may be placed on the Property or affixed to the exterior of any building, and no antennae or aerial placed or affixed within a building may extend or protrude beyond the exterior of such building or in any way be visible from outside the building. Under no circumstances shall any satellite dish exceed 39 inches in diameter. Satellite dishes may only be affixed to the rear of a home and must not be visible from the street in front of the building.
12. **Clothes Drying Area.** No clotheslines or other facilities or apparatus for the drying of clothes outside of a dwelling shall be constructed or maintained on the Property if viewable from the front of the home.
13. **Signs.** No sign of any kind shall be displayed to general view on the Property (whether freestanding, attached to a Building, or displayed in a window) except one "For Sale" sign not more than two square feet (as measured on each side of the sign) may be displayed on Property by the Owner or the agent for the Owner.
14. **Fences.** No fences may be erected on the Property without prior written approval of CLT. All fences, hedges, walls or the like constructed upon the Property shall comply with all applicable governmental regulations. No fence, hedge, wall or the like shall be constructed closer to the street than the front of the structure constituting the front of the home situated on the Property.
15. **Completion of Construction and Repairs.** Any repair or remodeling to the home built on the Property must be diligently and continuously pursued once begun, and promptly completed, shall be sightly and of good workmanship. Other than original new home construction, all construction of improvements on the Property and the construction, repair, or remodeling of any improvement must be completed within four (4) months after commencement. All waste shall be contained during construction and any debris that becomes scattered shall

be picked up and disposed of immediately by the person or company performing the construction.

16. Lot Drainage. No elevation or topography changes shall be permitted on the Property which materially affects the surface grade or drainage on any adjoining property.

17. Litter, Trash, Garbage. No garbage, trash, refuse, or rubbish may be deposited, dumped, or kept on the Property except in closed sanitary containers appropriately screened from view. Trash containers must be placed at the front of the Property on the day designated for pickup, but only if promptly returned to the proper storage area as soon as possible.

18. Parking of Wheeled Vehicles, Boats and Water Vessels. Boats, water vessels and trailers must be kept at all times parked in the rear yard behind a fence not readily visible from the street and are not permitted to be parked elsewhere on the Property. Private cars or private trucks owned by an Owner or an Owner's guest may only be parked in the Owner's driveway. Commercial vehicles may be parked in a street or driveway when necessary for providing services to an Owner, or for pickup and delivery service, but only while undertaking this activity and never overnight. Recreational vehicles, travel trailers, trailers, and campers may not be parked in the driveway on the Property or on the street adjacent to the Property. No Vehicles may be repaired or maintained on or adjacent to the Property.

19. Permanent Outside Storage Building. No outside storage building of any nature whatsoever will be permitted on the Property unless approved by CLT. The total area of the building shall not exceed 170 square feet and shall be located no closer than 5 feet from the side and rear property lines of the Property. No building or design shall violate the applicable governmental regulations.

20. Further Subdivision Property. The Property shall not be re-subdivided except that the Owner shall have the right to modify boundary lines in the event of a dispute regarding the location of such boundary lines.

21. Waiver of or Release from Violations. CLT may, in its absolute discretion, waive or release the Property or the Owner from any requirements and/or violations of this Declaration.

22. Enforcement. The covenants and restrictions contained in this Declaration may be enforced by CLT and/or its successors or assigns, in any judicial proceeding seeking any remedy recognizable at law or in equity, including an action or lawsuit seeking damages, injunction, specific performance, or any other form of relief, against any person, firm or entity violating or attempting to violate any covenant or restriction contained herein. The failure by any party to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of such covenant or restriction or of the right of such party to thereafter enforce such covenant or restriction. The prevailing party in any such litigation shall be entitled to reasonable attorneys' fees and court costs at all trial and appellate levels.

23. Assignment. CLT shall have the right, from time to time, to assign any of its rights or obligations pursuant hereto in part or in whole.

24. Notices. Notices shall be given as to Owner by posting at the Owner's dwelling on the Property, or mailing first class postage prepaid to the Owner's address as maintained by CLT. It shall be the Owner's sole responsibility to notify CLT in writing of any change of mailing address.

25. Captions and Statement of Purpose. Captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only, and in no way shall such captions or headings define, limit, or in any way affect any of the terms or provisions of this Declaration. The Statement of Purpose is a summary of general information only and in no way shall such statement define, limit, or in any way affect any of the terms or provisions of this Declaration.

26. Gender and Plural Terms. Whenever the context so requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine, or neuter form thereof, and the singular form of any noun or pronoun herein may be deemed the corresponding plural form thereof and vice versa.

27. Severability; Amendments to Laws. If any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, that judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Without limitation of the foregoing, the invalidation of any of the covenants, restrictions, terms, or conditions of this Declaration, or a reduction in the term of the same by reason of the legal rule against perpetuities, shall in no way affect any other provision, which shall remain in full force and effect for such period of time as may be permitted by law. Any amendment to applicable law that has the effect of reducing the rights of Owner or increasing the liabilities of or duties imposed on Owner will not be incorporated into this Declaration by reference. All other references to applicable laws and regulations will incorporate amendments to those laws and regulations.

28. Duration and Renewal. This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens, and liens contained herein, shall run with and bind all of the Lots and inure to the benefit of CLT and its successors, and assigns, for a term of 90 years from the date hereof. Notwithstanding the foregoing, CLT shall, at any time, have the right to waive, release, cancel or extinguish any of the covenants or restrictions contained herein.

29. Venue. This Declaration shall be governed by and enforced and construed under the laws of the State of Florida, without regard to its conflicts of laws provisions. Venue in any proceeding involving this Declaration will be in the county in which the property is situated.

DISCLAIMER OF REPRESENTATIONS OR WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS DECLARATION, NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, HAS BEEN GIVEN OR MADE BY CLT IN CONNECTION WITH THE PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. IF ANY SUCH WARRANTY CANNOT BE DISCLAIMED, AND AS TO ANY CLAIMS WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

Dated this **DATE**.

IN WITNESS WHEREOF, the parties have caused this Declaration to be executed as of the day and year first written above.

BUYER

The foregoing instrument was acknowledged before me on this **DATE** by **BUYER**.

State of Florida
County of _____

Signature: _____

Notary Public

Prepared By and Return To:
Adam C. Cobb
City of Pensacola Attorney's Office
222 W Main Street
Pensacola, FL 32502
(850) 435-1615

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, dated this _____ day of _____, 2024, given by _____, a/an [State] [Entity Type], whose mailing address is _____ (hereinafter called the "Grantor"), to _____, a/an [State] [Entity Type], whose mailing address is _____ (hereinafter called the "Grantee"). (Wherever used herein the terms "Grantor" and "Grantee" include all parties to this instrument and the successors and assigns of entities.)

WITNESSETH: That Grantor, for and in consideration of the sum of \$10.00 and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto Grantee, all that certain land situate in _____ County, Florida, to-wit ("Property"):

SUBJECT TO covenants, conditions, restrictions, reservations, limitations, easements and agreements of record, if any; taxes and assessments for the current year and subsequent years; all applicable zoning ordinances and/or restrictions and prohibitions imposed by governmental authorities, if any; Grantor's right of first refusal described below; and to the covenants, terms and conditions of that certain Land Donation Agreement between Grantor and Grantee with an effective date of _____, 20____ (the Land Donation Agreement is a publicly available document, available upon request to Grantor pursuant to Chapter 119 Florida Statutes).

TOGETHER WITH all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To have and to hold the same in fee simple forever.

And the said Grantor will only warrant and forever defend the right and title to the above-described Property unto the said Grantee against the claims of those persons claiming by, through or under Grantor, but not otherwise.

Grantor reserves unto itself a right of first refusal with respect to any conveyance by Grantee of Grantee's rights in and to the Property (including, in each instance, all of Grantee's right, title and interest in and to any improvements upon the Property), as follows: at such time as Grantee receives an offer which it desires to accept from any third party to purchase or otherwise acquire Grantee's interest in the Property, prior to consummating any such sale or conveyance Grantee shall first offer Grantee's interest in the Property to Grantor at the same

price offered by the third party by giving written notice to Grantor of the offer, the name and address of the purchaser, the price and other terms of the purchase. The giving of such notice shall constitute a representation and warranty to Grantor that the proposed transaction is bona fide in all respects. Grantor shall have 60 days from its receipt of such notice to notify Grantee that Grantor has elected to acquire Grantee's interest in the Property, or portion thereof if the offer is for said portion only, at the same price and terms offered by the third party (except that the closing date shall be at a time mutually agreeable to Grantor and Grantee, and in no event shall be required to be before the date that is 60 days following delivery of Grantor's notice of election, above). If Grantor waives such right of first refusal, either expressly or by failing to act within the 60-day period, the Landlord shall execute and deliver to Grantee a written waiver in recordable form. No sale or other transfer of title of Grantee's interest in the Property by Grantee shall be valid unless and until the written waiver by Grantor shall be recorded in the Official Records of Escambia County, Florida or until the 60-day period has elapsed without action by Grantor and Grantee records a certificate of that fact in the Official Records, together with a copy of the notice sent to Grantor, along with proof of delivery. If Grantor waives its right of first refusal either expressly or by failing to act within the 60-day period, Grantee shall be free within the one-year period following the notice to Grantor, to conclude the proposed sale with the original third party at the same or higher price (but not a lower price) as set forth in its original notice to Grantor. If Grantee does not conclude a sale within one year from the date of its notice to Grantor or if Grantee lowers the price at which it proposes to sell or if Grantee proposes to sell to a different party or if Grantee proposes to grant terms more favorable to a purchaser than was previously communicated to Grantor in a notice under this paragraph, then this paragraph shall remain applicable and Grantee must submit a new notice to Grantor and comply with the provisions of this provision before concluding the sale. Grantee shall not be required to give notice to Grantor under this paragraph if Grantee accepts an offer more favorable to Grantee than was previously communicated to Grantor in a notice under this paragraph.

[Signature page follows]

IN WITNESS WHEREOF, Grantor has signed and sealed these presents the date set forth above.

Signed, sealed and delivered in the presence of the following witnesses:

_____, a

Printed Name: _____ By: _____ (_____
Address: _____ Seal) _____
_____, [Title]

Printed Name: _____

Address: _____

STATE OF FLORIDA)
COUNTY OF ESCAMBIA)

The foregoing instrument was sworn to, subscribed and acknowledged before me this _____ day of _____, 2024, by means of () physical presence or () online notarization, by _____, as _____ corporation who is personally known to me or has produced _____ as identification.

Notary Public
Print Name: _____

My Commission Expires:



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-553

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Council Member Jennifer Brahier

SUBJECT:

APPROVAL OF LAND DONATION AGREEMENT WITH COMMUNITY LAND TRUST FOR AFFORDABLE HOUSING INFILL

RECOMMENDATION:

That City Council approve the land donation agreement with the Northwest Florida Community Land Trust for the redevelopment of 2300 W Jackson Street, A (Parcel ID# 000S009060020172) and 113 N. Spring Street (Parcel ID#000S009003001462) and the rehabilitation of 1491 N E Street (Parcel ID# 000S009050016054) for long-term affordable housing.

HEARING REQUIRED: No Hearing Required

SUMMARY:

On April 8, 2024, the City of Pensacola Community Redevelopment Agency (CRA) authorized staff to issue a notice of intent to dispose of three (3) affordable housing infill sites to a community land trust in accordance with Chapter 163, Part III, Florida Statutes.

A community land trust model is a mechanism that ensures affordable housing by separating ownership of land from ownership of structures on the land, keeping housing costs low and maintaining affordability in perpetuity. Common in both urban and rural areas, community land trusts are increasing in popularity as a proven tool to address affordable housing challenges. The number of community land trusts has grown significantly in recent years, with hundreds now operating across the United States.

The following three parcels are located within a CRA redevelopment district. The E Street property and the Jackson Street property are owned by the CRA, while the Spring Street property is owned by the City but located in a CRA redevelopment district.

1. 1491 N. E Street – existing single family residential structure in need of repair and remediation
2. 2300 W. Jackson Street, A – vacant
3. 113 N. Spring Street – vacant

The properties have been held for some time with the intent of redeveloping for affordable housing.

The 30-day notice was issued on April 24, 2024. Submittals were due by May 24, 2024. One (1) submittal was received from the Northwest Florida Community Land Trust (NWFL CLT) in partnership with the Pensacola Home Builders Association, a non-profit organization. The NWFL CLT proposes to construct two (2) new single family homes at 2300 West Jackson Street, A and 113 N. Spring Street, respectively, and to rehabilitate the existing home at 1491 N. E Street. The homes will be sold to income qualifying homeowners at or below 120% of the Area Median Income (AMI) for Escambia County, Florida. The NWFL CLT and HBA hope to celebrate the creation of long term affordable housing developed under this agreement during the 2024 Parade of Homes this fall.

A copy of the submittal is attached.

PRIOR ACTION:

July 18, 2022 - The CRA declared the properties located at 2300 W Jackson Street, A and 1491 N E Street (formally 901 W Blount Street) surplus and available for disposition under the terms of the City of Pensacola Attainable Housing Infill Program.

August 18, 2022 - City Council approved disposition of 2300 W Jackson Street, A and 1491 N E Street (formally 901 W Blount Street) at no cost to income-qualified homebuyers, subject to affordability requirements and pursuant to the terms of the City of Pensacola Attainable Housing Infill Program and Chapter 163, Part III, Florida Statutes.

August 18, 2022 - City Council held a public hearing regarding the disposition of 2300 W Jackson Street, A and 1491 N E Street (formally 901 W Blount Street) at no cost to income-qualified homebuyers, subject to affordability requirements and pursuant to the terms of the City of Pensacola Attainable Housing Infill Program and Chapter 163, Part III, Florida Statutes.

September 29, 2022 - City Council declared the property at 113 North Spring Street surplus and available for disposition.

April 8, 2024 - The CRA authorized staff to begin the required public notice period for the donation of three residential properties to a community land trust, pursuant to Section 163.380 Florida Statutes.

June 10, 2024 -- CRA approved the Land Donation Agreement

FUNDING:

N/A

FINANCIAL IMPACT:

Modest Ad Valorem Tax and Tax Increment Financing (TIF) revenue to the City's General Fund and CRA Fund will be gained through the payment of property taxes upon redevelopment/rehabilitation and acquisition by income qualifying homebuyers.

LEGAL REVIEW ONLY BY CITY ATTORNEY: No

STAFF CONTACT:

Don Kraher, Council Executive
David Forte, Deputy City Administrator
Sherry Morris, Development Services Director
Victoria D'Angelo, CRA Division Manager
Hilary Halford, CRA Division Assistant Manager
Erica Grancognolo, Economic Development Director

ATTACHMENTS:

1. Land Donation Agreement
2. Ground Lease Form
3. Special Warranty Deed (Form)
4. IROI Final Submittal 5.24.24
5. (6-5) 113 N Spring St-PROGRESS SET
6. N Spring St - Concrewall SCIP Structural Plans
7. (5-17) 1491 E St Rehab Aff Housing-PRELIM

PRESENTATION: No

LAND DONATION AGREEMENT

This Land Donation Agreement (the “**Agreement**”) is made and entered into this ____ day of _____, 2024 by and between Northwest Florida Community Land Trust, LLC, a Florida limited liability company (“**Land Trust**”), and the City of Pensacola, Florida, a Florida municipal corporation (“**City**”) and the Community Redevelopment Agency of the City of Pensacola, a public body, corporate and politic, of the State of Florida (“**CRA**”) (each of the City and CRA may hereinafter be referred to individually as a “**Donor**” and collectively as “**Donors**”).

W I T N E S S E T H:

WHEREAS, the CRA is the owner of certain real property located at 1491 N. E Street, Pensacola, Florida, as more particularly depicted and described in the attached Exhibit A (“**Parcel 1**”);

WHEREAS, the CRA is the owner of certain real property located at 2300 W. Jackson Street, A, Pensacola, Florida, as more particularly depicted and described in the attached Exhibit B (“**Parcel 2**”);

WHEREAS, the City is the owner of certain real property located on Spring Street in Pensacola, Florida, Parcel ID #000S009003001462, as more particularly depicted in the attached Exhibit C (“**Parcel 3**”) (Parcel 1, Parcel 2 and Parcel 3 are hereinafter sometimes referred to individually as a “**Parcel**”, and, collectively as the “**Property**”);

WHEREAS, Land Trust is a not-for-profit charitable organization engaged in the development and provision of housing opportunities for low to moderate income people and families in the greater Pensacola metropolitan area;

WHEREAS, Donors desire to donate the Property to Land Trust, to be developed, improved, and used by, through or under the Land Trust in perpetuity for the sole purpose of provision of housing for low to moderate income people and families in Pensacola, Florida; and

WHEREAS, Land Trust agrees to accept the donation of the Property from Donors, subject to the terms and conditions and covenants further set forth in this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt whereof is hereby acknowledged, and in consideration of the mutual covenants, conditions and promises herein contained, the parties hereto, hereby agree as follows:

1. **Recitals and Exhibits.** The foregoing recitations are true and correct and are hereby incorporated herein by reference. All Exhibits annexed to this Agreement are hereby incorporated herein and by reference made a part hereof.

2. **Donation of the Property.** Donors agree to donate and Land Trust agrees to accept donation of the Property upon the terms and conditions hereafter set forth.

3. **Conditions Precedent to the Land Trust's Obligation.** Unless waived in whole or in part in writing by Land Trust (which Land Trust shall have the right to do), this Agreement and Land Trust's obligations hereunder are subject to and conditioned upon the satisfaction of each and all of the following (hereinafter sometimes collectively referred to as the "**Conditions Precedent**" and singularly as "**Condition Precedent**"):

(a) **Title Status.** After the execution of the Agreement, Land Trust shall obtain from a closing agent selected by Land Trust, at Land Trust's cost and expense, a commitment to issue title insurance by a licensed title insurer. Such commitment shall be for the issuance of an ALTA Form Owner's Title Insurance Policy on the Property without exception other than the standard pre-printed exceptions normally contained therein, and those exceptions acceptable to Land Trust in its sole and absolute discretion (collectively, the "**Permitted Exceptions**"). Further:

(i) Donors shall supply such standard sellers' affidavits and other documentation as is reasonably required and satisfactory to Donors to cause the standard printed exception for parties in possession to be deleted;

(ii) Donors shall supply such standard sellers' affidavits and other documentation as may be reasonably required and satisfactory to Donors so as to permit the standard printed exception for construction liens to be deleted;

(iii) Land Trust may cause a survey or surveys to be prepared by a Florida licensed land surveyor from being sufficient to permit the title insurance company in question to delete the standard printed exception regarding matters which would be reflected by an accurate field survey; and

(iv) Land Trust shall determine whether the Property has legal, appropriate and practicable access for Land Trust's use of the Property which determination shall be made at Land Trust's sole discretion.

Land Trust shall, on or before the Closing Date (as defined below), notify Donors of any objections which Land Trust may have to Donors' title or to the other matters listed above, which matters shall be treated as title defects if unsatisfactory to Land Trust. If Donors are unable or unwilling to cure the defect(s) of which Land Trust gave notice, then Land Trust shall have the right, but not the obligation, for an additional sixty (60) days, to itself cure such defect(s) in title (and, if applicable, to extend the Closing Date contemplated hereby). If, after expiration of the above-referenced time periods, Donor has not cured the defect(s) in title and Land Trust either does not exercise its right to attempt to cure or is unable to cure such defect(s) within the time period heretofore specified, and Land Trust does not choose, at its option, to accept title to the Property in its then existing conditions, thereby waiving such objections to title then this Agreement shall terminate.

(b) **Due Diligence, Feasibility.** On or before sixty (60) days following the effective date of this Agreement (the "**Due Diligence Period**"), Land Trust shall determine whether the development or re-development of the Property for the purposes stated

herein is feasible. In so doing, Land Trust shall, among other things, determine: (i) whether there are any zoning restrictions or other prohibitions, codes, regulations, ordinances or requirements imposed by any governmental or quasi-governmental authority which will prevent Land Trust from development or re-development of the Property in the manner contemplated by Land Trust or otherwise impact Land Trust or the Property in any way; and (ii) whether the Property is free from hazardous materials and does not constitute an environmental hazard under federal, state or local law.

In the event: (i) Land Trust is unable to use the Property as contemplated by this Agreement or such use of the Property is not feasible, in Land Trust's sole and absolute discretion; or (ii) Land Trust's due diligence reveals the existence of a regulatory or environmental concern, then this Agreement shall, at Land Trust's request, made during the Due Diligence Period, be cancelled at which time it will be null and void, and Donors and Land Trust shall be released and relieved of any and all further obligations hereunder or in connection herewith. In the event Land Trust cancels the Agreement due to the failure of any of the Conditions Precedent, Land Trust will provide the Donors with copies of any engineering reports, plans, inspection reports or other documentation obtained by Land Trust during the due diligence process which pertain to the Property. Land Trust's officers, agents, employees and contractors will have the right to enter upon the Property to conduct any surveys, inspections and investigations at Land Trust's risk. Land Trust shall hold harmless Donors and indemnify them against loss, cause, damage or claim arising from entry onto the Property by Land Trust's officers, agents, employees and contractors.

4. **Donors' Representations and Warranties.** As an inducement to Land Trust to execute this Agreement and to close the transaction contemplated hereby, each Donor represents and warrants to Land Trust that, as to itself:

(a) Such Donor has the full right, power and authority to enter into this Agreement, to perform under this Agreement, and to consummate the transactions contemplated by this Agreement and the consummation of the transactions contemplated by this Agreement will not violate any other agreement to which such Donor is a party.

(b) This Agreement has been duly authorized, executed and delivered by such Donor, creates legal, valid and binding obligations of said Donor, and does not violate and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any judicial order, agreement, arrangements, understanding, accord, document or instrument by which such Donor or its portion of the Property is bound.

(c) No consent, waiver, approval or authorization is required from any person or entity in connection with the execution, delivery and performance of this Agreement by such Donor (other than those that have been obtained or will be obtained on or prior to the Closing).

(d) **DISCLAIMERS.** SUBJECT TO THE REPRESENTATIONS AND WARRANTIES OF DONORS SET FORTH IN THIS AGREEMENT AND ANY MATTERS SET FORTH IN THE DOCUMENTS TO BE DELIVERED IN CONNECTION WITH THE

CLOSING, IT IS UNDERSTOOD AND AGREED THAT DONORS ARE NOT MAKING AND HAVE NOT AT ANY TIME MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, AS TO HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. SUBJECT TO THE REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN THIS AGREEMENT, LAND TRUST ACKNOWLEDGES AND AGREES THAT UPON CLOSING, DONORS SHALL DONATE AND CONVEY TO LAND TRUST AND LAND TRUST SHALL ACCEPT THE PROPERTY “AS IS, WHERE IS, WITH ALL FAULTS.”

(e) Donors’ representations and warranties set forth in this Section 4 shall survive the Closing and thereafter shall be fully effective and enforceable.

5. **Land Trust’s Representations and Warranties.**

(a) Land Trust has the full right, power and authority to enter into this Agreement, to perform under this Agreement, and to consummate the transactions contemplated by this Agreement and the consummation of the transactions contemplated by this Agreement will not violate any other agreement to which Land Trust is a party.

(b) This Agreement has been duly authorized, executed and delivered by Land Trust, creates legal, valid and binding obligations of Land Trust, and does not violate and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any judicial order, agreement, arrangements, understanding, accord, document or instrument by which Land Trust is bound.

(c) No consent, waiver, approval or authorization is required from any person or entity in connection with the execution, delivery and performance of this Agreement by Land Trust (other than those that have been obtained or will be obtained on or prior to the Closing).

(d) Land Trust’s representations and warranties set forth in this Section 5 shall survive the Closing and thereafter shall be fully effective and enforceable.

6. **Land Trust’s Covenants.**

(a) Within 12 months from the Effective Date (“**Construction Deadline**”), Land Trust shall:

- i. Cause a single-family home to be constructed upon each of Parcel 2 and Parcel 3 (each a “**Home**”). Each such Home shall be constructed in accordance with all applicable law, and issuance of a certificate of occupancy related to each such Home by the Construction Deadline shall be evidence of satisfaction of this subsection.
- ii. Cause the single-family home existing upon Parcel 1 to be remodeled to substantially like-new condition (“**Remodel**”). The Remodel shall

be completed in accordance with all applicable law, and issuance of a certificate of occupancy related to such Remodel by the Construction Deadline shall be evidence of satisfaction of this subsection.

(b) As to each Parcel and within 18 months following the Effective Date (“**Lease Deadline**”), Land Trust shall enter into, and deliver a fully-executed copy to the applicable Donor, a ground lease in substantially the form attached hereto as Exhibit D (the “**Ground Lease**”) with an “Income-Qualified Person” as defined in said Ground Lease. The form of Ground Lease shall not be changed without the prior written consent of the applicable Donor, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Following the Lease Deadline, each Parcel shall at all times be used for the provision of housing for low to moderate income people and families and used and occupied only pursuant to the terms of a duly executed Ground Lease and to an “Income-Qualified Person” as defined in the Ground Lease. Without limiting the forgoing and understanding there may be transitional periods between tenants under the Ground Lease, in no event shall any Parcel be vacant or unoccupied for a period of longer than three consecutive months following the Lease Deadline, unless the reason for the vacancy is beyond the control of the Land Trust and the Land Trust is exercising reasonable diligence in enforcing its rights..

(d) Land Trust shall diligently and in good-faith monitor and enforce compliance with the terms of any Ground Lease. To that end, Land Trust agrees to promptly provide such information and documentation as may be requested by Donors to ensure Land Trust’s compliance with this provision, including, without limitation, such financial documentation and information of counterparties to any Ground Lease as reasonably sufficient to enable verification that such counterparty meets the standards of an “Income-Qualified Person” as defined in the Ground Lease. Land Trust further agrees that within 10 business days after a written request from any Donor, Land Trust shall deliver a duly executed and acknowledged written certification, in form and substance reasonably acceptable to the requesting Donor(s), as to the validity and force and effect of any Ground Lease, the existence of any default on the part of any party to a Ground Lease, and the existence of any offset, counterclaim or defense thereto on the part of Land Trust, as well as to any other matters as may be reasonably requested by Donors.

(e) Land Trust will not amend any Ground Lease without Donors’ prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(f) Land Trust will not allow any assignment or subletting of any interest in any Ground Lease by the counterparty thereto without Donors’ prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(g) Land Trust’s covenants set forth in this Section 6 shall survive the Closing and thereafter shall be fully effective and enforceable.

7. **Land Trust’s Breach of Covenants.**

(a) Default. The occurrence of either of the following shall constitute an "Event of Default" under this Agreement:

- i. Should Land Trust at any time be in breach of the timely performance of its covenants set forth in Sections 6(e) or 6(f) above, and such breach remains un-remedied after expiration of a period of 30 days after delivery of a written notice from Donors to Land Trust specifying the breach in question; or
- ii. Should Land Trust be in breach of the timely performance of its covenants set forth in Sections 6(a)-6(d), above, and should such breach of performance remain un-remedied, after expiration of a period of thirty (30) days after delivery of a written notice from Donors to Land Trust specifying the breach in question, or, in the case of a breach that cannot reasonably be remedied within a thirty (30) day period, then such breach remains un-remedied after expiration of such longer period of time after delivery of such written notice from Donors as is reasonably required by Land Trust to fulfill or perform such obligations, provided that Land Trust commences to fulfill such obligations or remedy such breach within thirty (30) days after notice from Donors and thereafter diligently prosecutes such curative efforts in a commercially reasonable manner to completion.

(b) Remedies of Donors. Upon any Event of Default, Donors shall have the right to buy back any Parcel affected by said Event of Default and all improvements thereon, including, without limitation, any Home or Remodel ("**Repurchase Option**"). Any such Repurchase Option shall be exercised by the Donor that conveyed the Parcel pursuant to this Agreement, by delivering written notice to Land Trust within 90 days following the Event of Default ("**Repurchase Notice**"). With the Repurchase Notice, Donors shall include a then-current appraisal issued by a Florida-licensed real estate appraiser appraising the value of a fee simple interest in the applicable Parcel and all improvements thereon ("**Appraisal**"), along with the identity and contact information for the closing agent selected by Donors that will conduct the closing of the transaction contemplated by the Repurchase Option ("**Repurchase Agent**"). The Appraisal shall include a separate valuation of the unimproved Parcel (the "**Vacant Parcel Value**") and the improvements upon said Parcel (the "**Improvement Value**"), all as if unencumbered, vacant, and fee-simple interests. For clarity, Land Trust will ensure that, within seven days following request, Donors and their respective appraiser(s) will have access to the Property and all improvements thereon sufficient to facilitate and enable the timely preparation and delivery of any Appraisal. As soon as possible and in any event within no later than 180 days following delivery of the Repurchase Notice ("**Repurchase Closing Date**"), Land Trust shall execute and deliver to the applicable Donor a special warranty deed for the applicable Parcel(s) and all improvements thereon ("**Repurchase Deed**") free and clear of any and all encumbrance or right, title, claim or interest of any person or entity other than the Permitted Exceptions. For avoidance of doubt, any Ground Lease will be considered a Permitted Exception if and only if no event of default exists under that Ground Lease on (i) the date of delivery of the Repurchase Notice, and (ii) the Repurchase Closing Date. . On the Repurchase

Closing Date, Land Trust shall likewise execute and deliver to the applicable Donor such customary seller's affidavits and other documents as are reasonably necessary or requested to enable the conveyance to Donor(s) contemplated hereby and the deletion of the standard title policy exceptions from any owner's policy of title insurance to issue in favor of Donors, along with an assignment and assumption of any Ground Lease affecting the repurchased Parcel(s), in form and substance reasonably satisfactory to Land Trust and the applicable Donor (collectively, such affidavit along with the deed from Land Trust are the "**Repurchase Documents**"). On the Repurchase Closing Date, Donor(s) will deliver to Land Trust the Improvement Value. Land Trust will pay any documentary stamp taxes and recording fees due in relation to any Repurchase Deed; otherwise, the parties will bear their own fees and costs associated with the exercise of any Repurchase Option. Land Trust's obligations under this Section 7(b) shall be enforceable by Grantors via an action for specific performance and by such other remedies available under applicable law.

(c) Following the exercise of any Repurchase Option, Donors agree to recognize and not disturb the rights of any tenant under a Ground Lease in place in relation to the repurchased Parcel(s), for so long as such tenant is not in default under the terms of said Ground Lease.

8. **Brokers.** The parties hereto represent and warrant unto the other party that there are no real estate brokers involved with respect to this transaction and there are no brokerage fees, finders fees or broker's commissions due as a result of their respective executions of this Agreement or which will be due as a result of the Closing by virtue of their respective acts, inactions, conduct or otherwise. Each party hereto does hereby agree to indemnify and hold the other harmless from any breach of their respective representations and warranties as set forth in this paragraph.

9. **Closing.** The closing of the transaction contemplated by this Agreement (execution and delivery of the statutory warranty deed, as well as the execution and delivery of all other documents required pursuant to this Agreement and the payment of all sums required to be paid) ("**Closing**") shall take place, if at all, at the time, place and manner hereinafter set forth.

(a) **Closing Date.** The Closing shall take place on such date as the parties may agree, but no later than sixty (60) days following the date of this Agreement, unless extended by the parties (the "**Closing Date**").

(b) **Place of Closing.** The Closing shall take place at closing agent determined by Land Trust ("**Closing Escrow Agent**"), on the Closing Date at such time as mutually is agreed to between Donor and Land Trust.

(c) **Closing Documents.** At Closing, each applicable Donor shall deliver to Land Trust a Special Warranty Deed for each of the Parcels, in the substantially the form attached hereto as Exhibit E.

(d) **Closing Expenses.** Land Trust shall be responsible for payment of the costs of Closing, including, but not limited to, the cost of any owner's title insurance premium and related title insurance costs, documentary stamp tax and recording fees on the deed and Land Trust's attorney's fees. Donor shall be responsible for Donor's attorney's fees and tax advisor fees, if any. Property taxes for the year of closing shall be prorated to the Closing Date.

10. **Governing Law/Venue/Waiver of Trial by Jury.** This Agreement shall be governed by and enforced and construed under the laws of the State of Florida (without regard to its conflicts of laws provisions). Venue will be in Escambia County, Florida. Neither Land Trust nor Donors shall seek a jury trial on any lawsuit, proceeding or counterclaim based upon or arising out of this Agreement, or the relationship between the parties hereto. The provisions of this paragraph shall survive the termination or consummation of this Agreement.

11. **Captions.** All captions or title of paragraphs used in this Agreement are for convenience only and are not intended to construe, limit, define or describe the scope or intent of any paragraph of this Agreement nor in any way affect this Agreement.

12. **Counterparts.** This Agreement and any amendments hereto may be executed in counterparts, each of which shall be deemed an original and such counterparts shall constitute but one and the same instrument.

13. **Binding Effects.** All covenants, agreements, warranties and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors, and permitted assigns.

14. **Further Acts.** In addition to the acts and deeds recited herein and contemplated to be performed, executed, and/or delivered by Donors and Land Trust, Donor and Land Trust agree to perform, execute, and/or deliver or cause to be performed, executed and/or delivered at Closing or after Closing any and all such further acts, deeds, and assurances as may be necessary to consummate the transaction contemplated hereby.

15. **Construction of Terms.** Where appropriate, any word denoting the singular shall be deemed to denote the plural, and vice versa. Where appropriate, any word denoting or referring to one gender shall be deemed to include the other gender.

16. **Time of the Essence.** Time is of the essence of this Agreement.

17. **Effective Date.** Whenever used herein the "date hereof," the "effective date" and the "date of the execution of this Agreement" shall be deemed to mean the date the last of the parties hereto has executed this Agreement.

18. **Entire Agreement.** This contract contains the sole and entire agreement of Donors and Land Trust with respect to the transaction contemplated hereunder and no representation, inducement, promise or agreement, parole or written, between Donors and Land

Trust and not incorporated or referred to herein shall be of any force or effect. Any amendment to this Agreement shall be in writing and executed by both Donors and Land Trust.

19. **Survival.** It is understood and agreed that the ongoing and perpetual enforceability of the parties' respective covenants, representations and warranties contained herein are material to the parties' willingness and ability to consummate the transactions contemplated hereby. As a result, all of the terms, covenants, conditions, representations, warranties, and agreements of this Agreement shall survive and continue in full force and effect and shall be enforceable after Closing and shall not be merged with the documents delivered in connection therewith.

20. **Florid Public Records Law.** The Florida Public Records Law, as contained in Chapter 119, Florida Statutes, is very broad. As a result, any written communication created or received by Donors will be made available to the public and media, upon request, unless a statutory exemption from such disclosure exists. Land Trust shall comply with the Florida Public Records Law in effect from time to time if and to the extent that the Florida Public Records Law is applicable to Land Trust.

21. **Relationship.** Nothing herein shall be construed to create or imply the existence of a partnership, joint venture or other relationship of any kind or nature between Land Trust and either Donor.

22. **Radon.** In accordance with Florida law, the following disclosure is hereby made:

RADON GAS: Radon gas is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed over time. Levels of radon that exceed Federal and State Guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

23. **Notices.** All notices which are required or permitted under this Agreement must be in writing and shall be deemed to have been given, delivered or made, as the case may be (notwithstanding lack of actual receipt by the addressee), (a) when delivered by personal delivery, or (b) one business day after having been deposited with an expedited, overnight courier service, in each case addressed to the party to whom notice is intended to be given at the address set forth below:

If to City:

City of Pensacola
Attn: City Administrator
222 West Main Street
Pensacola, Florida 32502

With a copy to:

City of Pensacola
Attn: City Attorney
222 West Main Street
Pensacola, Florida 32502

If to CRA:

Community Redevelopment Agency of the City of Pensacola
Attn: CRA Division Manager
222 West Main Street
Pensacola, Florida 32502

With a copy to:

City of Pensacola
Attn: City Attorney
222 West Main Street
Pensacola, Florida 32502

If to Land Trust:

Northwest Florida Community Land Trust, LLC
300A W. Leonard Street
Pensacola, Florida 32501

With a copy to:

Moorhead Law Group
Attn: Stephen R. Moorhead
127 Palafox Place, Suite 200
Pensacola, Florida 32502

or to such other address as any party may from time to time designate by notice in writing to the other. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section 23 shall constitute delivery.

24. **Waiver.** The failure of any party to exercise any right given hereunder or to insist upon strict compliance with any term, condition or covenant specified herein, shall not constitute a waiver of such party's right to exercise such right or to demand strict compliance with such term, condition, or covenant.

25. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all

respects as if such invalid or unenforceable provision were omitted.

26. **Amendment.** Neither this Agreement nor any provision hereof may be changed, amended, modified, waived, or discharged either orally or by any course of dealing, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

(end of text – signature page to follow)

IN WITNESS WHEREOF, Donors and Land Trust have executed this Agreement and have hereunto set their hands and seals as of the dates of their respective signatures below.

CITY OF PENSACOLA
a Florida municipal corporation

By: _____
D.C. Reeves, Mayor

Date: _____

(AFFIX CITY SEAL)

Attest:

Ericka L. Burnett, City Clerk

Approved as to form:

By: _____
Adam C. Cobb, City Attorney

[Separate signature pages follow.]

Land Donation Agreement – signature page

COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF PENSACOLA, a public body,
corporate and politic

By: _____
Jennifer Brahier, Chairperson

Date: _____

[A separate signature page follows.]

Land Donation Agreement – signature page

NORTHWEST FLORIDA COMMUNITY LAND
TRUST, LLC, a Florida limited liability company

Sign: _____

Print: _____

Title: _____

Date: _____

EXHIBIT "A"

Parcel 1

Parcel ID: 000S009050016054



EXHIBIT "B"

Parcel 2

Parcel ID: 000S009060020172



EXHIBIT "C"

Parcel 3

Parcel ID: 000S009003001462



EXHIBIT “D”

Form of Ground Lease

[to be attached]

EXHIBIT “E”

Form of special warranty deed

[to be attached]

Ground Lease

between

NORTHWEST FLORIDA COMMUNITY LAND TRUST

and

[Name], Homeowner

dated as of
the _____ day of _____, 20____

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- 9.2 HOMEOWNER MUST DEFEND CLT AGAINST ALL CLAIMS OF LIABILITY
- 9.3 HOMEOWNER MUST REIMBURSE CLT
- 9.4 HOMEOWNER MUST INSURE THE HOME AGAINST LOSS AND MUST MAINTAIN LIABILITY INSURANCE ON HOME AND LEASED LAND
- 9.5 WHAT HAPPENS IF HOME IS DAMAGED OR DESTROYED
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14.12 RECORDING

Exhibits That Must Be Attached

Exhibit LETTERS OF AGREEMENT AND ATTORNEY'S ACKNOWLEDGMENT
Exhibit LEASED LAND
Exhibit DEED
Exhibit PERMITTED MORTGAGES
Exhibit FIRST REFUSAL

Other Exhibits to be Attached as Appropriate

Exhibit RESTRICTIONS
Exhibit INITIAL APPRAISAL

DRAFT

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (the "Lease") entered into this _____ day of _____, 20____, by and between Northwest Florida Community Land Trust, LLC, a Florida limited liability company, having an office at 300 W Leonard St, Pensacola, FL 32501 ("CLT"), and _____ ("Homeowner").

RECITALS

- A. CLT is organized exclusively for charitable purposes, including the purpose of providing homeownership opportunities for low and moderate income (30 – 120% AMI) people who would otherwise be unable to afford homeownership.
- B. A goal of CLT is to preserve affordable homeownership opportunities through the long-term leasing of land under owner-occupied homes.
- C. The Leased Land described in this Lease has been acquired and is being leased by CLT in furtherance of this goal.
- D. The Homeowner shares the purposes of CLT and has agreed to enter into this Lease not only to obtain the benefits of homeownership, but also to further the charitable purposes of CLT.
- E. Homeowner and CLT recognize the special nature of the terms of this Lease, and each of them accepts these terms, including those terms that affect the marketing and resale price of the property now being purchased by the Homeowner.
- F. Homeowner and CLT agree that the terms of this Lease further their shared goals over an extended period of time and through a succession of owners.

NOW THEREFORE, Homeowner and CLT agree on all of the terms and conditions of this Lease as set forth below.

DEFINITIONS: Homeowner and CLT agree on the following definitions of key terms used in this Lease.

Leased Land: the parcel of land, described in Exhibit: LEASED LAND, that is leased to the Homeowner.

Home: the residential structure and other permanent improvements located on the Leased Land and owned by the Homeowner, including both the original Home described in Exhibit: DEED, and all permanent improvements added thereafter by Homeowner at Homeowner’s expense.

Area Median Income (AMI): Area median income is defined as the midpoint of a specific area’s income distribution and is calculated on an annual basis by the Department of Housing and Urban Development.

Base Price: the total price that is paid for the Home by the Homeowner (including the amount provided by a first mortgage loan but not including subsidy in the form of deferred loans to the Homeowner).

Purchase Option Price: the maximum price the Homeowner is allowed to receive for the sale of the Home and the Homeowner’s right to possess, occupy and use the Leased Land, as defined in Article 10 of this Lease.

Lease Fee: The monthly fee that the Homeowner pays to the CLT for the continuing use of the Leased Land and any additional amounts that the CLT charges to the Homeowner for reasons permitted by this Lease.

Permitted Mortgage: A mortgage or deed of trust on the Home and the Homeowner's right to possess, occupy and use the Leased Land granted to a lender by the Homeowner with the CLT's Permission. The Homeowner may not mortgage the CLT's interest in the Leased Land, and may not grant any mortgage or deed of trust without CLT's Permission.

Event of Default: Any violation of the terms of the Lease unless it has been corrected ("cured") by Homeowner or the holder of a Permitted Mortgage in the specified period of time after a written notice of default has been given by CLT.

Due Date: With respect to: (a) the Lease Fee, the date on which such Lease Fee is due as provided in this Lease; and (b) any Imposition, the last date on which such Imposition can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the non-payment thereof. The time cutoff is 5:00 p.m. for all Due Dates.

ARTICLE 1: Homeowner's Letter of Agreement and Attorney's Letter of Acknowledgment are Attached as Exhibits.

Attached as Exhibit HOMEOWNER'S LETTER OF AGREEMENT AND ATTORNEY'S LETTER OF ACKNOWLEDGMENT and made part of this Lease by reference are a Letter of Agreement from the Homeowner, describing the Homeowner's understanding and acceptance of this Lease (including the parts of the Lease that affect the resale of the Home), and a Letter of Acknowledgment from the Homeowner's attorney, describing the attorney's review of the Lease with the Homeowner.

ARTICLE 2: Leasing of Rights to the Land

2.1 CLT LEASES THE LAND TO HOMEOWNER: The CLT hereby leases to the Homeowner, and Homeowner hereby accepts, the right to possess, occupy and use the Leased Land in accordance with the terms of this Lease. CLT has furnished to Homeowner a copy of the most current title report, if any, obtained by CLT for the Leased Land, and Homeowner accepts title to the Leased Land in its condition "as is" as of the signing of this Lease.

2.2 MINERAL RIGHTS NOT LEASED TO HOMEOWNER: CLT does not lease to Homeowner the right to remove from the Leased Land any minerals lying beneath the Leased Land's surface. Ownership of such minerals remains with the CLT (or may be owned by prior owners), but the CLT shall not remove any such minerals from the Leased Land without the Homeowner's written permission.

ARTICLE 3: Term of Lease, Change of Land Owner

3.1 TERM OF LEASE IS 99 YEARS: This Lease shall remain in effect for 99 years, beginning on the ____ day of _____, 20____, and ending on the _____ day of _____, 21____, unless ended sooner or renewed as provided below.

3.2 HOMEOWNER CAN RENEW LEASE FOR ANOTHER 99 YEARS: Homeowner may renew this Lease for one additional period of 99 years. The CLT may change the terms of the Lease for the renewal period prior to the beginning of the renewal period but only if these changes do not materially and adversely interfere with the rights possessed by Homeowner under the Lease. Not more than 365 nor less than 180 days before the last day of the first 99-year period, CLT shall give Homeowner a written notice that states the date of the expiration of the first 99-year period and the conditions for renewal as set forth in the following paragraph (the "Expiration Notice"). The Expiration Notice shall also describe any

changes that CLT intends to make in the Lease for the renewal period as permitted above.

The Homeowner shall then have the right to renew the Lease only if the following conditions are met: (a) within 60 days of receipt of the Expiration Notice, the Homeowner shall give CLT written notice stating the Homeowner's desire to renew (the "Renewal Notice"); (b) this Lease shall be in effect on the last day of the original 99-year term, and (c) the Homeowner shall not be in default under this Lease or under any Permitted Mortgage on the last day of the original 99-year term.

When Homeowner has exercised the option to renew, Homeowner and CLT shall sign a memorandum stating that the option has been exercised. The memorandum shall comply with the requirements for a notice of lease as stated in Section 14.12 below. CLT shall record this memorandum in accordance with the requirements of law promptly after the beginning of the renewal period.

3.3 WHAT HAPPENS IF CLT DECIDES TO SELL THE LEASED LAND: If ownership of the Leased Land is ever transferred by CLT (whether voluntarily or involuntarily) to any other person or institution, this Lease shall not cease, but shall remain binding on the new land-owner as well as the Homeowner. If CLT agrees to transfer the Leased Land to any person or institution other than a non-profit corporation, charitable trust, government agency or other similar institution sharing the goals described in the Recitals above, the Homeowner shall have a right of first refusal to purchase the Leased Land. The details of this right shall be as stated in the attached Exhibit FIRST REFUSAL. Any sale or other transfer contrary to this Section 3.3 shall be null and void. Notwithstanding the forgoing or anything herein to the contrary, any right of first refusal granted hereby shall be subordinate and inferior to that held by the City of Pensacola and/or the Community Redevelopment Agency of the City of Pensacola, as reflected in that certain Special Warranty Deed recorded at Book _____, Page _____ of the Official Records of Escambia County, Florida.

ARTICLE 4: Use of Leased Land

4.1 HOMEOWNER MAY USE THE HOME ONLY FOR RESIDENTIAL AND RELATED PURPOSES: Homeowner shall use, and allow others to use, the Home and Leased Land only for residential purposes and any activities related to residential use that were permitted by local zoning law when the Lease was signed, as indicated in the attached Exhibit ZONING.

Use of the Leased Land shall be further limited by the restrictions described in the attached Exhibit RESTRICTIONS.]

4.2 HOMEOWNER MUST USE THE HOME AND LEASED LAND RESPONSIBLY AND IN COMPLIANCE WITH THE LAW: Homeowner shall use the Home and Leased Land in a way that will not cause harm to others or create any public nuisance. Homeowner shall dispose of all waste in a safe and sanitary manner. Homeowner shall maintain all parts of the Home and Leased Land in safe, sound and habitable condition, in full compliance with all laws and regulations, and in the condition that is required to maintain the insurance coverage required by Section 9.4 of this Lease.

4.3 HOMEOWNER IS RESPONSIBLE FOR USE BY OTHERS: Homeowner shall be responsible for the use of the Home and Leased Land by all residents and visitors and anyone else using the Leased Land with Homeowner's permission and shall make all such people aware of the restrictions on use set forth in this Lease.

4.4 HOMEOWNER MUST OCCUPY THE HOME FOR AT LEAST 11 MONTHS EACH YEAR: Homeowner shall occupy the Home for at least

11 months of each year of this Lease, unless otherwise agreed by CLT. Occupancy by Homeowner's child, spouse, domestic partner, or other persons approved by CLT shall be considered occupancy by Homeowner. Neither compliance with the occupancy requirement nor CLT's permission for an extended period of non-occupancy constitutes permission to sublease the Leased Land and Home, which is addressed in Section 4.5 below.

4.5 LEASED LAND MAY NOT BE ASSIGNED OR SUBLEASED WITHOUT CLT'S PERMISSION. Except as otherwise provided in Article 8 and Article 10, Homeowner shall not sublease, assign, sell or otherwise convey any of Homeowner's rights under this Lease, for any period of time, without the written permission of CLT. Homeowner agrees that CLT shall have the right to withhold such consent in order to further the purposes of this Lease.

If permission for subleasing is granted, the sublease shall be subject to the following conditions.

- a) Any sublease shall be subject to all of the terms of this Lease.
- b) The rental or occupancy fee charged the sub-lessee shall not be more than the amount of the Lease Fee charged the Homeowner by the CLT, plus an amount approved by CLT to cover Homeowner's costs in owning the Home, including but not limited to the cost of taxes, insurance and mortgage interest.

4.6 CLT HAS A RIGHT TO INSPECT THE LEASED LAND: The CLT may inspect any part of the Leased Land except the interiors of fully enclosed buildings, at any reasonable time, after notifying the Homeowner at least 48 hours before the planned inspection. No more than 4 regular inspections may be carried out in a single year, except in the case of an emergency. In an emergency, the CLT may inspect any part of the Leased Land except the interiors of fully enclosed buildings, after making reasonable efforts to inform the Homeowner before the inspection.

If the CLT has received an Intent-To-Sell Notice (as described in Section 10.4 below), then the CLT has the right to inspect the interiors of all fully enclosed buildings to determine their condition prior to the sale. The CLT must notify the Homeowner at least 24 hours before carrying out such inspection.

4.7 HOMEOWNER HAS A RIGHT TO QUIET ENJOYMENT: Homeowner has the right to quiet enjoyment of the Leased Land. The CLT has no desire or intention to interfere with the personal lives, associations, expressions, or actions of the Homeowner in any way not permitted by this Lease.

ARTICLE 5: Lease Fee

5.1 AMOUNT OF LEASE FEE: The Homeowner shall pay a monthly Lease Fee in an amount equal to the sum of \$ _____ to be paid in return for the continuing right to possess, occupy, and use the Leased Land.

5.2 WHEN THE LEASE FEE IS TO BE PAID: The Lease Fee shall be payable to CLT on the first day of each month for as long as this Lease remains in effect, unless the Lease Fee is to be escrowed and paid by a Permitted Mortgagee, in which case payment shall be made as directed by such mortgagee.

5.3 HOW THE AMOUNT OF THE LEASE FEE HAS BEEN DETERMINED: The amount of the Lease Fee stated in Section 5.1 above has been determined as follows. First, the approximate monthly fair rental value of the Leased Land has been established, as of the beginning of the Lease term, recognizing that use of the Leased Land is restricted by certain provisions imposed by this Lease. Then the affordability of this monthly amount for the Homeowner has been analyzed and, if necessary, the Lease Fee has been reduced to an amount considered to be affordable for Homeowner.

5.4 CLT MAY REDUCE OR SUSPEND THE LEASE FEE TO IMPROVE AFFORDABILITY: CLT may reduce, in its sole discretion, or suspend the total amount of the Lease Fee for a period of time for the purpose of improving the affordability of the Homeowner's monthly housing costs. Any such reduction or suspension must be in writing and signed by CLT.

5.5 FEES MAY BE INCREASED FROM TIME TO TIME: The CLT may increase the amount of the Lease Fee and/or the Repair Reserve Fee from time to time, but not more often than once every 3 years. Each time such amounts are increased, the total percentage of increase since the date this Lease was signed shall not be greater than the percentage of increase, over the same period of time, in the Consumer Price Index for urban wage earners and clerical workers for the urban area in which the Leased Land is located, or, if none, for urban areas the size of Escambia County, Florida.

5.6 LEASE FEE WILL BE INCREASED IF RESTRICTIONS ARE REMOVED: If, for any reason, the provisions of Article 10 regarding transfers of the Home or Sections 4.4 and 4.5 regarding occupancy and subleasing are suspended or invalidated for any period of time, then during that time the Lease Fee shall be increased to an amount calculated by CLT to equal the fair rental value of the Leased Land for use not restricted by the suspended provisions, but initially an amount not exceeding \$_____ dollars. Such increase shall become effective upon CLT's written notice to Homeowner. Thereafter, for so long as these restrictions are not reinstated in the Lease, the CLT may, from time to time, further increase the amount of such Lease Fee, provided that the amount of the Lease Fee does not exceed the fair rental value of the Leased Land, and provided that such increases do not occur more often than once in every 5 years.

5.7 IF PAYMENT IS LATE, A LATE FEE CAN BE CHARGED: If the CLT has not received any monthly installment of the Lease Fee on or before the date on which such installment first becomes payable under this Lease (the "Due Date"), the CLT may require Homeowner to pay a late fee from the Due Date through and including the date such payment or installment is received by CLT, at a fee not to exceed \$10 per day payment is late. Such late fee shall be deemed additional Lease Fee and shall be paid by Homeowner to CLT upon demand; provided, however, that CLT shall waive any such late fee that would otherwise be payable to CLT if such payment of the Lease Fee is received by CLT on or before the thirtieth (30th) day after the Due Date.

5.8 CLT CAN COLLECT UNPAID FEES WHEN HOME IS SOLD: In the event that any amount of payable Lease Fee remains unpaid when the Home is sold, the outstanding amount of payable Lease Fee, including any interest as provided above, shall be paid to CLT out of any proceeds from the sale that would otherwise be due to Homeowner. The CLT shall have, and the Homeowner hereby consents to, a lien upon the Home for any unpaid Lease Fee. Such lien shall be prior to all other liens and encumbrances on the Home except (a) liens and encumbrances recorded before the recording of this Lease, (b) Permitted Mortgages as defined in section 8.1 below; and (c) liens for real property taxes and other governmental assessments or charges against the Home.

ARTICLE 6: Taxes and Assessments

6.1 HOMEOWNER IS RESPONSIBLE FOR PAYING ALL TAXES AND ASSESSMENTS: Homeowner shall pay directly, when due, all taxes and governmental assessments that relate to the Home and the Leased Land (including any taxes relating to the CLT's interest in the Leased Land).

6.2 CLT WILL FORWARD ANY TAX BILLS IT RECEIVES TO

HOMEOWNER: In the event that the local taxing authority bills CLT for any portion of the taxes on the Home or Leased Land, CLT shall pass the bill to Homeowner and Homeowner shall promptly pay this bill.

6.3 HOMEOWNER HAS A RIGHT TO CONTEST TAXES: Homeowner shall have the right to contest the amount or validity of any taxes relating to the Home and Leased Land. Upon receiving a reasonable request from Homeowner for assistance in this matter, CLT shall join in contesting such taxes. All costs of such proceedings shall be paid by Homeowner.

6.4 IF HOMEOWNER FAILS TO PAY TAXES, CLT MAY INCREASE LEASE FEE: In the event that Homeowner fails to pay the taxes or other charges described in Section 6.1 above, CLT may increase Homeowner's Lease Fee to offset the amount of taxes and other charges owed by Homeowner. Upon collecting any such amount, CLT shall pay the amount collected to the taxing authority in a timely manner. CLT shall have the right but not the obligation to advance taxes and then charge such taxes to the Homeowner.

6.5 PARTY THAT PAYS TAXES MUST SHOW PROOF: When either party pays taxes relating to the Home or Leased Land, that party shall furnish satisfactory evidence of the payment to the other party. A photocopy of a receipt shall be the usual method of furnishing such evidence.

ARTICLE 7: The Home

7.1 HOMEOWNER OWNS THE HOUSE AND ALL OTHER IMPROVEMENTS ON THE LEASED LAND: All structures, including the house, fixtures, and other improvements purchased, constructed, or installed by the Homeowner on any part of the Leased Land at any time during the term of this Lease (collectively, the "Home") shall be property of the Homeowner. However, Homeowner's rights of ownership are limited by certain provisions of this Lease, including provisions regarding the sale or leasing of the Home by the Homeowner and the CLT's option to purchase the Home. In addition, Homeowner shall not remove any part of the Home from the Leased Land without CLT's prior written consent.

7.2 HOMEOWNER PURCHASES HOME WHEN SIGNING LEASE: Upon the signing of this Lease, Homeowner is simultaneously purchasing the Home located at that time on the Leased Land.

7.3 CONSTRUCTION CARRIED OUT BY HOMEOWNER MUST COMPLY WITH CERTAIN REQUIREMENTS: Any construction in connection with the Home is permitted only if the following requirements are met: (a) all costs shall be paid for by the Homeowner; (b) all construction shall be performed in a professional manner and shall comply with all applicable laws and regulations; (c) all changes in the Home shall be consistent with the permitted uses described in Article 4; (d) the footprint, square-footage, or height of the Home shall not be increased and new structures shall not be built or installed on the Leased Land without the prior written consent of CLT.

For any construction requiring CLT's prior written consent, Homeowner shall submit a written request to the CLT. Such request shall include:

- a) a written statement of the reasons for undertaking the construction;
- b) a set of drawings (floor plan and elevations) showing the dimensions of the proposed construction;
- c) a list of the necessary materials, with quantities needed;
- d) a statement of who will do the work;

If the CLT finds it needs additional information it shall request such information from Homeowner within two weeks of receipt of Homeowner's request. The CLT then, within two weeks of receiving all necessary information (including any additional information it may have requested) shall give Homeowner either its written consent or a written statement of its reasons for not consenting. Before construction can begin, Homeowner shall provide CLT with copies of all necessary building permits, if not previously provided.

7.4 HOMEOWNER MAY NOT ALLOW LIENS TO REMAIN AGAINST LEASED LAND OR HOME: No lien of any type shall attach to the CLT's title to the Leased Land. Homeowner shall not permit any statutory or similar lien to be filed against the Leased Land or the Home which remains more than 60 days after it has been filed. Homeowner shall take action to discharge such lien, whether by means of payment, deposit, bond, court order, or other means permitted by law. If Homeowner fails to discharge such lien within the 60-day period, then Homeowner shall immediately notify CLT of such failure. CLT shall have the right to discharge the lien by paying the amount in question. Homeowner may, at Homeowner's expense, contest the validity of any such asserted lien, provided Homeowner has furnished a bond or other acceptable surety in an amount sufficient to release the Leased Land from such lien. Any amounts paid by CLT to discharge such liens shall be treated as an additional Lease Fee payable by Homeowner upon demand.

7.5 HOMEOWNER IS RESPONSIBLE FOR SERVICES, MAINTENANCE AND REPAIRS: Homeowner hereby assumes responsibility for furnishing all services or facilities on the Leased Land, including but not limited to heat, electricity, air conditioning and water. CLT shall not be required to furnish any services or facilities or to make any repairs to the Home. Homeowner shall maintain the Home and Leased Land as required by Section 4.2 above and shall see that all necessary repairs and replacements are accomplished in a reasonable time not to exceed thirty (30) days following written notice by the CLT.

7.6 RESERVED

7.7 WHEN LEASE ENDS, OWNERSHIP REVERTS TO CLT, WHICH SHALL REIMBURSE HOMEOWNER: Upon the expiration or termination of this Lease, ownership of the Home shall revert to CLT. Upon thus assuming title to the Home, CLT shall promptly pay Homeowner and Permitted Mortgagee(s), as follows:

FIRST, CLT shall pay any Permitted Mortgagee(s) the full amount owed to such mortgagee(s) by Homeowner;

SECOND, CLT shall pay the Homeowner the balance of the Purchase Option Price calculated in accordance with Article 10 below, as of the time of reversion of ownership, less the total amount of any unpaid Lease Fee and any other amounts owed to the CLT under the terms of this Lease. The Homeowner shall be responsible for any costs necessary to clear any additional liens or other charges related to the Home which may be assessed against the Home. If the Homeowner fails to clear such liens or charges, the balance due the Homeowner shall also be reduced by the amount necessary to release such liens or charges, including reasonable attorneys fees incurred by the CLT.

ARTICLE 8: Financing

8.1 HOMEOWNER CANNOT MORTGAGE THE HOME WITHOUT CLT's PERMISSION: The Homeowner may mortgage the Home only with the written permission of CLT. Any mortgage permitted in writing by the CLT is defined as a

Permitted Mortgage, and the holder of such a mortgage is defined as a Permitted Mortgagee.

8.2 BY SIGNING LEASE, CLT GIVES PERMISSION FOR ORIGINAL MORTGAGE. By signing this Lease, CLT gives written permission for any mortgage or deed of trust signed by the Homeowner effective on the day this Lease is signed for the purpose of financing Homeowner's purchase of the Home.

8.3 HOMEOWNER MUST GET SPECIFIC PERMISSION FOR REFINANCING OR OTHER SUBSEQUENT MORTGAGES. If, at any time subsequent to the purchase of the Home and signing of the Lease, the Homeowner seeks a loan that is to be secured by a mortgage on the Home (to refinance an existing Permitted Mortgage or to finance home repairs or for any other purpose), Homeowner must inform CLT, in writing, of the proposed terms and conditions of such mortgage loan at least 15 business days prior to the expected closing of the loan. The information to be provided to the CLT must include:

- a. the name of the proposed lender;
- b. Homeowner's reason for requesting the loan;
- c. the principal amount of the proposed loan and the total mortgage debt that will result from the combination of the loan and existing mortgage debt, if any;
- d. expected closing costs;
- e. the rate of interest;
- f. the repayment schedule; and
- g. a copy of the appraisal commissioned in connection with the loan request.

CLT may also require Homeowner to submit additional information. CLT will not permit such a mortgage loan if the loan increases Homeowner's total mortgage debt to an amount greater than 90% of the then current Purchase Option Price, calculated in accordance with Article 10 below, or if the terms of the transaction otherwise threaten the interests of either the Homeowner or the CLT.

8.4 CLT IS REQUIRED TO PERMIT A "STANDARD PERMITTED MORTGAGE." The CLT shall be required to permit any mortgage for which the mortgagee has signed a "Standard Permitted Mortgage Agreement" as set forth in "Exhibit: Permitted Mortgages, Part C," and for which the loan secured thereby does not increase Homeowner's total mortgage debt to an amount greater than 90% of the then current Purchase Option Price, calculated in accordance with Article 10 below.

8.5 A PERMITTED MORTGAGEE HAS CERTAIN OBLIGATIONS UNDER THE LEASE. Any Permitted Mortgagee shall be bound by each of the requirements stated in "Exhibit: Permitted Mortgages, Part A, Obligations of Permitted Mortgagee," which is made a part of this Lease by reference, unless the particular requirement is removed, contradicted or modified by a Rider to this Lease signed by the Homeowner and the CLT to modify the terms of the Lease during the term of the Permitted Mortgage.

8.6 A PERMITTED MORTGAGEE HAS CERTAIN RIGHTS UNDER THE LEASE. Any Permitted Mortgagee shall have all of the rights and protections stated in "Exhibit: Permitted Mortgages, Part B, Rights of Permitted Mortgagee," which is made a part of this Lease by reference.

8.7 IN THE EVENT OF FORECLOSURE, ANY PROCEEDS IN EXCESS OF THE PURCHASE OPTION PRICE WILL GO TO CLT. Homeowner and CLT recognize that it would be contrary to the purposes of this agreement if Homeowner could receive more than the Purchase Option Price as the result of the foreclosure of a mortgage. Therefore, Homeowner hereby irrevocably assigns to

CLT all net proceeds of sale of the Home that would otherwise have been payable to Homeowner and that exceed the amount of net proceeds that Homeowner would have received if the property had been sold for the Purchase Option Price, calculated as described in Section 10.10 below. Homeowner authorizes and instructs the Permitted Mortgagee, or any party conducting any sale, to pay such excess amount directly to CLT. If, for any reason, such excess amount is paid to Homeowner, Homeowner hereby agrees to promptly pay such amount to CLT.

ARTICLE 9: Liability, Insurance, Damage and Destruction, Eminent Domain

9.1 HOMEOWNER ASSUMES ALL LIABILITY. Homeowner assumes all responsibility and liability related to Homeowner's possession, occupancy and use of the Leased Land.

9.2 HOMEOWNER MUST DEFEND CLT AGAINST ALL CLAIMS OF LIABILITY. Homeowner shall defend, indemnify and hold CLT harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Land. Homeowner waives all claims against CLT for injury or damage on or about the Leased Land. However, CLT shall remain liable for injury or damage due to the grossly negligent or intentional acts or omissions of CLT or CLT's agents or employees.

9.3 HOMEOWNER MUST REIMBURSE CLT. In the event the CLT shall be required to pay any sum that is the Homeowner's responsibility or liability, the Homeowner shall reimburse the CLT for such payment and for reasonable expenses caused thereby.

9.4 HOMEOWNER MUST INSURE THE HOME AGAINST LOSS AND MUST MAINTAIN LIABILITY INSURANCE ON HOME AND LEASED LAND.

Homeowner shall, at Homeowner's expense, keep the Home continuously insured against "all risks" of physical loss, using Insurance Services Office (ISO) Form HO 00 03, or its equivalent, for the full replacement value of the Home, and in any event in an amount that will not incur a coinsurance penalty. The amount of such insured replacement value must be approved by the CLT prior to the commencement of the Lease. Thereafter, if the CLT determines that the replacement value to be insured should be increased, the CLT shall inform the Homeowner of such required increase at least 30 days prior to the next date on which the insurance policy is to be renewed, and the Homeowner shall assure that the renewal includes such change. If Homeowner wishes to decrease the amount of replacement value to be insured, Homeowner shall inform the CLT of the proposed change at least 30 days prior to the time such change would take effect. The change shall not take effect without CLT's approval.

Should the Home lie in a flood hazard zone as defined by the National Flood Insurance Plan, the Homeowner shall keep in full force and effect flood insurance in the maximum amount available.

The Homeowner shall also, at its sole expense, maintain in full force and effect public liability insurance using ISO Form HO 00 03 or its equivalent in the amount of \$300,000 per occurrence and in the aggregate. The CLT shall be named as an additional insured using ISO Form HO 04 41 or its equivalent, and certificates of insurance shall be delivered to the CLT prior to the commencement of the Lease and at each anniversary date thereof.

The dollar amounts of such coverage may be increased from time to time at the CLT's request but not more often than once in any one-year period. CLT shall inform the Homeowner of such required increase in coverage at least 30 days prior to the next date on which the insurance policy is to be renewed, and the Homeowner shall assure that the renewal includes such change. The amount of

such increase in coverage shall be based on current trends in homeowner's liability insurance coverage in the area in which the Home is located.

9.5 HOME IS DAMAGED OR DESTROYED. Except as provided below, in the event of fire or other damage to the Home, Homeowner shall take all steps necessary to assure the repair of such damage and the restoration of the Home to its condition immediately prior to the damage. All such repairs and restoration shall be completed as promptly as possible. Homeowner shall also promptly take all steps necessary to assure that the Leased Land is safe and that the damaged Home does not constitute a danger to persons or property.

If Homeowner, based on professional estimates, determines either (a) that full repair and restoration is physically impossible, or (b) that the available insurance proceeds will pay for less than the full cost of necessary repairs and that Homeowner cannot otherwise afford to cover the balance of the cost of repairs, then Homeowner shall notify CLT of this problem, and CLT may then help to resolve the problem. Methods used to resolve the problem may include efforts to increase the available insurance proceeds, efforts to reduce the cost of necessary repairs, efforts to arrange affordable financing covering the costs of repair not covered by insurance proceeds, and any other methods agreed upon by both Homeowner and CLT.

If Homeowner and CLT cannot agree on a way of restoring the Home in the absence of adequate insurance proceeds, then Homeowner may give CLT written notice of intent to terminate the Lease. The date of actual termination shall be no less than 60 days after the date of Homeowner's notice of intent to terminate. Upon termination, any insurance proceeds payable to Homeowner for damage to the Home shall be paid as follows.

FIRST, to the expenses of their collection;

SECOND, to any Permitted Mortgagee(s), to the extent required by the Permitted Mortgage(s);

THIRD, to the expenses of enclosing or razing the remains of the Home and clearing debris;

FOURTH, to the CLT for any amounts owed under this Lease;

FIFTH, to the Homeowner, up to an amount equal to the Purchase Option Price, as of the day prior to the loss, less any amounts paid with respect to the second, third, and fourth clauses above; and

SIXTH, the balance, if any, to the CLT.

9.6 SOME OR ALL OF THE LAND IS TAKEN FOR PUBLIC USE. If all of the Leased Land is taken by eminent domain or otherwise for public purposes, or if so much of the Leased Land is taken that the Home is lost or damaged beyond repair, the Lease shall terminate as of the date when Homeowner is required to give up possession of the Leased Land. Upon such termination, the entire amount of any award(s) paid shall be allocated in the way described in Section 9.5 above for insurance proceeds.

In the event of a taking of a portion of the Leased Land that does not result in damage to the Home or significant reduction in the usefulness or desirability of the Leased Land for residential purposes, then any monetary compensation for such taking shall be allocated entirely to CLT.

In the event of a taking of a portion of the Leased Land that results in damage to the Home only to such an extent that the Home can reasonably be restored to a residential use consistent with this Lease, then the damage shall be treated as damage is treated in Section 9.5 above, and monetary compensation shall be allocated as insurance proceeds are to be allocated under Section 9.5.

9.7 IF PART OF THE LAND IS TAKEN, THE LEASE FEE MAY BE REDUCED. In the event of any taking that reduces the size of the Leased Land but does not result in the termination of the Lease, CLT shall reassess the fair rental value of the remaining Land and shall adjust the Lease Fee if necessary to assure that the monthly fee does not exceed the monthly fair rental value of the Land for use as restricted by the Lease.

9.8 IF LEASE IS TERMINATED BY DAMAGE, DESTRUCTION OR TAKING, CLT WILL TRY TO HELP HOMEOWNER BUY ANOTHER CLT HOME. If this Lease is terminated as a result of damage, destruction or taking, CLT shall take reasonable steps to allow Homeowner to purchase another home on another parcel of leased land owned by CLT if such home can reasonably be made available. If Homeowner purchases such a home, Homeowner agrees to apply any proceeds or award received by Homeowner to the purchase of the home. Homeowner understands that there are numerous reasons why it may not be possible to make such a home available, and shall have no claim against CLT if such a home is not made available.

ARTICLE 10: Transfer of the Home

10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY: Homeowner and CLT agree that the provisions of this Article 10 are intended to preserve the affordability of the Home for lower income households and expand access to homeownership opportunities for such households.

10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO CLT OR QUALIFIED PERSONS: Homeowner may transfer the Home only to the CLT or an Income-Qualified Person as defined below or otherwise only as explicitly permitted by the provisions of this Article 10. All such transfers are to be completed only in strict compliance with this Article 10. Any purported transfer that does not follow the procedures set forth below, except in the case of a transfer to a Permitted Mortgagee in lieu of foreclosure, shall be null and void.

“Income-Qualified Person” shall mean a person or group of persons whose household income does not exceed _____% of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor.

10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER: If Homeowner dies (or if the last surviving co-owner of the Home dies), the executor or personal representative of Homeowner’s estate shall notify CLT within ninety (90) days of the date of the death. Upon receiving such notice CLT shall consent to a transfer of the Home and Homeowner’s rights to the Leased Land to one or more of the possible heirs of Homeowner listed below as “a,” “b,” or “c,” provided that (i) such heir(s) demonstrate that they meet the standard of an “Income-Qualified Person” as defined above, and (ii) “a Letter of Agreement and a Letter of Attorney’s Acknowledgment” (as described in Article 1 above) are submitted to CLT to be attached to the Lease when it is transferred to the heirs.

- a) the spouse of the Homeowner; or
- b) the child or children of the Homeowner; or
- c) member(s) of the Homeowner’s household who have resided in the Home for at least one year immediately prior to Homeowner’s death.

Any other heirs, legatees or devisees of Homeowner, in addition to submitting Letters of Agreement and Attorney’s Acknowledgment as provided above, must demonstrate to CLT’s satisfaction that they are Income-Qualified Persons as

defined above. If they cannot demonstrate that they are Income-Qualified Persons, they shall not be entitled to possession of the Home but must transfer the Home in accordance with the provisions of this Article.

10.4 HOMEOWNER MUST GIVE NOTICE OF INTENT TO SELL: In the event that Homeowner wishes to sell Homeowner's Property, Homeowner shall notify CLT, in writing, of such wish (the Intent-to-Sell Notice). This Notice shall include a statement as to whether Homeowner wishes to recommend a prospective buyer as of the date of the Notice.

10.5 AFTER RECEIVING NOTICE, CLT SHALL COMMISSION AN APPRAISAL: No later than ten (10) days after CLT's receipt of Homeowner's Intent-to-Sell Notice, CLT shall commission a market valuation of the Leased Land and the Home (the "Appraisal") to be performed by a duly licensed appraiser who is acceptable to the Homeowner. CLT shall pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though title to Land and Home were held in fee simple absolute by a single party, disregarding all of the restrictions of this Lease on the use, occupancy and transfer of the property. Copies of the Appraisal are to be provided to both CLT and Homeowner.

10.6 CLT HAS AN OPTION TO PURCHASE THE HOME. Upon receipt of an Intent-to-Sell Notice from Homeowner, CLT shall have the option to purchase the Home at the Purchase Option Price calculated as set forth below. The Purchase Option is designed to further the purpose of preserving the affordability of the Home for succeeding Income-Qualified Persons while taking fair account of the investment by the Homeowner.

If CLT elects to purchase the Home, CLT shall exercise the Purchase Option by notifying Homeowner, in writing, of such election (the Notice of Exercise of Option) within forty-five (45) days of the receipt of the Appraisal, or the Option shall expire. Having given such notice, CLT may either proceed to purchase the Home directly or may assign the Purchase Option to an Income-Qualified Person.

The purchase (by CLT or CLT's assignee) must be completed within sixty (60) days of CLT's Notice of Exercise of Option. At closing, Homeowner shall execute a Special Warranty Deed conveying the Home to the CLT. The warranties in the Special Warranty Deed shall be limited to items arising by, through or under Homeowner and the Permitted Mortgage(s). If CLT fails to complete the purchase, Homeowner may sell the Home and Homeowner's rights to the Leased Land as provided in Section 10.7 below. The time permitted for the completion of the purchase may be extended by mutual agreement of CLT and Homeowner.

Homeowner may recommend to CLT a prospective buyer who is an Income-Qualified Person and is prepared to submit Letters of Agreement and Attorney's Acknowledgement indicating informed acceptance of the terms of this Lease. CLT shall make reasonable efforts to arrange for the assignment of the Purchase Option to such person, unless CLT determines that its charitable mission is better served by retaining the Home for another purpose or transferring the Home to another Income-Qualified Person.

10.7 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS: If the Purchase Option has expired or if CLT has failed to complete the purchase within the sixty-day period allowed by Section 10.6 above, Homeowner may sell the Home to any Income-Qualified Person for not more than the then applicable Purchase Option Price.

10.8 AFTER ONE YEAR CLT SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE: If CLT does not exercise its option and complete the purchase

of Homeowner's Property as described above, and if Homeowner (a) is not then residing in the Home and (b) continues to hold Homeowner's Property out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of the date of the Intent to Sell Notice, Homeowner does hereby appoint CLT its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Lease, sell the property, and pay to the Homeowner the proceeds of sale, minus CLT's costs of sale and any other sums owed CLT by Homeowner.

10.9 PURCHASE OPTION PRICE EQUALS LESSER OF APPRAISED VALUE OF HOMEOWNER'S OWNERSHIP INTEREST OR FORMULA PRICE: In no event may the Home be sold for a price that exceeds the Purchase Option Price. The Purchase Option Price shall be the lesser of (a) the Appraised Value of Homeowner's Ownership Interest at Resale as calculated in line "d" of Section 10.10 below or (b) the Formula Price calculated in accordance with Section 10.10 below.

10.10 HOW THE FORMULA PRICE IS CALCULATED: The Formula Price shall be equal to ("a") the amount of Homeowner's Base Price (as stated below), plus a maximum of 25% of any increase in the appraised value of Homeowner's Ownership Interest (as calculated below).

a. Homeowner's Base Price: The Parties agree that the price paid by Homeowner upon the execution of this lease (Homeowner's Base Price) is \$ _____. (Homeowner's Base Price equals Homeowner's Ownership Interest at time of purchase.)

b. Initial Appraised Value of Home and Leased Land: The parties agree that the total appraised value of Home and Leased Land at the time of Homeowner's purchase (the Initial Appraised Value) is \$ _____ as documented by the appraiser's report attached to this Lease as Exhibit INITIAL APPRAISAL,

c. Ratio of Homeowner's Base Price to Initial Appraised Value: The parties agree that the Ratio of Homeowner's Base Price to Initial Appraised Value, expressed as a percentage, is a maximum of ____%.

d. Appraised Value of Homeowner's Ownership Interest at Resale: The appraised value of Homeowner's Ownership Interest at time of resale equals the appraised value of Home and Leased Land at resale, determined in accordance with Section 10.5, multiplied by the Ratio of Homeowner's Base Price to Initial Appraised Value (____%) as calculated in ("c") above.

e. Increase in Appraised Value of Homeowner's Ownership Interest: The increase in appraised value of Homeowner's Ownership Interest equals the appraised value of Homeowner's Ownership Interest at resale determined in accordance with ("d") above minus the Homeowner's Base Price stated in ("a") above.

f. Homeowner's share of Increase in Appraised Value of Homeowner's Ownership Interest: Homeowner's share of the increase in the appraised value of the Homeowner's Ownership Interest shall be determined by multiplying the Increase in Market Value as calculated in ("e") above by the "Shared Appreciation Factor." The "Shared Appreciation Factor" shall be tied to the length of ownership as follows:

- If the property is sold following purchase prior to the completion of the 2nd year of ownership, the "Shared Appreciation Factor" shall be 5%
- If the property is sold within the 3rd to the 5th year of ownership, the "Shared Appreciation Factor" shall be 10%
- If the property is sold in the 6th through 10th year of ownership, the Shared Appreciation Factor shall be 20%

- If the property is sold at any time during or after the 11th year of ownership, the Shared Appreciation Factor shall be 25%

g. Formula Price: The Formula Price equals Homeowner's Base Price ("a") plus Homeowner's share of Increase in the appraised value of the Homeowner's Ownership Interest ("f").

10.11 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE: The CLT shall issue a new lease to any person who purchases the Home in accordance with the terms of this Article 10. The terms of such lease shall be the same as those of new leases issued to homebuyers at that time for land not previously leased by the CLT.

10.12 PURCHASER MAY BE CHARGED A TRANSFER FEE. In the event that Homeowner sells the Home to a party other than the CLT (whether directly to such party or as a result of CLT's assignment of its Purchase Option to such party), the price to be paid by such purchaser shall include in addition to the Purchase Option Price, at the discretion of the CLT, a transfer fee to compensate the CLT for carrying out its responsibilities with regard to the transaction. The amount of the transfer fee shall be no more than ____% of the Purchase Option Price.

10.13 HOMEOWNER REQUIRED TO MAKE NECESSARY REPAIRS AT TRANSFER: The Homeowner is required to make necessary repairs when the Homeowner voluntarily transfers the Home as follows:

- a) The person purchasing the Home ("Buyer") shall, prior to purchasing the Home, hire at her sole expense a duly licensed building inspector to assess the condition of the Home and prepare a written report of the condition ("Inspection Report"). The Homeowner shall cooperate fully with the inspection.
- b) The Buyer shall provide a copy of the Inspection Report to Buyer's lender (if any), the Homeowner, and the CLT within 10 days after receiving the Inspection Report.
- c) Homeowner shall repair specific reported defects or conditions necessary to bring the Home into full compliance with Sections 4.2 and 7.5 above prior to transferring the Home.
- d) Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner's written request, the CLT may allow the Homeowner to pay all or a portion of the repair costs after transfer, from Homeowner's proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In such event, either (i) 150% of the unpaid estimated cost of repairs or (ii) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner's proceeds of sale in a CLT-approved escrow account.
- e) Homeowner shall allow CLT, Buyer, and Buyer's building inspector and lender's representative to inspect the repairs prior to closing to determine that the repairs have been satisfactorily completed.
- f) Upon sale or other transfer, Homeowner shall either (i) transfer the Home with all originally purchased appliances or replacements in the Home in good working order or (ii) reduce the Purchase Option Price by the market value of any such appliances that are not left with the Home in good working order.

ARTICLE 11: RESERVED

ARTICLE 12: DEFAULT

12.1 HOMEOWNER FAILS TO MAKE PAYMENTS TO THE CLT THAT ARE REQUIRED BY THE LEASE: It shall be an event of default if Homeowner fails to pay the Lease Fee or other charges required by the terms of this Lease and such failure is not cured by Homeowner or a Permitted Mortgagee within thirty (30) days after notice of such failure is given by CLT to Homeowner and Permitted Mortgagee. However, if Homeowner makes a good faith partial payment of at least two-thirds (2/3) of the amount owed during the 30-day cure period, then the cure period shall be extended by an additional 30 days.

12.2 HOMEOWNER VIOLATES OTHER (NONMONETARY) TERMS OF THE LEASE: It shall be an event of default if Homeowner fails to abide by any other requirement or restriction stated in this Lease, and such failure is not cured by Homeowner or a Permitted Mortgagee within sixty (60) days after notice of such failure is given by CLT to Homeowner and Permitted Mortgagee. However, if Homeowner or Permitted Mortgagee has begun to cure such default within the 60-day cure period and is continuing such cure with due diligence but cannot complete the cure within the 60-day cure period, the cure period shall be extended for as much additional time as may be reasonably required to complete the cure.

12.3 HOMEOWNER DEFAULTS AS A RESULT OF JUDICIAL PROCESS: It shall be an event of default if the leasehold estate hereby created is taken on execution or by other process of law, or if Homeowner is judicially declared bankrupt or insolvent according to law, or if any assignment is made of the property of Homeowner for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of the Home or Homeowner's interest in the Leased Land by a court of competent jurisdiction, or if a petition is filed for the reorganization of Homeowner under any provisions of the Bankruptcy Act now or hereafter enacted, or if Homeowner files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.

12.4 A DEFAULT (UNCURED VIOLATION) GIVES CLT THE RIGHT TO TERMINATE THE LEASE OR EXERCISE ITS PURCHASE OPTION:

a) **TERMINATION:** In the case of any of the events of default described above, CLT may terminate this lease at which time Homeowner shall execute a Special Warranty Deed conveying the Home to the CLT. The warranties in the Special Warranty Deed shall be limited to items arising by, through or under Homeowner and the Permitted Mortgage(s). If Homeowner fails to relinquish possession of the Home and deed the Home to the CLT, the CLT may initiate summary proceedings under applicable law against Homeowner, and CLT shall have all the rights and remedies consistent with such laws and resulting court orders to enter the Leased Land and Home and repossess the entire Leased Land and Home, and expel Homeowner and those claiming rights through Homeowner. In addition, CLT shall have such additional rights and remedies to recover from Homeowner arrears of rent and damages from any preceding breach of any covenant of this Lease. If this Lease is terminated by CLT pursuant to an Event of Default, then, as provided in Section 7.7 above, upon thus assuming title to the Home, CLT shall pay to Homeowner and any Permitted Mortgagee an amount equal to the Purchase Option Price calculated in accordance with Section 10.9 above, as of the time of reversion of ownership, less the total amount of any unpaid Lease Fee and any other amounts owed to the CLT under the terms of this Lease and all reasonable costs (including reasonable attorneys' fees) incurred by CLT in pursuit of its remedies under this Lease.

If CLT elects to terminate the Lease, then the Permitted Mortgagee shall have the right (subject to Article 8 above and the attached Exhibit: Permitted Mortgages) to postpone and extend the specified date for the termination of the Lease for a period sufficient to enable the Permitted Mortgagee or its designee to acquire Homeowner's interest in the Home and the Leased Land by foreclosure of its mortgage or otherwise.

b) EXERCISE OF OPTION: In the case of any of the events of default described above, Homeowner hereby grants to the CLT (or its assignee) the option to purchase the Home for the Purchase Option Price as such price is defined in Article 10 above. Within thirty (30) days after the expiration of any applicable cure period as established in Sections 12.1 or 12.2 above or within 30 days after any of the events constituting an Event of Default under Section 12.3 above, CLT shall notify the Homeowner and the Permitted Mortgagee(s) of its decision to exercise its option to purchase under this Section 12.4(b). Not later than ninety (90) days after the CLT gives notice to the Homeowner of the CLT's intent to exercise its option under this Section 12.4(a), the CLT or its assignee shall purchase the Home for the Purchase Option Price.

12.5 WHAT HAPPENS IF CLT DEFAULTS: CLT shall in no event be in default in the performance of any of its obligations under the Lease unless and until CLT has failed to perform such obligations within sixty (60) days, or such additional time as is reasonably required to correct any default, after notice by Homeowner to CLT properly specifying CLT's failure to perform any such obligation.

ARTICLE 13: Mediation and Arbitration

13.1 Nothing in this Lease shall be construed as preventing the parties from utilizing any process of mediation or arbitration in which the parties agree to engage for the purpose of resolving a dispute.

13.2 Homeowner and CLT shall each pay one half (50%) of any costs incurred in carrying out mediation or arbitration in which the parties have agreed to engage.

ARTICLE 14: GENERAL PROVISIONS

14.1 HOMEOWNER'S MEMBERSHIP IN CLT: CLT Homeowners shall have representation on the CLT Committee.

14.2 NOTICES: Whenever this Lease requires either party to give notice to the other, the notice shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice:

If to CLT: Northwest Florida Community Land Trust, LLC
Attn: Sam Young
300A W. Leonard St.
Pensacola, FL 32501

with a copy to: Moorhead Law Group, PLLC
Attn: Robert J. Powell
127 Palafox Pl, Suite 200
Pensacola, FL 32502

If to Homeowner: _____ (name/address of Homeowner)

All notices, demands and requests shall be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

14.3 NO BROKERAGE: Homeowner warrants that it has not dealt with any real estate broker other than _____ in connection with the purchase of the Home. If any claim is made against CLT regarding dealings with brokers other than _____, Homeowner shall defend CLT against such claim with counsel of CLT's selection and shall reimburse CLT for any loss, cost or damage which may result from such claim.

14.4 SEVERABILITY AND DURATION OF LEASE: If any part of this Lease is unenforceable or invalid, such material shall be read out of this Lease and shall not affect the validity of any other part of this Lease or give rise to any cause of action of Homeowner or CLT against the other, and the remainder of this Lease shall be valid and enforced to the fullest extent permitted by law. It is the intention of the parties that CLT's option to purchase and all other rights of both parties under this Lease shall continue in effect for the full term of this Lease and any renewal thereof, and shall be considered to be coupled with an interest. In the event any such option or right shall be construed to be subject to any rule of law limiting the duration of such option or right, the time period for the exercising of such option or right shall be construed to expire twenty (20) years after the death of the last survivor of the following persons:

NOTE: List an identifiable group of small children, e.g., the children living as of the date of this Lease of any of the directors or employees of a specified corporation.

14.5 RIGHT OF FIRST REFUSAL IN LIEU OF OPTION: If the provisions of the purchase option set forth in Article 10 of this Lease shall, for any reason, become unenforceable, CLT shall nevertheless have a right of first refusal to purchase the Home at the highest documented bona fide purchase price offer made to Homeowner. Such right shall be as specified in Exhibit FIRST REFUSAL. Any sale or transfer contrary to this Section, when applicable, shall be null and void.

14.6 WAIVER: The waiver by CLT at any time of any requirement or restriction in this Lease, or the failure of CLT to take action with respect to any breach of any such requirement or restriction, shall not be deemed to be a waiver of such requirement or restriction with regard to any subsequent breach of such requirement or restriction, or of any other requirement or restriction in the Lease. CLT may grant waivers in the terms of this Lease, but such waivers must be in writing and signed by CLT before being effective.

The subsequent acceptance of Lease Fee payments by CLT shall not be deemed to be a waiver of any preceding breach by Homeowner of any requirement or restriction in this Lease, other than the failure of the Homeowner to pay the particular Lease Fee so accepted, regardless of CLT's knowledge of such preceding breach at the time of acceptance of such Lease Fee payment.

14.7 CLT'S RIGHT TO PROSECUTE OR DEFEND: CLT shall have the right, but shall have no obligation, to prosecute or defend, in its own or the Homeowner's name, any actions or proceedings appropriate to the protection of its own or Homeowner's interest in the Leased Land. Whenever requested by CLT, Homeowner shall give CLT all reasonable aid in any such action or proceeding.

14.8 CONSTRUCTION: Whenever in this Lease a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand.

14.9 HEADINGS AND TABLE OF CONTENTS: The headings, subheadings and table of contents appearing in this Lease are for convenience only, and are not

a part of this Lease and do not in any way limit or amplify the terms or conditions of this Lease.

14.10 PARTIES BOUND: This Lease sets forth the entire agreement between CLT and Homeowner with respect to the leasing of the Land; it is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Lease, their respective successors in interest. This Lease may be altered or amended only in a writing executed by CLT and Homeowner or their legal representatives or, in accordance with the provisions of this Lease, their successors in interest.

14.11 GOVERNING LAW: This Lease shall be interpreted in accordance with and governed by the laws of Florida. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against CLT or Homeowner.

14.12 RECORDING: The parties agree, as an alternative to the recording of this Lease, to execute a so-called Notice of Lease or Short Form Lease in form recordable and complying with applicable law and reasonably satisfactory to CLT’s attorneys. In no event shall such document state the rent or other charges payable by Homeowner under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.

IN WITNESS WHEREOF, the parties have executed this lease at _____ on the day and year first above written.

NAME OF CLT

Witness By: _____
Its duly authorized agent

Witness _____ (Homeowner):

[notarize signatures]

**Exhibit LETTERS OF AGREEMENT AND ATTORNEY'S
ACKNOWLEDGMENT**

Sample
Letter of Agreement

To _____ Community Land Trust ("the CLT")

Date: _____

This letter is given to the CLT to become an exhibit to a Lease between the CLT and me. I will be leasing a parcel of land from the CLT and will be buying the home that sits on that parcel of land. I will therefore become what is described in the Lease as a "the Homeowner."

My legal counsel, _____, has explained to me the terms and conditions of the Lease and other legal documents that are part of this transaction. I understand the way these terms and conditions will affect my rights as a CLT homeowner, now and in the future.

In particular I understand and agree with the following points.

One of the goals of the CLT is to keep CLT homes affordable for lower income households from one CLT homeowner to the next. I support this goal as a CLT homeowner and as a member of the CLT.

The terms and conditions of my Lease will keep my home affordable for future "income-qualified persons" (as defined in the Lease). If and when I want to sell my home, the lease requires that I sell it either to the CLT or to another income-qualified person. The terms and conditions of the lease also limit the price for which I can sell the home, in order to keep it affordable for such income-qualified persons.

It is also a goal of the CLT to promote resident ownership of CLT homes. For this reason, my Lease requires that, if I and my family move out of our home permanently, we must sell it. We cannot continue to own it as absentee owners.

I understand that I can leave my home to my child or children or other members of my household and that, after my death, they can own the home for as long as they want to live in it and abide by the terms of the Lease, or they can sell it on the terms permitted by the Lease.

As a CLT homeowner and a member of the CLT, it is my desire to see the terms of the Lease and related documents honored. I consider these terms fair to me and others.

Sincerely

Sample
Letter of Attorney’s Acknowledgment

I, _____, have been independently employed by _____ (hereinafter “the Client”) who intends to purchase a house and other improvements (the “Home”) on land to be leased from Community Land Trust. The house and land are located at _____.

In connection with the contemplated purchase of the Home and the leasing of the land, I reviewed with the Client the following documents:

- a) this Letter of Attorney’s Acknowledgment and a Letter of Agreement from the Client;
- b) a proposed Deed conveying the Home to the Client;
- c) a proposed Ground Lease conveying the “Leased Land” to the Client;
- d) other written materials provided by the CLT.

The Client has received full and complete information and advice regarding this conveyance and the foregoing documents. In my review of these documents my purpose has been to reasonably inform the Client of the present and foreseeable risks and legal consequences of the contemplated transaction.

The Client is entering the aforesaid transaction in reliance on her own judgment and upon her investigation of the facts. The advice and information provided by me was an integral element of such investigation.

Name

Date

Title

Firm/Address

Exhibit DEED

Sample
Deed

Between

LOCAL LAND TRUST (Grantor), a not-for-profit corporation having its principal offices at _____, _____, _____, and

JOHN AND MARY DOE (Grantees), residing at
_____, _____, _____.

Witnesseth

That Grantor, in consideration of one dollar and other good and valuable consideration paid by Grantees, does hereby grant and release unto Grantees, their heirs, or successors and assigns forever,

THE BUILDINGS AND OTHER IMPROVEMENTS ONLY, as presently erected on the Land described in Schedule “A” attached hereto and made a part hereof.

It is the intention of the parties that the real property underlying the buildings and other improvements conveyed herein remain vested in Grantor and that this warranty deed convey only such buildings and other improvements as are presently erected upon the subject Land.

In witness whereof, as authorized agent of Grantor, I hereunto set my hand this _____ day of _____, A.D. 20__.

signature

[notarize signature]

Exhibit: PERMITTED MORTGAGES

The rights and provisions set forth in this Exhibit shall be understood to be provisions of Section 8.2 of the of the Lease. All terminology used in this Exhibit shall have the meaning assigned to it in the Lease.

A. OBLIGATIONS OF PERMITTED MORTGAGEE. Any Permitted Mortgagee shall be bound by each of the following requirements unless the particular requirement is removed, contradicted or modified by a rider to this Lease signed by the Homeowner and the CLT to modify the terms of the Lease during the term of the Permitted Mortgage.

1. If Permitted Mortgagee sends a notice of default to the Homeowner because the Homeowner has failed to comply with the terms of the Permitted Mortgage, the Permitted Mortgagee shall, at the same time, send a copy of that notice to the CLT. Upon receiving a copy of the notice of default and within that period of time in which the Homeowner has a right to cure such default (the “cure period”), the CLT shall have the right to cure the default on the Homeowner’s behalf, provided that all current payments due the Permitted Mortgagee since the notice of default was given are made to the Permitted Mortgagee.
2. If, after the cure period has expired, the Permitted Mortgagee intends to accelerate the note secured by the Permitted Mortgage or begin foreclosure proceedings under the Permitted Mortgage, the Permitted Mortgagee shall first notify CLT of its intention to do so, and CLT shall then have the right, upon notifying the Permitted Mortgagee within thirty (30) days of receipt of such notice, to acquire the Permitted Mortgage by paying off the debt secured by the Permitted Mortgage.
3. If the Permitted Mortgagee acquires title to the Home through foreclosure or acceptance of a deed in lieu of foreclosure, the Permitted Mortgagee shall give CLT written notice of such acquisition and CLT shall then have an option to purchase the Home from the Permitted Mortgagee for the full amount owing to the Permitted Mortgagee under the Permitted Mortgage. To exercise this option to purchase, CLT must give written notice to the Permitted Mortgagee of CLT’s intent to purchase the Home within thirty (30) days following CLT’s receipt of the Permitted Mortgagee’s notice. CLT must then complete the purchase of the Home within sixty (60) days of having given written notice of its intent to purchase. If CLT does not complete the purchase within this 60-day period, the Permitted Mortgagee shall be free to sell the Home to another person.
4. Nothing in the Permitted Mortgage or related documents shall be construed as giving Permitted Mortgagee a claim on CLT’s interest in the Leased Land, or as assigning any form of liability to the CLT with regard to the Leased Land, the Home, or the Permitted Mortgage.
5. Nothing in the Permitted Mortgage or related documents shall be construed as rendering CLT or any subsequent Mortgagee of CLT’s interest in this Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt secured by the Permitted Mortgage or any part thereof.
6. The Permitted Mortgagee shall not look to CLT or CLT’s interest in the Leased Land, but will look solely to Homeowner, Homeowner’s interest in the Leased Land, and the Home for the payment of the debt secured thereby or any part thereof. (It is the intention of the parties hereto that CLT’s consent to such the Permitted Mortgage shall be without any liability on the part of CLT for any deficiency judgment.)

7. In the event any part of the Security is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the Permitted Mortgagee in accordance with the provisions of ARTICLE 9 hereof.

8. CLT shall not be obligated to execute an assignment of the Lease Fee or other rent payable by Homeowner under the terms of this Lease.

B. RIGHTS OF PERMITTED MORTGAGEE. The rights of a Permitted Mortgagee as referenced under Section 8.6 of the Lease to which this Exhibit is attached shall be as set forth below.

1. Any Permitted Mortgagee shall, without further consent by CLT, have the right to (a) cure any default under this Lease, and perform any obligation required under this Lease, such cure or performance being effective as if it had been performed by Homeowner; (b) acquire and convey, assign, transfer and exercise any right, remedy or privilege granted to Homeowner by this Lease or otherwise by law, subject to the provisions, if any, in the Permitted Mortgage, which may limit any exercise of any such right, remedy or privilege; and (c) rely upon and enforce any provisions of the Lease to the extent that such provisions are for the benefit of a Permitted Mortgagee.

2. A Permitted Mortgagee shall not be required, as a condition to the exercise of its rights under the Lease, to assume personal liability for the payment and performance of the obligations of the Homeowner under the Lease. Any such payment or performance or other act by Permitted Mortgagee under the Lease shall not be construed as an agreement by Permitted Mortgagee to assume such personal liability except to the extent Permitted Mortgagee actually takes possession of the Home and Leased Land. In the event Permitted Mortgagee does take possession of the Home and Leased Land and thereupon transfers such property, any such transferee shall be required to enter into a written agreement assuming such personal liability and upon any such assumption the Permitted Mortgagee shall automatically be released from personal liability under the Lease.

3. In the event that title to the estates of both CLT and Homeowner are acquired at any time by the same person or persons, no merger of these estates shall occur without the prior written declaration of merger by Permitted Mortgagee, so long as Permitted Mortgagee owns any interest in the Security or in a Permitted Mortgage.

4. If the Lease is terminated for any reason, or in the event of the rejection or disaffirmance of the Lease pursuant to bankruptcy law or other law affecting creditors' rights, CLT shall enter into a new lease for the Leased Land with the Permitted Mortgagee (or with any party designated by the Permitted Mortgagee, subject to CLT's approval, which approval shall not be unreasonably withheld), not more than thirty (30) days after the request of the Permitted Mortgagee. Such lease shall be for the remainder of the term of the Lease, effective as of the date of such termination, rejection or disaffirmance, and upon all the terms and provisions contained in the Lease. However, the Permitted Mortgagee shall make a written request to CLT for such new lease within sixty (60) days after the effective date of such termination, rejection or disaffirmance, as the case may be. Such written request shall be accompanied by a copy of such new lease, duly executed and acknowledged by the Permitted Mortgagee or the party designated by the Permitted Mortgagee to be the Homeowner thereunder. Any new lease made pursuant to this Section shall have the same priority with respect to other interests in the Land as the Lease. The provisions of this Section shall survive the termination, rejection or disaffirmance of the Lease and shall continue in full effect thereafter to the same extent as if this Section were independent and an independent contract made by CLT, Homeowner and the Permitted Mortgagee.

5. The CLT shall have no right to terminate the Lease during such time as the Permitted Mortgagee has commenced foreclosure in accordance with the provisions of the Lease and is diligently pursuing the same.

6. In the event that CLT sends a notice of default under the Lease to Homeowner, CLT shall also send a notice of Homeowner's default to Permitted Mortgagee. Such notice shall be given in the manner set forth in Section 14.2 of the Lease to the Permitted Mortgagee at the address which has been given by the Permitted Mortgagee to CLT by a written notice to CLT sent in the manner set forth in said Section 14.2 of the Lease.

7. In the event of foreclosure sale by a Permitted Mortgagee or the delivery of a deed to a Permitted Mortgagee in lieu of foreclosure in accordance with the provisions of the Lease, at the election of the Permitted Mortgagee the provisions of Article 10, Sections 10.1 through 10.11 shall be deleted and thereupon shall be of no further force or effect as to only so much of the Security so foreclosed upon or transferred.

8. Before becoming effective, any amendments to this Lease must be approved in writing by Permitted Mortgagee, which approval shall not be unreasonably withheld. If Permitted Mortgagee has neither approved nor rejected a proposed amendment within 60 days of its submission to Permitted Mortgagee, then the proposed amendment shall be deemed to be approved.

C. STANDARD PERMITTED MORTGAGE AGREEMENT. A Standard Permitted Mortgage Agreement, as identified in Section 8.4 of this Lease, shall be written as follows, and shall be signed by Mortgagee and Homeowner.

This Agreement is made by and among:

(Mortgagee) and
("Homeowner"),

Whereas:

- a) _____ CLT (the “CLT”) and Homeowner have entered, or are entering, into a ground lease (“the Lease”), conveying to Homeowner a leasehold interest in the Land located at _____ (“the Leased Land”); and Homeowner has purchased, or is purchasing, the Home located on the Leased Land (“the Home”).
- b) The Mortgagee has been asked to provide certain financing to the Homeowner, and is being granted concurrently herewith a mortgage and security interest (the “Mortgage”) in the Leased Land and Home, all as more particularly set forth in the Mortgage, attached hereto as Schedule A.
- c) The Ground Lease states that the Homeowner may mortgage the Leased Land only with the written consent of CLT. The Ground Lease further provides that CLT is required to give such consent only if the Mortgagee signs this Standard Permitted Mortgage Agreement and thereby agrees to certain conditions that are stipulated herein (“the Stipulated Conditions”).

Now, therefore, the Homeowner/Mortgagor and the Mortgagee hereby agree that the terms and conditions of the Mortgage shall include the Stipulated Conditions stated below.

Stipulated Conditions:

1) If Mortgagee sends a notice of default to the Homeowner because the Homeowner has failed to comply with the terms of the Mortgage, the Mortgagee shall, at the same time, send a copy of that notice to the CLT. Upon receiving a copy of the notice of default and within that period of time in which

the Homeowner has a right to cure such default (the “cure period”), the CLT shall have the right to cure the default on the Homeowner’s behalf, provided that all current payments due the Permitted Mortgagee since the notice of default was given are made to the Mortgagee.

2) If, after such cure period, the Mortgagee intends to accelerate the note secured by the Mortgage or initiate foreclosure proceedings under the Mortgage, in accordance with the provisions of the Lease, the Mortgagee shall first notify CLT of its intention to do so and CLT shall have the right, but not the obligation, upon notifying the Mortgagee within thirty (30) days of receipt of said notice, to purchase the Mortgagee loans and to take assignment of the Mortgage.

3) If the Mortgagee acquires title to the Home and Homeowner’s interest in the Leased Land through foreclosure or acceptance of a deed in lieu of foreclosure, the Mortgagee shall give the CLT written notice of such acquisition and the CLT shall have an option to purchase the Home and Homeowner’s interest in the Leased Land from the Mortgagee for the full amount owing to the Mortgagee; provided, however, that the CLT notifies the Mortgagee in writing of the CLT’s intent to make such purchase within thirty (30) days following the CLT’s receipt of the Mortgagee’s notice of such acquisition of the Home and Homeowner’s interest in the Leased Land; further provided that CLT shall complete such purchase within sixty (60) days of having given written notice of its intent to purchase; and provided that, if the CLT does not complete the purchase within such period, the Mortgagee shall be free to sell the Home and Homeowner’s interest in the Leased Land to another person;

4) Nothing in the Mortgage or related documents shall be construed as giving the Mortgagee a claim on CLT’s interest in the Leased Land, or as assigning any form of liability to the CLT with regard to the Leased Land, the Home, or the Mortgage.

5) Nothing in the Mortgage shall be construed as rendering CLT or any subsequent holder of the CLT’s interest in and to the Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt evidenced by such note and such Mortgage or any part thereof.

6) The Mortgagee shall not look to CLT or CLT’s interest in the Leased Land, but will look solely to Homeowner and Homeowner’s interest in the Leased Land and the Home for the payment of the debt secured by the Mortgage. (It is the intention of the parties hereto that CLT’s consent to the Mortgage shall be without any liability on the part of CLT for any deficiency judgment.)

7) In the event that any part of the Leased Land is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the Mortgagee in accordance with the provisions of Article 9 of the Lease.

8) Nothing in the Mortgage shall obligate CLT to execute an assignment of the Lease Fee or other rent payable by Homeowner under the terms of this Lease.

By:

_____ *for Mortgagee*

Date:

_____ *for Homeowner/Mortgagor* *Date:*

Exhibit FIRST REFUSAL

Whenever any party under the Lease shall have a right of first refusal as to certain property, the following procedures shall apply. If the owner of the property offering it for sale ("Offering Party") shall within the term of the Lease receive a bona fide third party offer to purchase the property which such Offering Party is willing to accept, the holder of the right of first refusal (the "Holder") shall have the following rights:

- a) Offering Party shall give written notice of such offer ("the Notice of Offer") to Holder setting forth (a) the name and address of the prospective purchaser of the property, (b) the purchase price offered by the prospective purchaser and (c) all other terms and conditions of the sale. Holder shall have a period of forty-five (45) days after the receipt of the Notice of Offer ("the Election Period") within which to exercise the right of first refusal by giving notice of intent to purchase the property ("the Notice of Intent to Purchase") for the same price and on the same terms and conditions set forth in the Notice of Offer. Such Notice of Intent to Purchase shall be given in writing to the Offering Party within the Election Period.
- b) If Holder exercises the right to purchase the property, such purchase shall be completed within sixty (60) days after the Notice of Intent to Purchase is given by Holder (or if the Notice of Offer shall specify a later date for closing, such date) by performance of the terms and conditions of the Notice of Offer, including payment of the purchase price provided therein.
- c) Should Holder fail to exercise the right of first refusal within the Election Period, then the Offering Party shall have the right (subject to any other applicable restrictions in the Lease) to go forward with the sale which the Offering Party desires to accept, and to sell the property within one (1) year following the expiration of the Election Period on terms and conditions which are not materially more favorable to the purchaser than those set forth in the Notice. If the sale is not consummated within such one-year period, the Offering Party's right so to sell shall end, and all of the foregoing provisions of this section shall be applied again to any future offer, all as aforesaid. If a sale is consummated within such one-year period, the purchaser shall purchase subject to the Holder having a renewed right of first refusal in said property.

Other Exhibits to be Attached as Appropriate

Exhibit LAND *[Correct legal description of area of Leased Land and appurtenant title rights and obligations.]*
Exhibit INITIAL APPRAISAL *[To be attached if Lease contains an “appraisal-based” resale formula]*

Exhibit RESTRICTIONS
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

State of Florida
County of _____

_____ This Declaration of Covenants, Conditions and Restrictions ("Declaration") is made **DATE**, by **BUYER** ("Owner"). (Whenever the context so requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine, or neuter form thereof, and the singular form of any noun or pronoun herein may be deemed the corresponding plural thereof and vice versa.)

WITNESSETH:

Whereas, contemporaneously with the execution of this Declaration, Owner is acquiring title to the following described property (the "Property"):

ADD LEGAL DESCRIPTION.

from Northwest Florida Community Land Trust., a Florida not-for-profit corporation ("CLT");

Whereas, as a condition of the purchase CLT requires Owner to encumber the Property with the covenants, conditions and restrictions set forth hereinbelow.

NOW THEREFORE, Owner hereby establishes this Declaration of Covenants, Conditions and Restrictions which will run with the Property in accordance with the terms, provisions and conditions set forth as follows:

1. Residential Use Only. The Property shall be occupied and used exclusively as a principal residence for one single family (defined as the members of the family listed with CLT, plus after-adopted or after-born children of those family members). No structure may be erected, placed or permitted to remain on the Property other than one single-family dwelling, a garage, a swimming pool or a detached structure. No detached structure may be constructed prior to the completion of the construction of the primary structure. No business or commercial building may be erected on the Property and no business or commercial activity may be conducted on the Property.
2. Maintenance of Exteriors. The Owner shall at all times maintain the exterior of all structures on the Property including all improvements, facilities, furnishings, landscaping on the Property in an attractive and sightly manner. No waste, impairment or deterioration of the Property shall be permitted.
3. No Fire Hazard. Nothing which would or could increase the risk of fire or other hazard to the Property or any part thereof or to the areas surrounding the Property will be allowed.

4. **Pets.** No animals of any kind shall be kept, had or maintained on the Property except a total of no more than two (2) dogs, cats or other customary household pets, provided that they are duly licensed, if applicable; that they do not constitute any annoyance or nuisance; that they are well groomed and maintained in a sanitary condition; that they are not kept or bred for any commercial purposes; and that such pets are not permitted to be present beyond the boundaries of the Property without being leashed or caged. Rottweilers, pit bulls and chows, or breeds similar, and any other dangerous pets are not permitted at any time.

5. **Compliance with Regulations.** All present and future laws, ordinances, rules and regulations of any governmental authority affecting the Property or any part thereof shall be complied with.

6. **No Offensive Activity.** No unreasonable noises or odors shall be caused or permitted on the Property and no nuisance, immoral or illegal activity, or anything that may be an annoyance or a noxious or offensive activity to surrounding property owners or their guests shall be caused or permitted on the Property.

7. **No Convicted Residents.** No resident of the Property shall be convicted of a felony or be identified by the Escambia County or Santa Rosa County Sheriff's Office or other State law enforcement agency as a gang member or gang affiliate.

8. **Remodeling or Other Construction.** No construction, improvements, remodeling, or modification on or to the Property, except interior alterations not affecting the external appearance of the Property or improvements thereon, is permitted without advance written approval of CLT. This specifically includes, but is not limited to, painting or other alteration of a home or any building situated on the Property (including doors, windows, and trim); replacement of roof or other parts of a building other than with duplicates of the original material; installation of antennas, satellite dishes or receivers, solar panels, or other devices; construction of fountains, swimming pools, whirlpools, or other pools; construction of privacy walls or other fences or gates; addition of awnings, flower boxes, shelves, statues, or other outdoor ornamentation; addition of window coverings, installation of a well; and any material alteration of landscaping. CLT, in making its decisions, may consider purely aesthetic matters that in its sole opinion will affect the desirability or suitability of the construction. If any construction or modification is undertaken that has not been approved, CLT may bring an action for specific performance, declaratory decree, or injunction, and will be entitled to recover all costs of such action including attorney fees at trial or on appeal. CLT may, in its sole and absolute discretion, waive in writing violations and/or grant deviations or variances. However, the waiver of a particular violation or violations will not be deemed a waiver to enforce these provisions as to future or continuing violations.

9. **Exterior Color and Materials.** The color and materials of all exterior surfaces will be subject to approval of CLT. CLT may promulgate a list of approved colors and materials for this purpose. This restriction includes window tints and films.

10. **Air Conditioning Units.** No window or through-the-wall air conditioning unit will be permitted on the home situated on the Property.

11. **Antennae, Aerials, and Satellite Dishes.** No antennae or aerial may be placed on the Property or affixed to the exterior of any building, and no antennae or aerial placed or affixed within a building may extend or protrude beyond the exterior of such building or in any way be visible from outside the building. Under no circumstances shall any satellite dish exceed 39 inches in diameter. Satellite dishes may only be affixed to the rear of a home and must not be visible from the street in front of the building.

12. **Clothes Drying Area.** No clotheslines or other facilities or apparatus for the drying of clothes outside of a dwelling shall be constructed or maintained on the Property if viewable from the front of the home.

13. **Signs.** No sign of any kind shall be displayed to general view on the Property (whether freestanding, attached to a Building, or displayed in a window) except one "For Sale" sign not more than two square feet (as measured on each side of the sign) may be displayed on Property by the Owner or the agent for the Owner.

14. **Fences.** No fences may be erected on the Property without prior written approval of CLT. All fences, hedges, walls or the like constructed upon the Property shall comply with all applicable governmental regulations. No fence, hedge, wall or the like shall be constructed closer to the street than the front of the structure constituting the front of the home situated on the Property.

15. **Completion of Construction and Repairs.** Any repair or remodeling to the home built on the Property must be diligently and continuously pursued once begun, and promptly completed, shall be sightly and of good workmanship. Other than original new home construction, all construction of improvements on the Property and the construction, repair, or remodeling of any improvement must be completed within four (4) months after commencement. All waste shall be contained during construction and any debris that becomes scattered shall

be picked up and disposed of immediately by the person or company performing the construction.

16. Lot Drainage. No elevation or topography changes shall be permitted on the Property which materially affects the surface grade or drainage on any adjoining property.

17. Litter, Trash, Garbage. No garbage, trash, refuse, or rubbish may be deposited, dumped, or kept on the Property except in closed sanitary containers appropriately screened from view. Trash containers must be placed at the front of the Property on the day designated for pickup, but only if promptly returned to the proper storage area as soon as possible.

18. Parking of Wheeled Vehicles, Boats and Water Vessels. Boats, water vessels and trailers must be kept at all times parked in the rear yard behind a fence not readily visible from the street and are not permitted to be parked elsewhere on the Property. Private cars or private trucks owned by an Owner or an Owner's guest may only be parked in the Owner's driveway. Commercial vehicles may be parked in a street or driveway when necessary for providing services to an Owner, or for pickup and delivery service, but only while undertaking this activity and never overnight. Recreational vehicles, travel trailers, trailers, and campers may not be parked in the driveway on the Property or on the street adjacent to the Property. No Vehicles may be repaired or maintained on or adjacent to the Property.

19. Permanent Outside Storage Building. No outside storage building of any nature whatsoever will be permitted on the Property unless approved by CLT. The total area of the building shall not exceed 170 square feet and shall be located no closer than 5 feet from the side and rear property lines of the Property. No building or design shall violate the applicable governmental regulations.

20. Further Subdivision Property. The Property shall not be re-subdivided except that the Owner shall have the right to modify boundary lines in the event of a dispute regarding the location of such boundary lines.

21. Waiver of or Release from Violations. CLT may, in its absolute discretion, waive or release the Property or the Owner from any requirements and/or violations of this Declaration.

22. Enforcement. The covenants and restrictions contained in this Declaration may be enforced by CLT and/or its successors or assigns, in any judicial proceeding seeking any remedy recognizable at law or in equity, including an action or lawsuit seeking damages, injunction, specific performance, or any other form of relief, against any person, firm or entity violating or attempting to violate any covenant or restriction contained herein. The failure by any party to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of such covenant or restriction or of the right of such party to thereafter enforce such covenant or restriction. The prevailing party in any such litigation shall be entitled to reasonable attorneys' fees and court costs at all trial and appellate levels.

23. Assignment. CLT shall have the right, from time to time, to assign any of its rights or obligations pursuant hereto in part or in whole.

24. Notices. Notices shall be given as to Owner by posting at the Owner's dwelling on the Property, or mailing first class postage prepaid to the Owner's address as maintained by CLT. It shall be the Owner's sole responsibility to notify CLT in writing of any change of mailing address.

25. Captions and Statement of Purpose. Captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only, and in no way shall such captions or headings define, limit, or in any way affect any of the terms or provisions of this Declaration. The Statement of Purpose is a summary of general information only and in no way shall such statement define, limit, or in any way affect any of the terms or provisions of this Declaration.

26. Gender and Plural Terms. Whenever the context so requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine, or neuter form thereof, and the singular form of any noun or pronoun herein may be deemed the corresponding plural form thereof and vice versa.

27. Severability; Amendments to Laws. If any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, that judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Without limitation of the foregoing, the invalidation of any of the covenants, restrictions, terms, or conditions of this Declaration, or a reduction in the term of the same by reason of the legal rule against perpetuities, shall in no way affect any other provision, which shall remain in full force and effect for such period of time as may be permitted by law. Any amendment to applicable law that has the effect of reducing the rights of Owner or increasing the liabilities of or duties imposed on Owner will not be incorporated into this Declaration by reference. All other references to applicable laws and regulations will incorporate amendments to those laws and regulations.

28. Duration and Renewal. This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens, and liens contained herein, shall run with and bind all of the Lots and inure to the benefit of CLT and its successors, and assigns, for a term of 90 years from the date hereof. Notwithstanding the foregoing, CLT shall, at any time, have the right to waive, release, cancel or extinguish any of the covenants or restrictions contained herein.

29. Venue. This Declaration shall be governed by and enforced and construed under the laws of the State of Florida, without regard to its conflicts of laws provisions. Venue in any proceeding involving this Declaration will be in the county in which the property is situated.

DISCLAIMER OF REPRESENTATIONS OR WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS DECLARATION, NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, HAS BEEN GIVEN OR MADE BY CLT IN CONNECTION WITH THE PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. IF ANY SUCH WARRANTY CANNOT BE DISCLAIMED, AND AS TO ANY CLAIMS WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

Dated this DATE.

IN WITNESS WHEREOF, the parties have caused this Declaration to be executed as of the day and year first written above.

BUYER

The foregoing instrument was acknowledged before me on this DATE by BUYER.

State of Florida
County of _____

Signature: _____

Notary Public

Prepared By and Return To:
Adam C. Cobb
City of Pensacola Attorney's Office
222 W Main Street
Pensacola, FL 32502
(850) 435-1615

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, dated this _____ day of _____, 2024, given by _____, a/an [State] [Entity Type], whose mailing address is _____ (hereinafter called the "Grantor"), to _____, a/an [State] [Entity Type], whose mailing address is _____ (hereinafter called the "Grantee"). (Wherever used herein the terms "Grantor" and "Grantee" include all parties to this instrument and the successors and assigns of entities.)

WITNESSETH: That Grantor, for and in consideration of the sum of \$10.00 and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto Grantee, all that certain land situate in _____ County, Florida, to-wit ("Property"):

SUBJECT TO covenants, conditions, restrictions, reservations, limitations, easements and agreements of record, if any; taxes and assessments for the current year and subsequent years; all applicable zoning ordinances and/or restrictions and prohibitions imposed by governmental authorities, if any; Grantor's right of first refusal described below; and to the covenants, terms and conditions of that certain Land Donation Agreement between Grantor and Grantee with an effective date of _____, 20____ (the Land Donation Agreement is a publicly available document, available upon request to Grantor pursuant to Chapter 119 Florida Statutes).

TOGETHER WITH all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To have and to hold the same in fee simple forever.

And the said Grantor will only warrant and forever defend the right and title to the above-described Property unto the said Grantee against the claims of those persons claiming by, through or under Grantor, but not otherwise.

Grantor reserves unto itself a right of first refusal with respect to any conveyance by Grantee of Grantee's rights in and to the Property (including, in each instance, all of Grantee's right, title and interest in and to any improvements upon the Property), as follows: at such time as Grantee receives an offer which it desires to accept from any third party to purchase or otherwise acquire Grantee's interest in the Property, prior to consummating any such sale or conveyance Grantee shall first offer Grantee's interest in the Property to Grantor at the same

price offered by the third party by giving written notice to Grantor of the offer, the name and address of the purchaser, the price and other terms of the purchase. The giving of such notice shall constitute a representation and warranty to Grantor that the proposed transaction is bona fide in all respects. Grantor shall have 60 days from its receipt of such notice to notify Grantee that Grantor has elected to acquire Grantee's interest in the Property, or portion thereof if the offer is for said portion only, at the same price and terms offered by the third party (except that the closing date shall be at a time mutually agreeable to Grantor and Grantee, and in no event shall be required to be before the date that is 60 days following delivery of Grantor's notice of election, above). If Grantor waives such right of first refusal, either expressly or by failing to act within the 60-day period, the Landlord shall execute and deliver to Grantee a written waiver in recordable form. No sale or other transfer of title of Grantee's interest in the Property by Grantee shall be valid unless and until the written waiver by Grantor shall be recorded in the Official Records of Escambia County, Florida or until the 60-day period has elapsed without action by Grantor and Grantee records a certificate of that fact in the Official Records, together with a copy of the notice sent to Grantor, along with proof of delivery. If Grantor waives its right of first refusal either expressly or by failing to act within the 60-day period, Grantee shall be free within the one-year period following the notice to Grantor, to conclude the proposed sale with the original third party at the same or higher price (but not a lower price) as set forth in its original notice to Grantor. If Grantee does not conclude a sale within one year from the date of its notice to Grantor or if Grantee lowers the price at which it proposes to sell or if Grantee proposes to sell to a different party or if Grantee proposes to grant terms more favorable to a purchaser than was previously communicated to Grantor in a notice under this paragraph, then this paragraph shall remain applicable and Grantee must submit a new notice to Grantor and comply with the provisions of this provision before concluding the sale. Grantee shall not be required to give notice to Grantor under this paragraph if Grantee accepts an offer more favorable to Grantee than was previously communicated to Grantor in a notice under this paragraph.

[Signature page follows]

IN WITNESS WHEREOF, Grantor has signed and sealed these presents the date set forth above.

Signed, sealed and delivered in the presence of the following witnesses:

_____, a

Printed Name: _____ By: _____ (Seal)

Address: _____, [Title]

Printed Name: _____

Address: _____

STATE OF FLORIDA)
COUNTY OF ESCAMBIA)

The foregoing instrument was sworn to, subscribed and acknowledged before me this _____ day of _____, 2024, by means of () physical presence or () online notarization, by _____, as _____ corporation who is personally known to me or has produced _____ as identification.

Notary Public
Print Name: _____

My Commission Expires:

Northwest Florida Community Land Trust’s Proposal in Response to City of Pensacola “Notice of Intent to Dispose Proposal Requirements and Negotiation Criteria”

Established in 2023, the Northwest Florida Community Land Trust (NFCLT) is a shared equity homeownership model designed to make homeownership attainable for low-income households. The NFCLT builds neighborhood stability, housing equity, and community strength by fostering a healthy mix of housing types, sizes, and prices, based on local community needs. While the NFCLT does not build homes, it partners with local, established builders to develop CLT properties. This project will be built by the Homebuilders Association of West Florida (HBA) who has a long history of homebuilding in the community. The Homebuyer will be selected by Pensacola Habitat for Humanity (PHFH) and they will coordinate the Homebuyer education and mortgage/DPA financing component of the project. The NFCLT is confident that this strategic partnership will result in successful development and subsequent sale, and long-term affordable stewardship of the three in-fill sites located at 1419 N E Street, 2300 W Jackson Street, A, and Spring Street.

Homebuilders Association of West Florida (HBA)

The HBA was founded in 1950 and is an affiliate organization of the Florida Home Builders Association and the National Home Builders Association. We have over 375 industry members who do business in Escambia and Santa Rosa counties. Every year the HBA selects a qualified member builder to construct a showcase home with combined resources, financial, and material donations of our members. The HBA has selected the following three experienced local Pensacola builders, and Keith Branch as the home designer for the three properties noted in the proposal. We have included the brief bios, and comparable projects below.

Amir Fooladi
ParsCo, LLC
700 North de Villiers, Pensacola 32501

Kyle McGee
Sunchase Construction
119 W. Garden St., Pensacola 32502

Shelby Johnson
Johnson Construction of Pensacola
6310 West Fairfield Dr., Pensacola 32506

Keith Branch
President
Good Foundations, LLC
35 W Maxwell Street, Suite 158, Pensacola, FL 32502

ParsCo, LLC - Amir Fooladi

ParsCo has completed numerous residential projects ranging from high-end custom homes to smaller, affordable housing units. Most recently, ParsCo completed a Public-Private Partnership with the City of Pensacola in 2017 when awarded the Re-Development of the Former Blount School property. During negotiations with the City of Pensacola, ParsCo agreed to build and sell six (6) of the homes as affordable housing units for a sale price of \$189,000.00. ParsCo worked with the Pensacola City Housing program to develop the City of Pensacola Home Buyer Incentive program that provided homebuyers the opportunity to purchase the homes once approved by the city staff.

Each completed home had a development schedule of 30 days to gain approval/permits and about 4-6 months for construction and Certificate of Occupancy.

The addresses of the homes completed by ParsCo that were sold for \$189,000 were:

929 W. Gregory St.
959 W. Gregory St.
140 N. D Street
980 W. Chase St.
962 W. Chase St.
141 N C Street



As the President and CEO of ParsCo, LLC, Amir is responsible for all aspects required to manage a project successfully and oversees all operations and his staff of 15 employees. Amir has nearly 30 years and over \$2 billion dollars of construction experience. He has successfully completed a wide variety of private and public-sector projects, including residential, commercial, restaurant, retail, high-rise condominium, hospitality, resorts, casino, office, medical, Historic renovations, and military/state/government projects. Amir began his career in construction in 1994 and went on to work for some of the largest General Contractors in the country before becoming a Certified General Contractor in Florida in 2004 and starting ParsCo in 2005. Amir is the past President of the Home Builders Association of West Florida (2023) and serves as an adjunct instructor at the University of West Florida in their Construction Management program.

Sunchase Companies - Kyle McGee

Education & Experience

Bachelor of Science in Finance and Management

2012 – 2015

Florida State University - College of Business

General Contractor License

Florida DBPR, Issued Nov 2017

Credential ID: CGC1525911

Real Estate Broker Associate

September 2016 – Present Levin Rinke Resort Realty, Inc

Sunchase Companies LLC

Founder and CEO

Oct 2017- Present

- Sunchase Property Group LLC
- Sunchase Construction LLC
- The Sunchase Team
- Sunchase Development LLC

Panhandle Developers LLC

Principal

November 2017-Present

Relevant Development

Residential Projects:

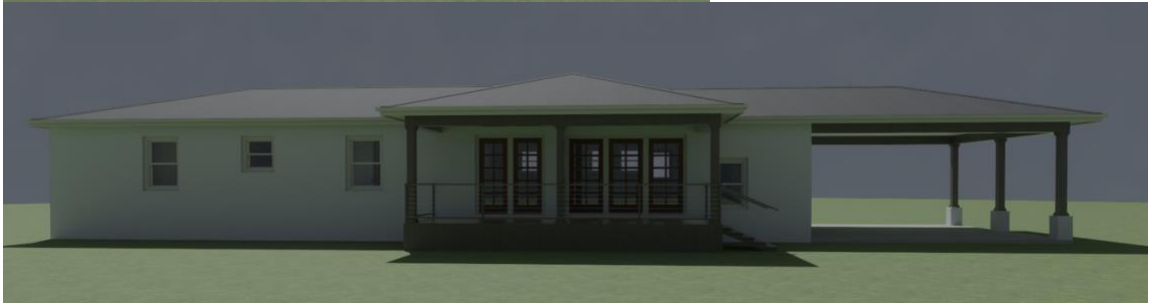
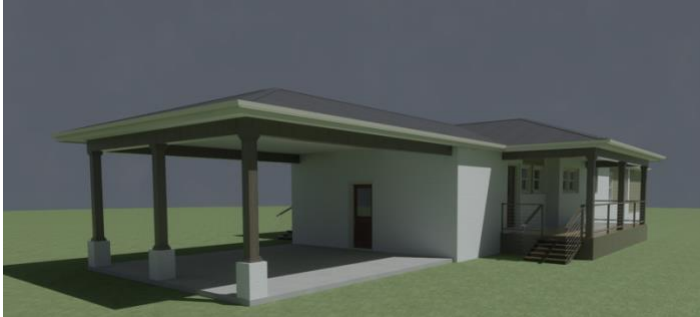
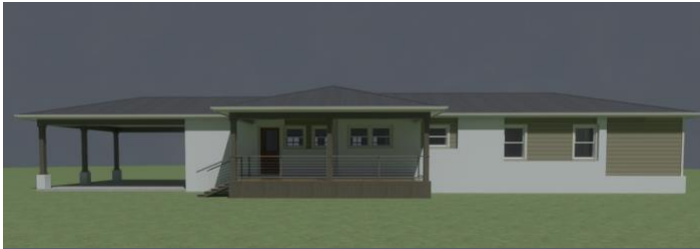
- Built over 100 homes since 2017, priced with first-time homebuyers in mind

Apartment Projects:

- Acquisition of a 90-unit affordable housing apartment portfolio in downtown Pensacola and execution of a comprehensive renovation plan for the three individual properties
- Acquisition of a 98-unit apartment complex in Baldwin County and execution of an extensive renovation plan

Notable local projects (reno/rehab):

- 315 W Lee St - renovation and addition of historic home, with the addition of a detached structure
- 410 S Palafox St - rebuild and renovation of a restaurant in the downtown district



William Shelby Johnson

Education & Experience

Bachelor of Science in Engineering Technology--Construction

General and Specialty Contractor (1994-Current)

- Effectively prepare and present detailed information to city and county planning / zoning commissions, Santa
- Rosa Island Authority, and citizens groups including homeowner's associations, realtors, and historical preservation review board.
- Strategically prioritize, plan, coordinate, and guide projects to ensure on-time, budget-compliant delivery while maintaining high quality standards.
- Contribute critical thinking and analytical skills in identifying and resolving various issues within projects to ensure a positive outcome for various parties concerns and interest.
- Apply advanced communication abilities toward establishing key relationships with elected officials, appointed officials, citizen groups, civil engineers, architects, and local builders groups.
- Successfully implement the Florida Building Codes on construction project ranging up to \$1,200,000.00.
- Demonstrate leadership qualities and project management skills in overseeing all aspects of general construction and roofing projects.
- Successfully build top-performing personnel integral to supporting enterprise-wide operations by strategically recruiting and effectively interviewing, screening and testing candidates.
- Maximize human resource performance by conducting quarterly evaluations, clearly defining skill gaps, and providing expert recommendations on strategic training/professional development solutions.
- Actively mentor and motivate supervisors, playing an instrumental role in the development of top performing team members.
- Manage company finance and ensure that taxes, payroll, and insurances are paid on time and in full.
- Continuously available to clients and staff, listened to concerns, and applied common sense to solve problems.
- Manage a company with A+ Better Business Bureau Rating
- Mentor and provide employment opportunities to students in University of West Florida engineering students, and West Florida Vo-tech.

Professional Development/Training & Licenses

- Certified General Contractor - Florida
- Certified Roofing Contractor - Florida
- OSHA 30-hour Construction Safety and Health Card Holder
- OSHA 8-hour Masonry Supervisor Safety Card Holder
- EPA Certified Lead Paint Specialist
- Certified Equipment Operator
- Florida Green Home Designation Certified – Florida Solar Energy Center
- Hazardous Waste Awareness & Chemical Hazardous Communication – Florida Dep. Environmental Health Safety
- Certified Green Building Professional – National Home Builder Association

Professional Affiliations

Board Director

- Northwest Florida Home Builders Association
- EscaRosa Beekeepers Association
- Bill Hargreaves Rodeo (Raises funds for Ronald McDonald House)
- University Of Florida Extension
- Rotary

Member

- Construction Specifications Institute
- U.S. Green Building Council
- Florida Green Build Coalition
- National Home Builders Association
- National Roofing Contractors Association
- United States Navy League
- EscaRosa Beekeepers Association
- Scout Master, Boy Scouts of America

Teacher

- University of West Florida Construction Camps
- University of Florida Extension Beekeeping Classes

Good Foundations, Inc. - Keith Branch

Education

- Bachelor's of Design, Major in Architecture, 2002

Relevant Experience

- 2005-2006: Interplan, LLC (Orlando, FL) - commercial architecture firm specializing in corporate prototype rollout projects. Major client projects: Staples, Chick Fil-A, Miller's Ale House, AmSouth Bank, Sonny's BBQ
- 2006-2009: Bay Design Associates (Pensacola, FL) - local commercial architecture firm. Projects of note: 25 W Avery St (new construction, office/event space); 200 N Palafox St (Sole Inn & Suites), renovation of existing downtown motel, 9220 Pine Forest Road - Disaster Operations Control Center for Gulf Power/FPL.
- 2009-2014: HSA Consulting Group (Gulf Breeze, FL) - Traffic Technician; acquisition and processing of Traffic Characteristic Inventory counts for FDOT, District 3
- 2014-present Good Foundations, Inc.: Founder and President

Notable local projects (prototype development and rollout):

- Redfish Harbor - developed with aDoor Properties (75+ units)
- 4+ years developing starter home prototypes built in Navarre by Ramsey & Walker (approx. 200+ units)

Notable local projects (CRA):

- Corte De La Rua - 4-unit townhome structure developed with aDoor Properties
- 422 N C St; 428 N C St; 613 N B St; 615 N B St - developed with Better Opportunities Group and built by Grand Builders

Notable local projects (reno/rehab):

- 1315 E La Rua St - rehabilitation/renovation/addition (including structural rehab and repair), originally built in 1935
- 1100 E DeSoto St - rehabilitation/renovation/addition, originally built in 1913

Development Program and Intent

The intent for the Property is to develop single-family homes that range from 1,400 to 1,600 square feet designed for first-time homebuyers who are at or below 120% AMI in accordance with CRA Urban Design Overlay Standards. The conceptual plans are approximately 75% complete and still have some due diligence to complete regarding the building setbacks prior to finalizing the engineering for that build. Overall design concepts on both projects are complete, barring changes to comply with code and/or engineering requirements.

The working versions of the conceptional plans are enclosed in this response.

Marketing Experience, Approach, and Management for Project

For the NFCLT project and acquiring new properties, our marketing approach and management strategy are comprehensive and tailored to both the community and potential developers and homebuyers. The key staff who will be involved with the marketing, management, and stewardship of the NWFLCLT program are Sam Young, Quinn Luehring-Buerkett, and Betsy McDonald.

Community-Centric Marketing Approach:

- Engage with the local community through informational sessions and community outreach events to foster trust and transparency.
- Utilize targeted outreach efforts through digital media to reach underserved populations and ensure inclusivity in the acquisition process.
- Highlight the benefits of Northwest Florida Community Land Trust ownership, such as long-term affordability, community stewardship, and shared equity through digital media, website, press in the local media outlets, etc.

Developer Engagement and Collaboration:

- Cultivate relationships with developers, in this instance the HBA, who align with the mission and values of the NFCLT.
- Collaborate to ensure that new properties adhere to NFCLT principles, including affordability, sustainability, and community integration.
- Provide access to incentives and support for developers to participate in NFCLT projects, such as tax incentives, grants, or streamlined permitting processes.

Stewardship Plan for New Properties:

- Grow the existing Community Land Trust to a true tripartite committee with representation of NFCLT homeowners, community residents, and local stakeholders to engage meaningfully with the NFCLT.
- NFCLT staff, in collaboration with PHFH staff, works alongside each homebuyer to ensure completion of robust homebuyer education.
- NFCLT will send out a quarterly newsletter engaging with NFCLT homeowners in meaningful ways providing NFCLT information and reminders about various aspects of homeownership and owning a home in partnership with NFCLT

- PHFH created a Homeowner Hub, a resource for homeowners purchased through PHFH programs. We will include access for NFCLT homeowners. The hub provides an online, easily accessible resources for homeowners who are looking for support for a wide variety of topics (i.e. builders warranties, warranty request form, disaster supply kit, community resource guide, will and estate planning, etc.).

Experience in Managing New Developments and Infill Lots:

- Pensacola Habitat for Humanity has developed infill lots and large tract neighborhoods since 1981 producing over 1,600 households, highlighting our track record of creating vibrant, sustainable communities.

Marketing Home Builds to Homebuyer Program Participants:

- Utilize a multi-channel marketing approach to reach potential homebuyers, including paid advertisements, social media campaigns, community outreach events, radio and TV campaigns, and word-of-mouth referrals from other community organizations.
- Tailor marketing materials to emphasize the unique benefits of NFCLT homeownership, such as affordable pricing, long-term affordability, and community support services.
- Collaborate with local real estate agents and housing organizations to expand our reach and attract a diverse pool of qualified applicants up to 120% AMI.
- Pensacola Habitat for Humanity (PHFH) will utilize existing infrastructure and staff support to accept, underwrite and approve qualified applicants. Upon application submission via the Programs Application Portal, the Pensacola Habitat Programs team will contact the applicant to clarify the options they qualify for.

Sam Young became the CEO of Pensacola Habitat for Humanity in 2020. Previously, he was President and CEO of a large health and wellness company in New Jersey. Aside from Pensacola Habitat for Humanity, Sam chairs the boards of the National Aviation Research & Technology Park and is past-Chair of Boys and Girls Club of Atlantic City. He has been recognized as a top board leader and Businessman of the Year. A retired Navy Captain, he served for 30 years on active and reserve duty, holding numerous senior leadership and command positions. Sam has also a graduate of Leadership Florida's Cornerstone Class 40 for 2022-2023. Under his leadership, Pensacola Habitat has more than doubled revenue, new home construction and expanded several of its key programs.

Quinn Luehring-Buerkett was born and raised in the suburbs of Chicago. She graduated from Southern Illinois University in Edwardsville, IL in 2015 with a bachelor's degree in mass communications. Her love and passion for nonprofit work began in 2015 with an organization focused on assisting homeless women and children in the Chicago suburbs. This position sparked a deeper mission for Quinn as she learned how great the need is for temporary shelter and permanent, affordable housing solutions. She moved to Florida in 2016, where she is now the Director of Marketing and Communications for Pensacola Habitat for Humanity and serves on the board of Family Promise of Escambia County. Quinn has a proven track record in increasing community engagement, fundraising for diverse missions, and promoting strong initiatives to improve communities.

Betsy McDonald is a lifetime resident of Northwest Florida and currently serves as the Director of Programs at Pensacola Habitat for Humanity. Betsy graduated from the University of West Florida in

2015 with her bachelor's degree in international relations and then in 2016 with her master's degree in political science. Betsy has worked for Habitat for Humanity at the affiliate level for 5 years. Betsy is a HUD Certified Housing Counselor and a Certified Aging in Place Specialist. She also serves as a member of the Affordable Housing Advisory Committee in Santa Rosa County, Valerie's House Community Engagement Council, Florida Housing Enterprise Board, and is an alumnus of Leadership Pensacola, class of 2024.

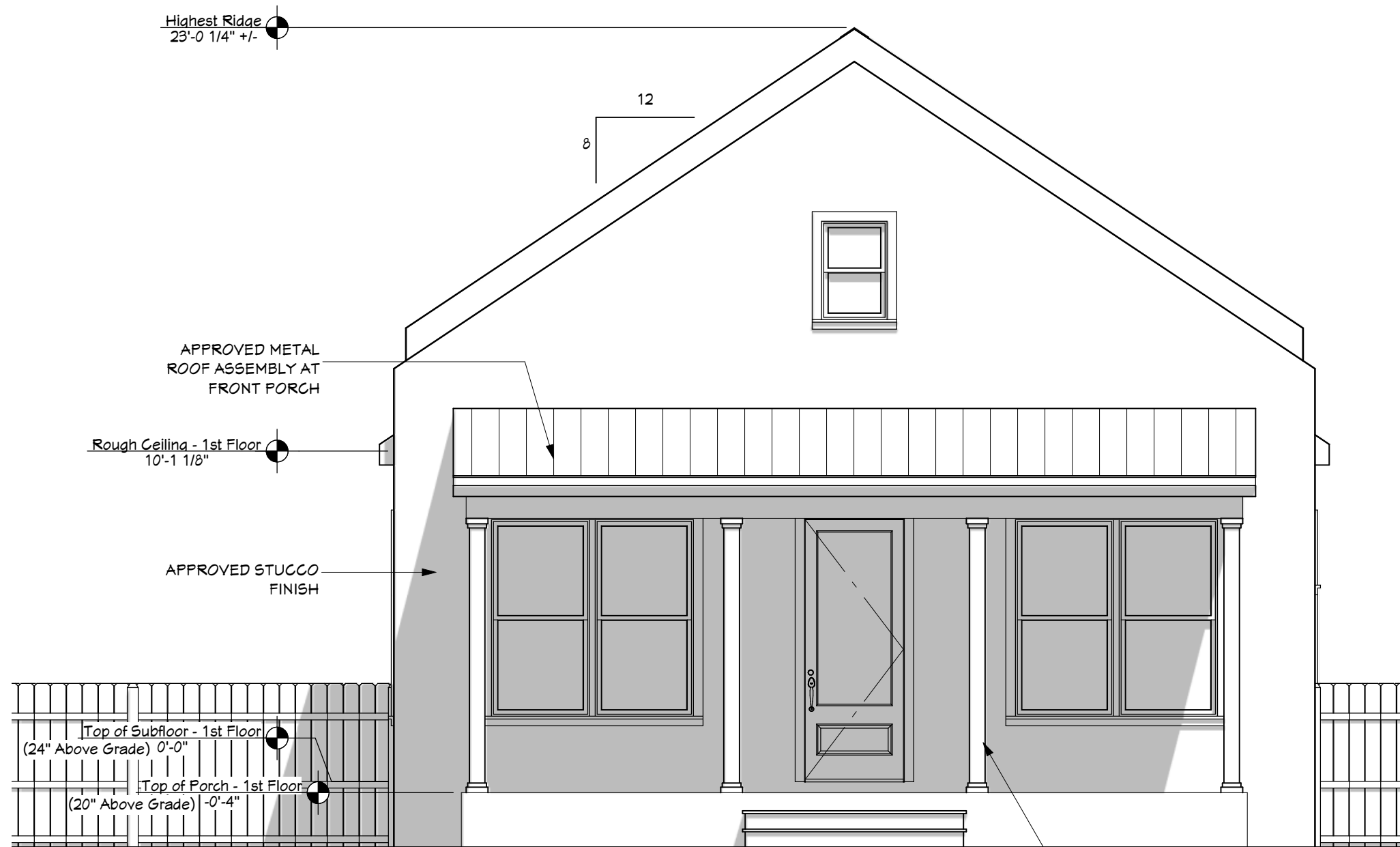
By leveraging our marketing experience, community engagement strategies, and proven track record in neighborhood development and stewardship with approved homeowners, we are confident in our ability to develop single family homes, manage them effectively, and market our home builds to potential buyers through various channels.

Project Timing

The HBAs construction timeline for all three projects is to begin immediately upon approval by the CRA and construction to be completed on or about Oct. 1, 2024.

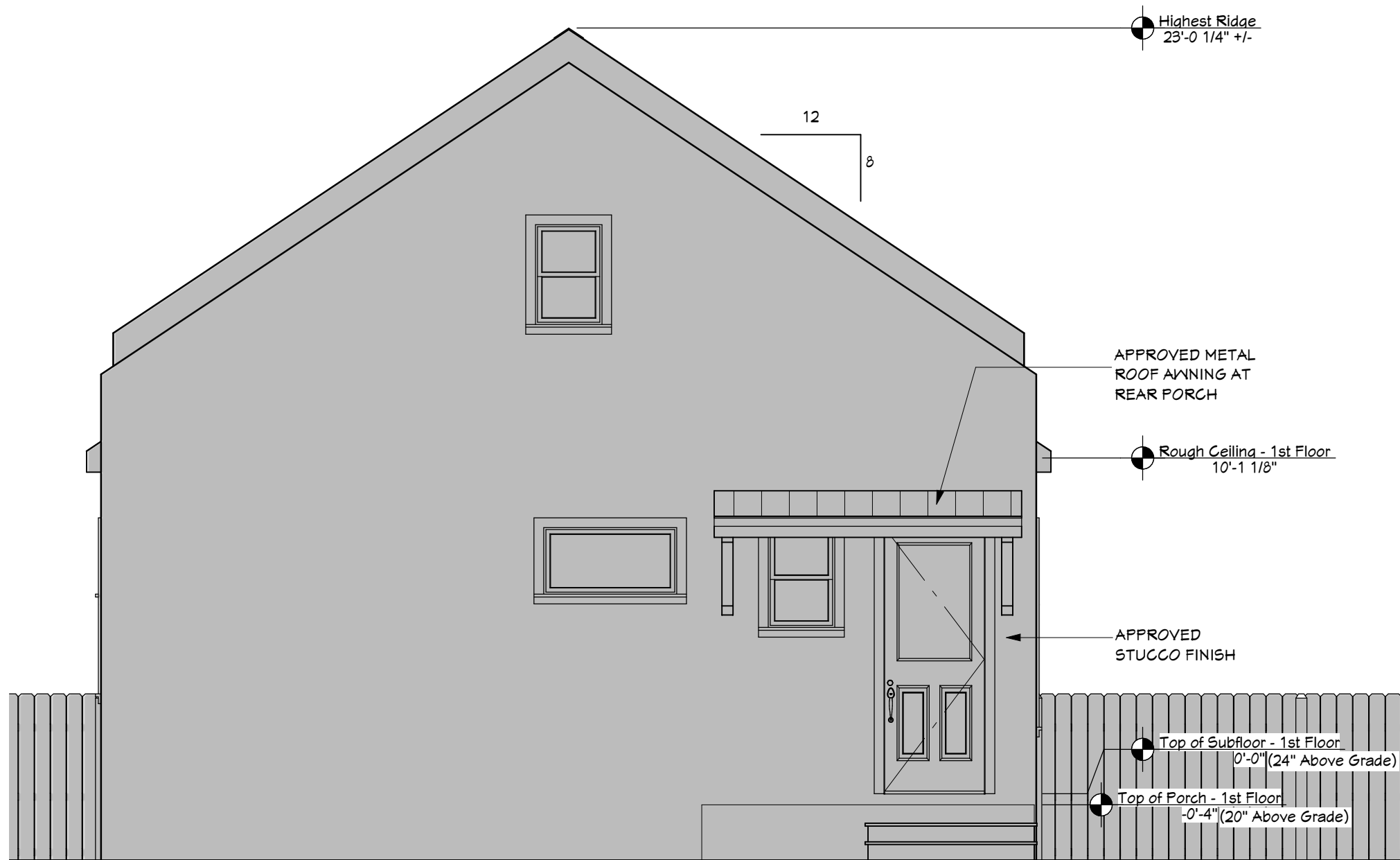
All financial details, to include the construction budget, will be provided if awarded.

PROPOSED RESIDENCE



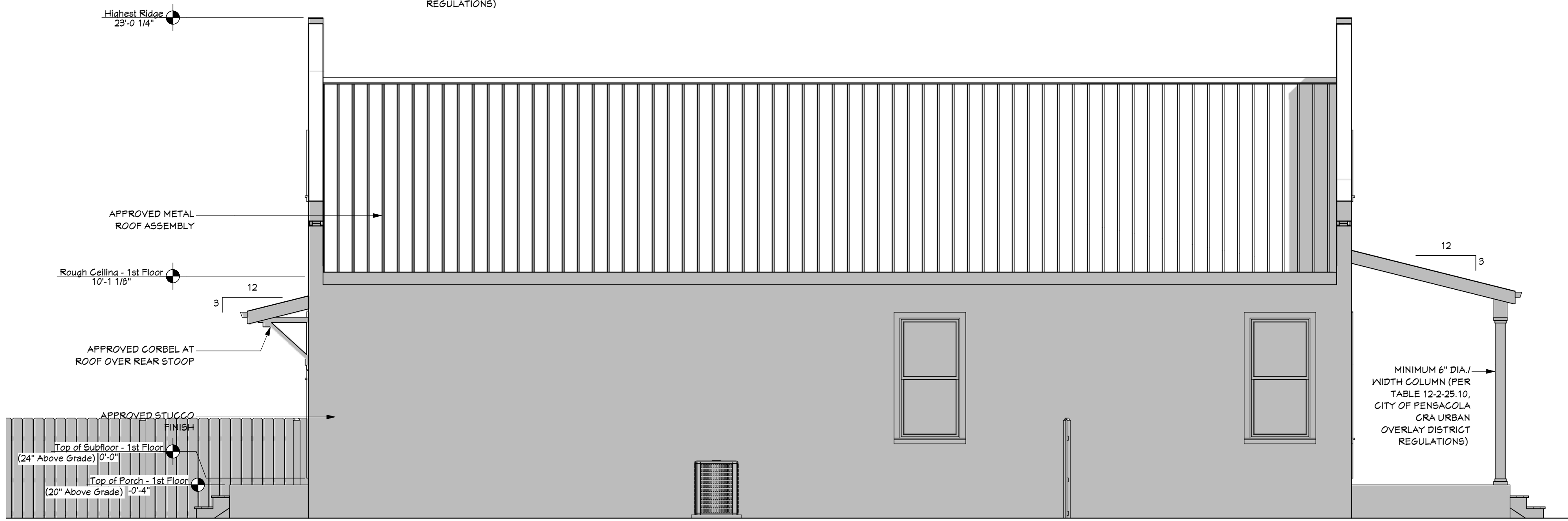
FRONT ELEVATION

SCALE: 1/4" = 1'-0"



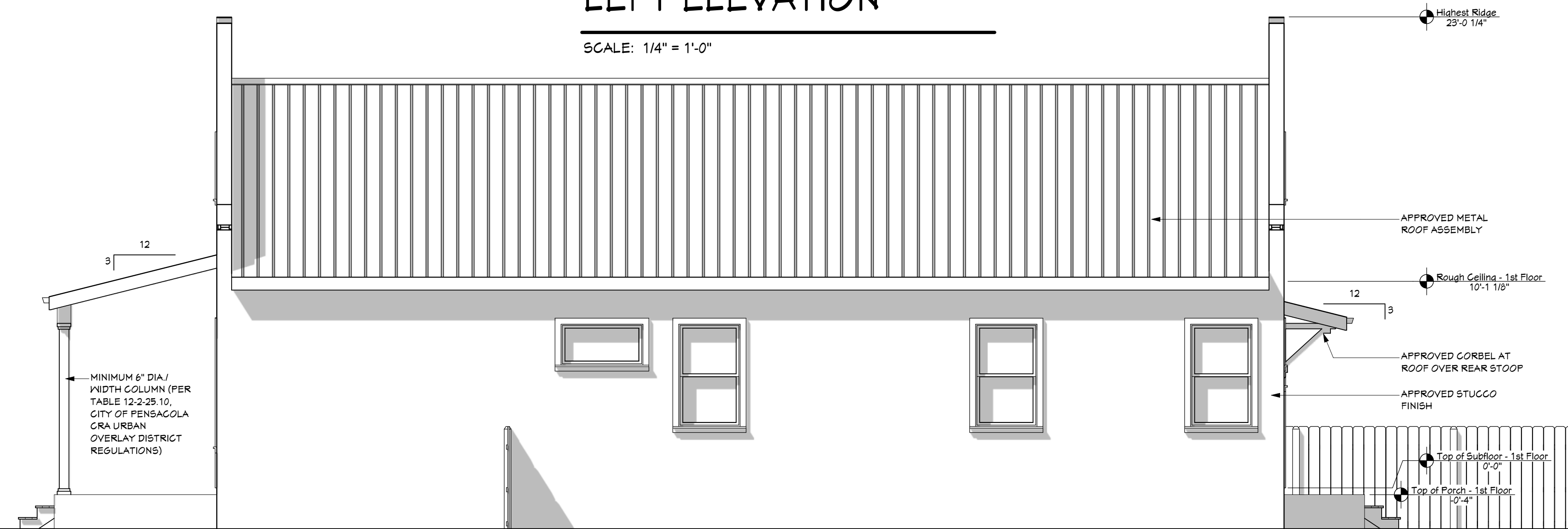
REAR ELEVATION

SCALE: 1/4" = 1'-0"



LEFT ELEVATION

SCALE: 1/4" = 1'-0"



RIGHT ELEVATION

SCALE: 1/4" = 1'-0"

PARCEL INFORMATION & CALCULATIONS

ZONING DISTRICT:
COMMUNITY REDEVELOPMENT AREA (CRA) URBAN
DESIGN OVERLAY DISTRICT (R-NCB)

FORM STANDARD FOR DEVELOPMENT:
TABLE 12-3-31.4 (SINGLE FAMILY DETACHED: R-NCB)

SETBACKS (TABLE 12-3-31.4):
FRONT = 8ft MIN./20ft MAX. / REAR = 25ft MIN. / SIDES = 5ft

PRIMARY FRONTAGE OCCUPATION:
28.53ft (Building Frontage) / 60ft (Parcel Width)
= 48% Frontage Occupation

FRONTAGE YARD TYPE (Table 12-3-31.9):
A: STANDARD YARD

FACADE TYPE (Table 12-3-31.10):
A: PORCH

FRONT YARD PERVIOUS AREA (Table 12-3-31.9):
FRONT YARD: 60ft x 15ft = 900sqft

IMPERVIOUS SURFACE:
DRIVE: 10ft x 15ft = 150sqft
WALKWAY: 5ft x 15ft = 75sqft
TOTAL: = 225sqft

225sqft / 900sqft = 25% IMPERVIOUS AREA
-or- **75% PERVIOUS AREA**

LOT COVERAGE (BUILDING ONLY):
1,124sqft / 7,500sqft = 23% LOT COVERAGE

WINDOWS/GLAZING (Sec. 12-2-25(6)(10)):

GLAZING AREA: 82sqft
FRONT ELEVATION AREA: 294sqft
1ST FLOOR GLAZING: 82sqft / 294sqft = 27.8%

NOTE: FRONT ENTRY DOOR TO BE 3/4 LITE
WITH MINIMUM 10sqft OF GLAZING

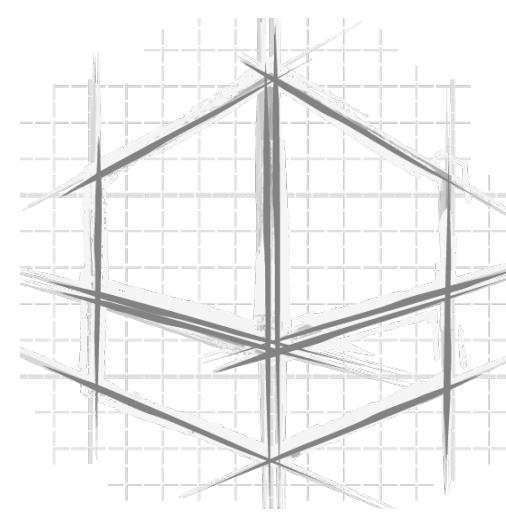
BUILDING AREAS

LIVING AREA - 1,499 SQ FT
PORCHES - 225 SQ FT
TOTAL UNDER ROOF - 1,724 SQ FT



GLAZING @ FRONT ELEVATION

SCALE: 1/4" = 1'-0"



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Suite 158
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FOUNDATIONS, INC.

PREPARED FOR: **PARSCO CONSTRUCTION**
PROPOSED RESIDENCE
113 N SPRING ST PENSACOLA, FL
ESCAMBIA COUNTY

NOTE:

CONTRACTORS/SUBCONTRACTOR TO VERIFY
ALL DIMENSIONS IN THE FIELD PRIOR TO
CONSTRUCTION. SOLE RESPONSIBILITY LIES
WITH THE CONTRACTOR TO ENSURE ALL
ASPECTS OF CONSTRUCTION COMPLY WITH
BUILDING CODE REQUIREMENTS INCLUDING
BUT NOT LIMITED TO: HANDICAP
ACCESSIBILITY, EGRESS REQUIREMENTS,
STAIR CONSTRUCTION, AND ELECTRICAL AND
PLUMBING REQUIREMENTS. DESIGNER IS NOT
RESPONSIBLE FOR ANY CHANGES TO
ORIGINAL DESIGNS.

JOB # 24-0419

DRAWN BY: KEB

DATE: 6/5/2024

A-1



PREPARED FOR: PARSCO CONSTRUCTION
PROPOSED RESIDENCE
1113 N SPRING ST PENSACOLA, FL
ESCAMBIA COUNTY

NOTE:
CONTRACTOR/SUBCONTRACTOR TO VERIFY ALL DIMENSIONS IN THE FIELD PRIOR TO CONSTRUCTION. SOLE RESPONSIBILITY WITH THE CONTRACTOR TO ENSURE ALL ASPECTS OF CONSTRUCTION COMPLY WITH BUILDING CODE REQUIREMENTS, INCLUDING BUT NOT LIMITED TO: HANDICAP ACCESSIBILITY, EGRESS REQUIREMENTS, STAIR CONSTRUCTION, AND ELECTRICAL, PLUMBING REQUIREMENTS. DESIGNER IS RESPONSIBLE FOR ANY CHANGES TO ORIGINAL DESIGNS.

JOB # 24-04

DRAWN BY: KE

DATE: 6/5/20

A-2

CONTRACTOR TO VERIFY ALL DIMENSIONS SHOWN COMPARED TO THOSE SHOWN ON FLOOR PLAN, FRAMING PLAN, TRUSS PLAN, ETC. PRIOR TO BEGINNING CONSTRUCTION. NOTIFY DESIGNER AND/OR ENGINEER IMMEDIATELY FOR ANY DISCREPANCIES. DESIGNER AND/OR ENGINEER NOT RESPONSIBLE FOR ANY DELAYS OR EXTRA COST INCURRED FROM DISCREPANCIES WITH DIMENSIONS.

OWNER/BUILDER/DEVELOPER IS RESPONSIBLE FOR VERIFYING FINAL TRUSS DESIGN WITH THESE FOUNDATION REQUIREMENTS PRIOR TO CONSTRUCTION. OWNER/ BUILDER/DEVELOPER MUST VERIFY ALL DIMENSIONS, TRUSS BEARING REQUIREMENTS, ETC. PRIOR TO CONSTRUCTION. NOTIFY DESIGNER AND/OR ENGINEER OF ANY DISCREPANCIES. COORDINATE FINAL TRUSS DESIGN WITH MILTON TRUSS COMPANY PRIOR TO CONSTRUCTION.

SEE ATTACHED ENGINEERING DETAIL SHEETS FOR FOUNDATION, FOOTING, SLAB, REINFORCEMENT, AND OTHER STRUCTURAL REQUIREMENTS. SEE ATTACHED ENGINEERING DETAIL SHEETS TO DETERMINE HOLD-DOWN HARDWARE AND LOCATION REQUIREMENTS PRIOR TO CONSTRUCTION. SEE ATTACHED ENGINEERING DETAILS FOR PRESSURE TREATED COLUMN HOLD-DOWN REQUIREMENTS.

SEE ATTACHED HOME DESIGN SHEETS TO DETERMINE WINDOW AND DOOR OPENING LOCATIONS, WALL LOCATIONS, AND PLUMBING, HVAC, AND ELECTRICAL REQUIREMENTS. COORDINATE DOOR AND WINDOW OPENING LOCATIONS WITH ALL REQUIRED HOLD-DOWN LOCATIONS PRIOR TO CONSTRUCTION. ANY LOCATION INFORMATION ON THE FOUNDATION PLAN IS PROVIDED FOR REFERENCE PURPOSES ONLY. SEE ATTACHED HOME DESIGN SHEETS FOR ADDITIONAL DIMENSIONAL INFORMATION.

VERIFY LOCATIONS OF ALL REQUIRED CONDUITS IN SLAB FOR ELECTRICAL AND CONDENSATION LINES AS WELL AS ALL PLUMBING LOCATIONS PRIOR TO POURING CONCRETE. VERIFY LOCATIONS WITH FLOOR PLAN AND CONTRACTOR.

COORDINATE AND VERIFY ALL DIMENSIONS IN THE FIELD WITH OWNER PRIOR TO CONSTRUCTION. CONFIRM WITH OWNER ANY ADDITIONAL REQUIREMENTS NOT SHOWN ON THESE PLANS.

TYPICAL DIMENSIONS SHOWN ARE FROM FLOOR PLAN AND ARE BASED ON FRAMING DIMENSIONS. OUTSIDE OF FINISH WALL DIMENSIONS NOT SHOWN ON THIS SHEET.

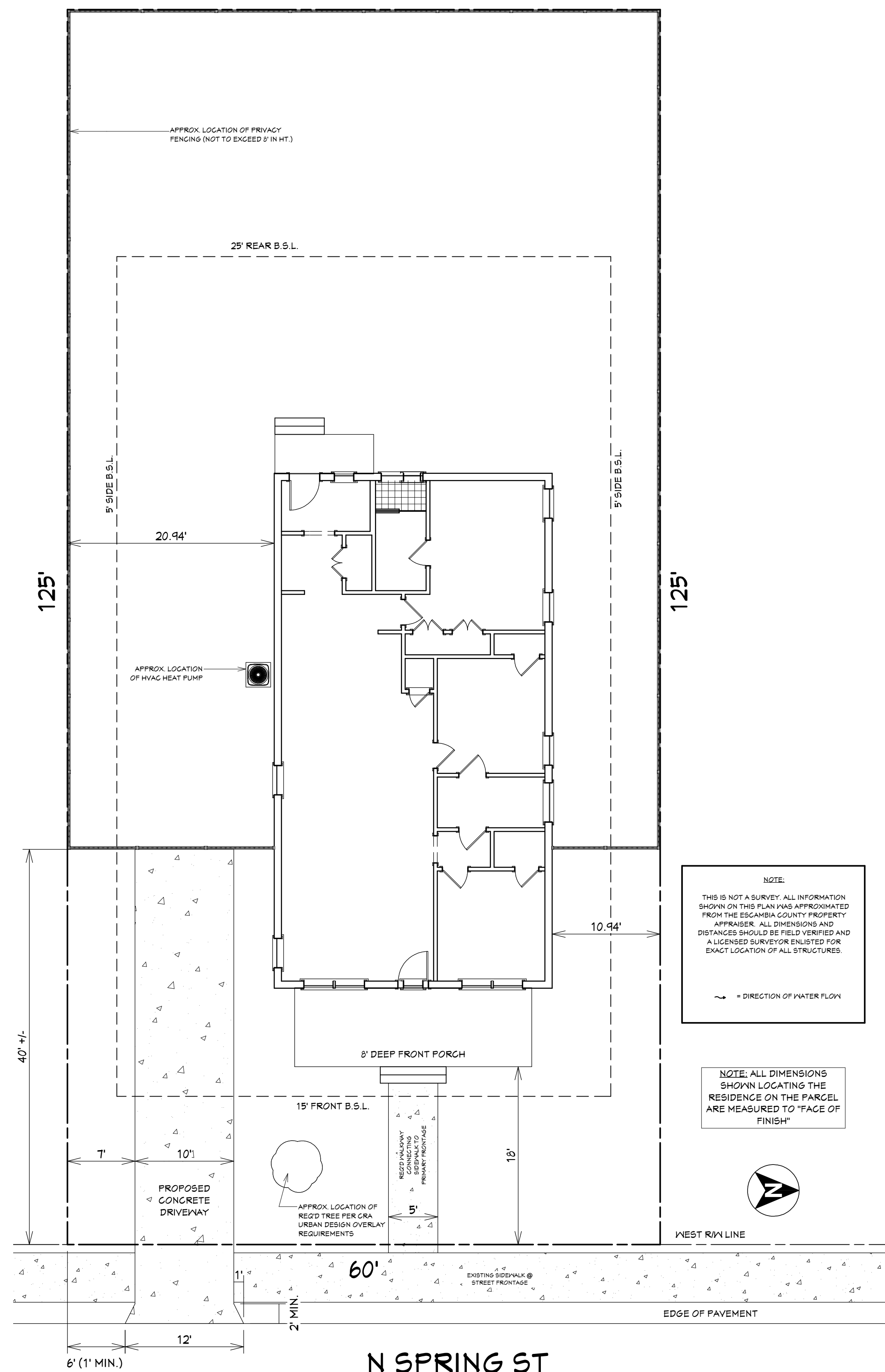
VERIFY DIMENSIONS WITH OWNER PRIOR TO CONSTRUCTION TO ENSURE PROPER COORDINATION AND LOCATION OF STRUCTURE ON LOT TO ENSURE STRUCTURE DOES NOT ENCR OACH INTO BUILDING SETBACK LIMITS.



SCALE: 1/8" = 1'-0"

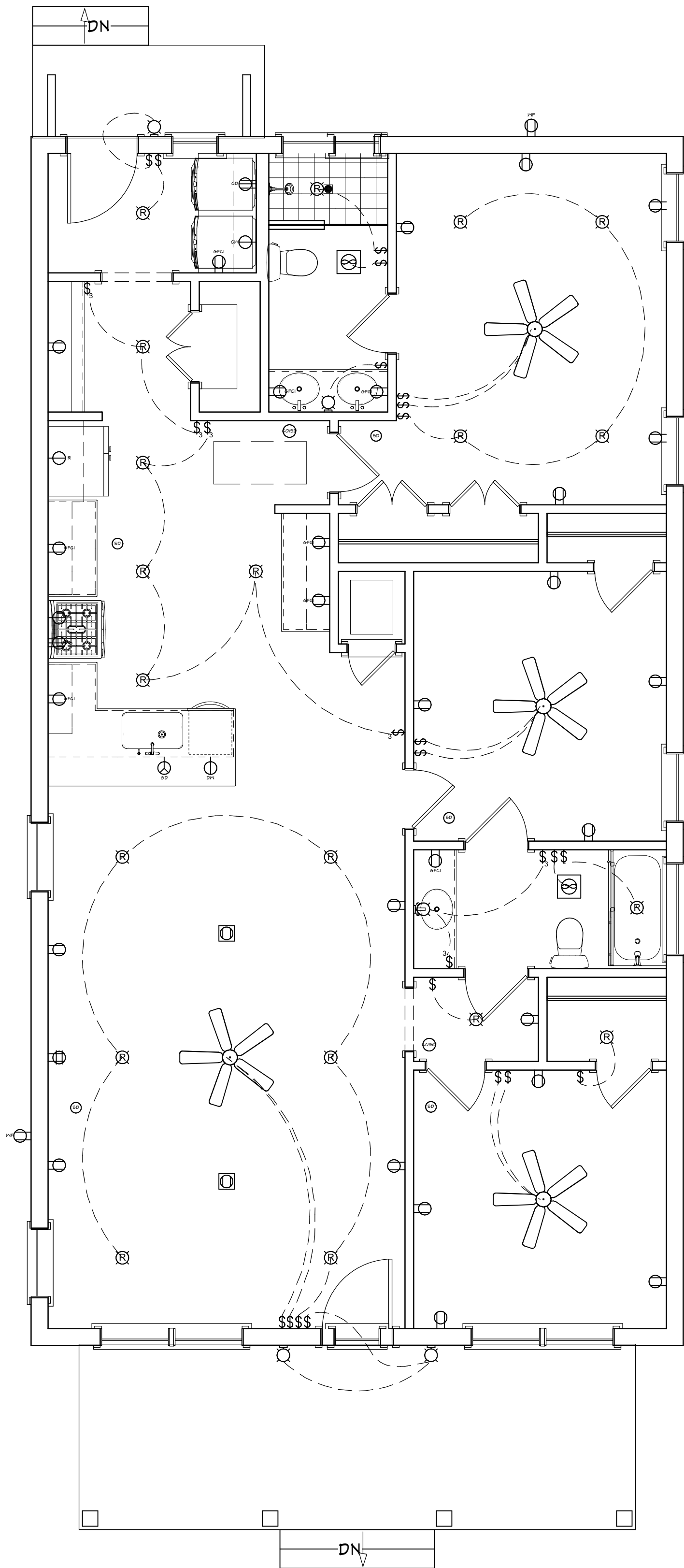


SCALE: 1/4" = 1'-0"



SITE PLAN

SCALE: 1/8" = 1'-0"



ELECTRICAL PLAN

SCALE: 1/4" = 1'-0"

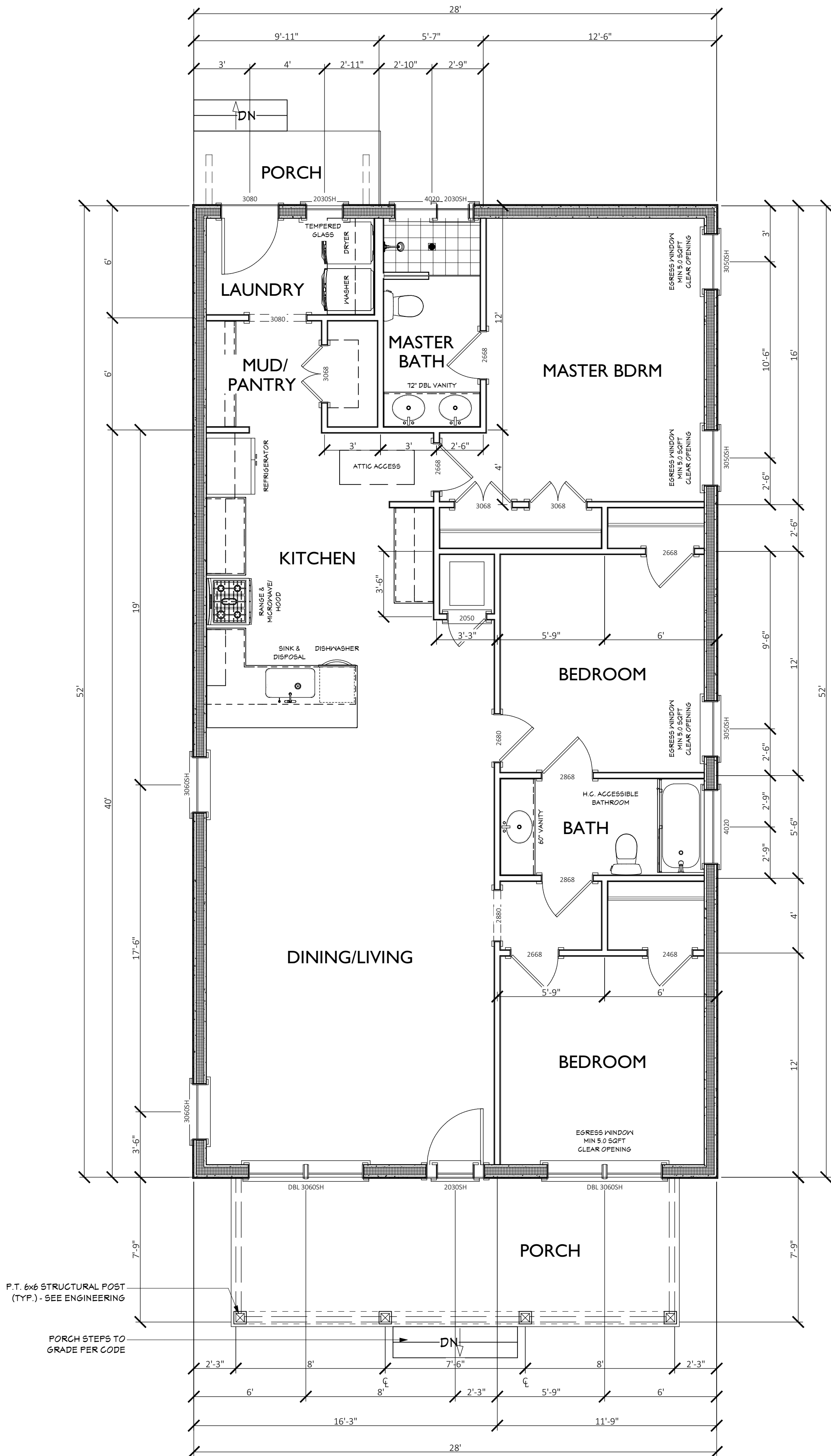
DOOR SCHEDULE **REFER TO OWNER/BUILDER FOR FINAL SPECIFICATIONS AND QUANTITIES**					
NUMBER	QTY	TYPE	SIZE	WIDTH	HEIGHT
D01	3	DOUBLE HINGED	3068 L/R IN	36"	80"
D02	1	HINGED	2680 R IN	30"	96"
D03	1	HINGED	2468 L IN	28"	80"
D04	2	HINGED	2668 L IN	30"	80"
D05	2	HINGED	2668 R IN	30"	80"
D06	2	HINGED	2868 L IN	32"	80"
D07	1	HINGED	3080 R EX	36"	96"
D08	1	HINGED	2050 L IN	24"	60"
D09	1	HINGED	3080 R EX	36"	96"
3/4 LITE W/ MIN. 10 SQFT GLAZING					

WINDOW SCHEDULE **REFER TO OWNER/BUILDER FOR FINAL SPECIFICATIONS AND QUANTITIES**					
NUMBER	QTY	TYPE	SIZE	R/O	EGRESS
W01	2	SINGLE HUNG	3060SH	37"X73"	YES
W02	3	SINGLE HUNG	3050SH	37"X61"	YES
W03	2	FIXED GLASS	4020	49"X25"	
W05	2	MULLED UNIT	6260	75"X73"	
W06	3	SINGLE HUNG	2030SH	25"X37"	YES

ELECTRICAL SCHEDULE **REFER TO OWNER/BUILDER FOR FINAL SPECIFICATIONS AND QUANTITIES**				
NUMBER	QTY	ATTACHED TO	DESCRIPTION	COMMENTS
E01	1	CABINET	DISHWASHER RECEPTACLE	
E02	1	CABINET	GARBAGE DISPOSAL RECEPTACLE	
E03	4	CEILING	CEILING FAN W/ LIGHT	
E04	2	CEILING	CO/SMOKE DETECTOR	
E05	2	CEILING	EXHAUST FAN	
E06	20	CEILING	RECESSED DOWN LIGHT 6	
E07	5	CEILING	SMOKE DETECTOR 3	
E08	2	FLOOR	DUPLEX FLOOR MOUNTED RECEPTACLE	
E09	1	WALL	CLOTHES DRYER RECEPTACLE	
E10	1	WALL	CLOTHES WASHER RECEPTACLE	
E11	19	WALL	DUPLEX RECEPTACLE	
E12	2	WALL	DUPLEX WEATHERPROOF RECEPTACLE, COVER	
E13	1	WALL	ELECTRIC RANGE RECEPTACLE	
E14	3	WALL	EXTERIOR LANTERN 2	
E15	8	WALL	GFCI RECEPTACLE	
E16	1	WALL	MICROWAVE RECEPTACLE	
E17	1	WALL	QUADRUPLUX RECEPTACLE	
E18	1	WALL	REFRIGERATOR RECEPTACLE	
E19	2	WALL	SCONCE I	
E20	20	WALL	SINGLE POLE	
E21	6	WALL	THREE WAY	

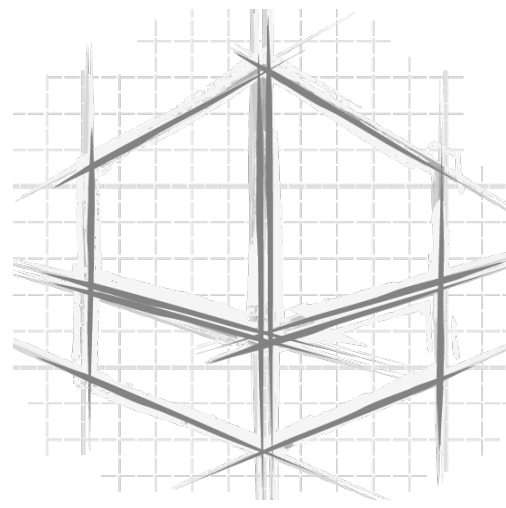
ELECTRICAL NOTES:
HOME OWNER SHALL DO A WALK-THRU WITH RELEVANT INSTALLERS TO VERIFY THE EXACT LOCATION FOR OUTLETS, LIGHTS, SWITCHES, CABLE, DATA, PHONE, AUDIO, ETC.

ELECTRICAL NOTES:
1. ELECTRICAL RECEPTACLES IN BATHROOMS, KITCHENS AND GARAGES SHALL BE G.F.I. OR G.F.I.C. PER NATIONAL ELECTRICAL CODE REQUIREMENTS.
2. PROVIDE ONE SMOKE DETECTOR IN EACH ROOM. IN ADDITION, PROVIDE ONE SMOKE DETECTOR AS WELL AS ONE CARBON MONOXIDE DETECTOR IN EACH CORRIDOR ACCESSING BEDROOMS AND/OR ANY MAIN HALLWAY. SMOKE DETECTORS SHALL BE HARD WIRED, INTERCONNECTED, AND HAVE BATTERY BACK UP.
3. CIRCUITS SHALL BE VERIFIED WITH HOME OWNER PRIOR TO WIRE INSTALLATION.
4. FINAL SWITCHES FOR TIMERS AND DIMMERS SHALL BE VERIFIED WITH HOME OWNER.
5. ELECTRICAL DIAGRAM IS SUGGESTIVE ONLY. CONSULT OWNERS FOR FURTHER INFORMATION ON TYPE, NUMBER, AND LOCATION OF ALL ELECTRICAL RELATED UNITS. FIXTURES TO BE SELECTED BY HOME OWNER.
6. WATER HEATER SHALL BE TANKLESS TYPE, SPECIFIED AND LOCATED BY CONTRACTOR.



FLOOR PLAN

SCALE: 1/4" = 1'-0"



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113 N SPRING ST PENSACOLA, FL
ESCAMBIA COUNTY

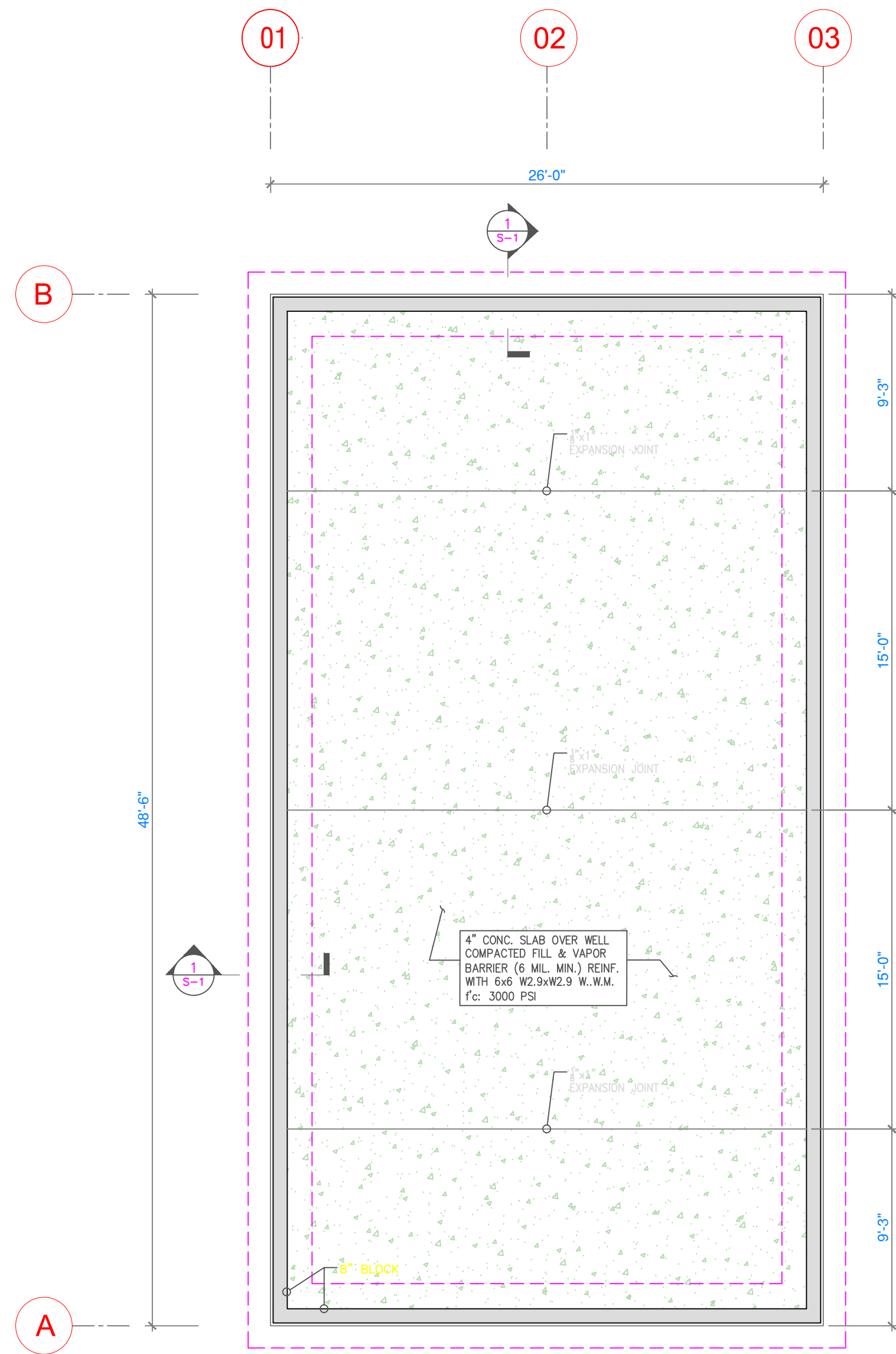
NOTE:
CONTRACTOR/SUBCONTRACTOR TO VERIFY
ALL DIMENSIONS IN THE FIELD PRIOR TO
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WITH THE CONTRACTOR TO ENSURE ALL
ASPECTS OF CONSTRUCTION COMPLY WITH
BUILDING CODE REQUIREMENTS, INCLUDING
BUT NOT LIMITED TO: HANDICAP
ACCESSIBILITY, EGRESS REQUIREMENTS,
STAIR CONSTRUCTION, AND ELECTRICAL AND
PLUMBING REQUIREMENTS. DESIGNER IS NOT
RESPONSIBLE FOR ANY CHANGES TO
ORIGINAL DESIGNS.

JOB # 24-0419

DRAWN BY: KEB

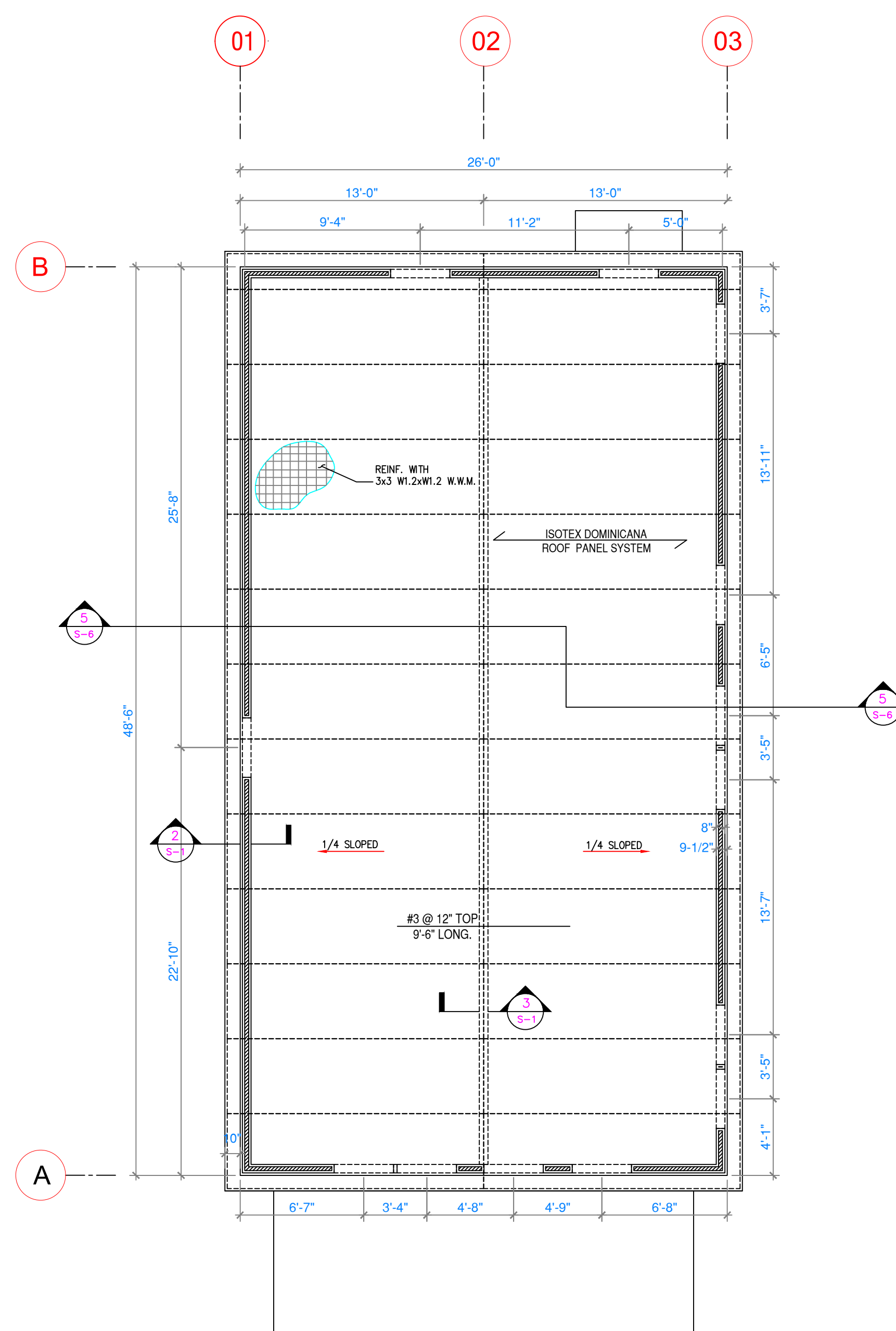
DATE: 6/5/2024

A-3



FOUNDATION PLAN

SCALE: 3/16"=1'-0"



ROOF FLOOR FRAMING PLAN

SCALE: 3/16"=1'-0"

CONCRETE SLAB ON GRADE:

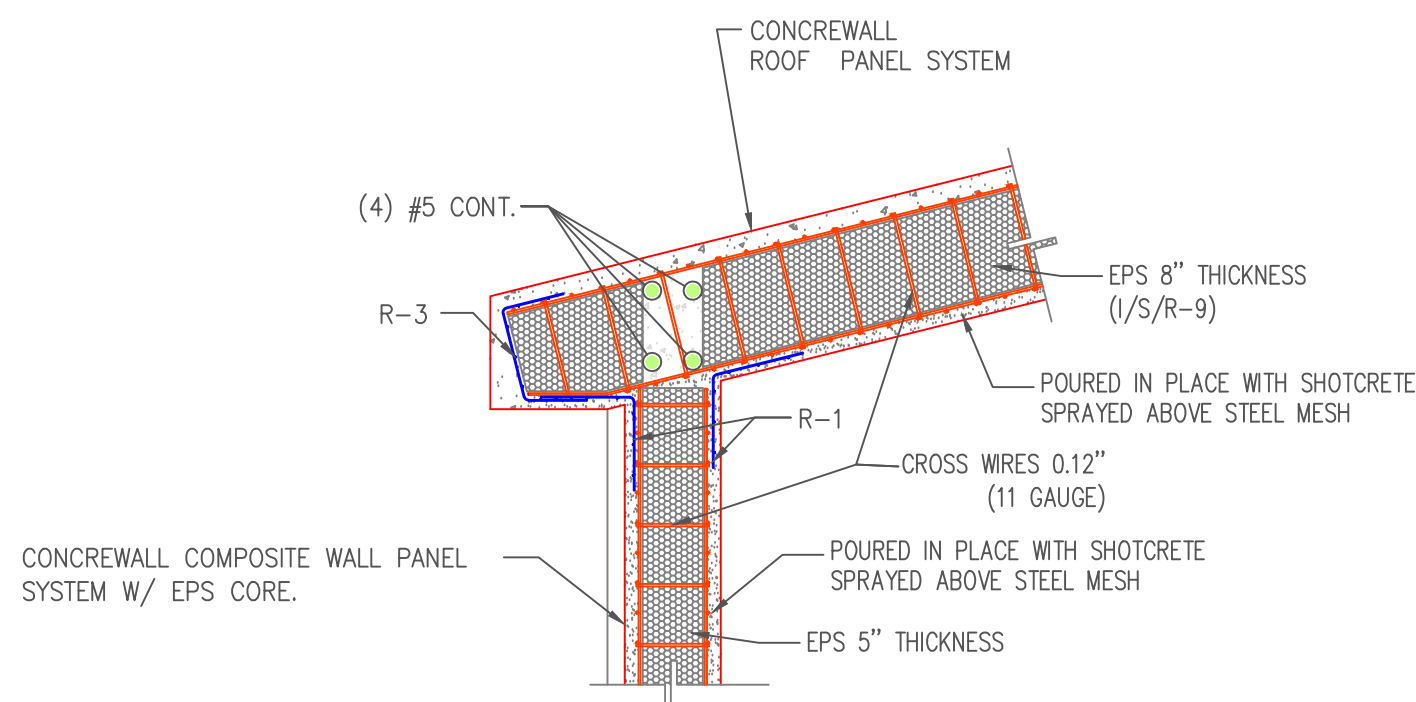
4" CONC. SLAB OVER 6 MIL VISQUEEN ON CLEAN FINE SAND FILL COMPACTED IN 12" LAYERS TO 95% OF THE STANDARD PROCTOR DENSITY TEST. SEE GEOTECHNICAL NOTE BELOW. REINFORCE W/ 6 X 6 W2.9 X W2.9 WELDED WIRE FABRIC, PLACED 1 1/2" FROM TOP OF SLAB.

TERMITE TREATMENT NOTE:

CONTRACTOR MUST PROVIDE TERMITE TREATMENT & FUMIGATOR CERTIFICATION REPORT. TERMITE TREATMENT OF SOILS UNDER SLAB ON GRADE SHALL BE PERFORMED BEFORE POURING SLAB. TERMITE PROTECTION SHALL BE PROVIDED BY REGISTERED TERMICIDES OR OTHER APPROVED METHODS OF TERMITE PROTECTION LABELED AS A PREVENTIVE TREATMENT TO NEW CONSTRUCTION.

LEGEND:

- NEW CONC. FOOTING
- DENOTES NEW ISOTEX COMPOSITE WALL PANEL SYSTEM W/ EPS CORE.
- C C C DENOTES NEW CONCRETE TIE COLUMN/COLUMN, SEE SCHEDULE ON SHEET S-4
- MWF DENOTES NEW MONOLITHIC CONTINUOUS WALL FOOTING.
- TE DENOTES THICKENED EDGE OF CONCRETE SLAB, SEE SCHEDULE ON SHEET S-4
- C.J. DENOTES CONTROL JOINT
- SHADE AREA IN THIS SHEET DENOTES TOP CONC. SLAB ON GRADE BELOW ELEV. -0'-0"

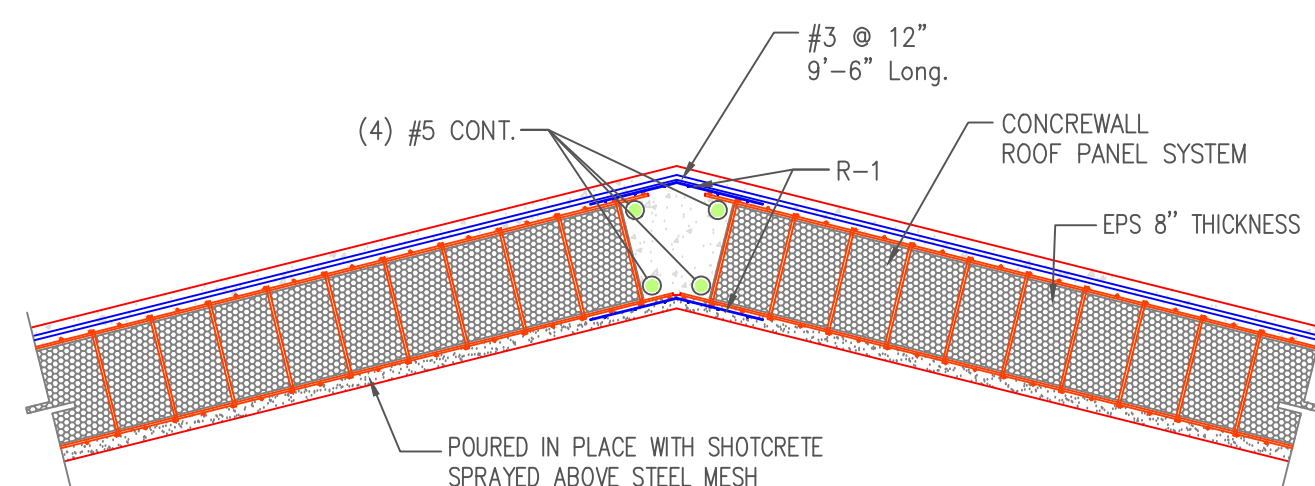


SECTION TYPICAL

SCALE : 3/4" = 1'-0"

2

S-1

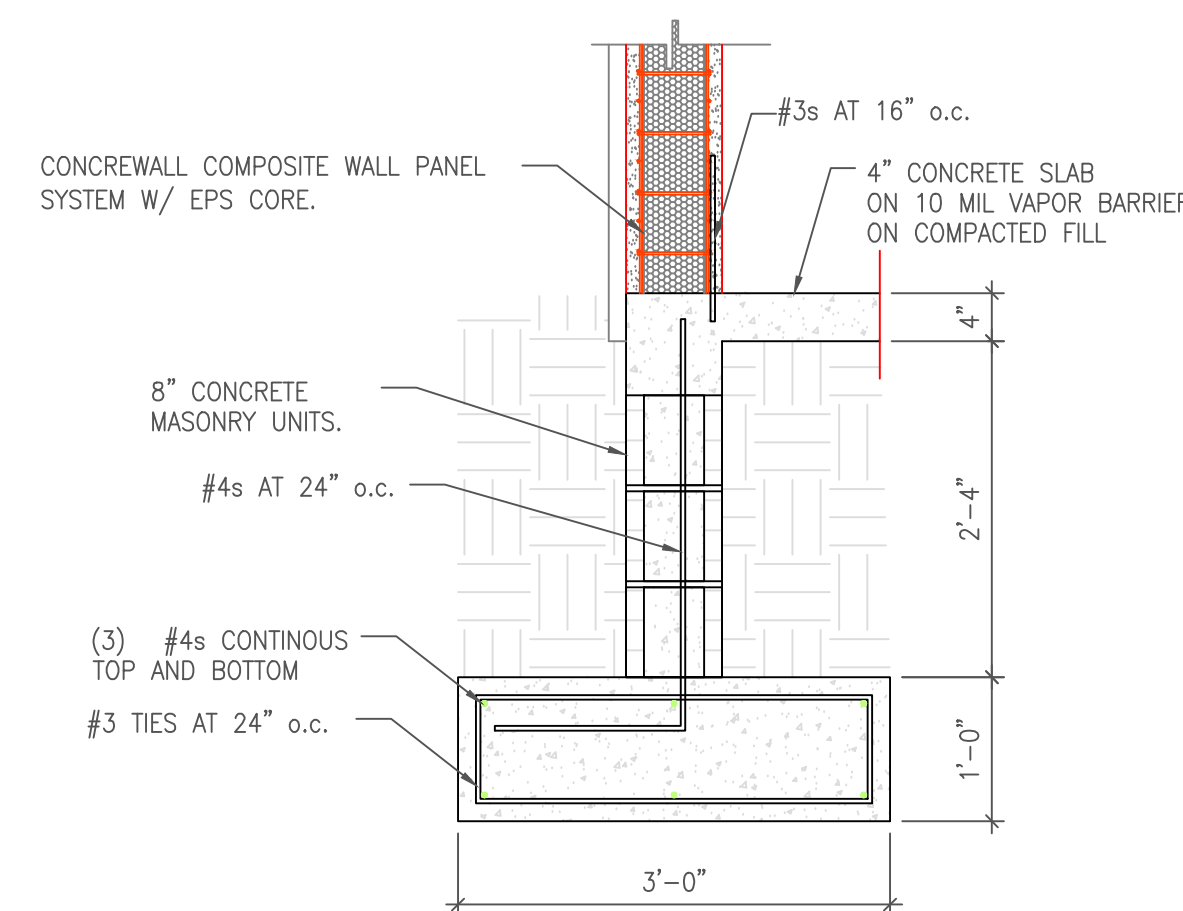


SECTION TYPICAL

SCALE : 3/4" = 1'-0"

3

S-1



SECTION TYPICAL

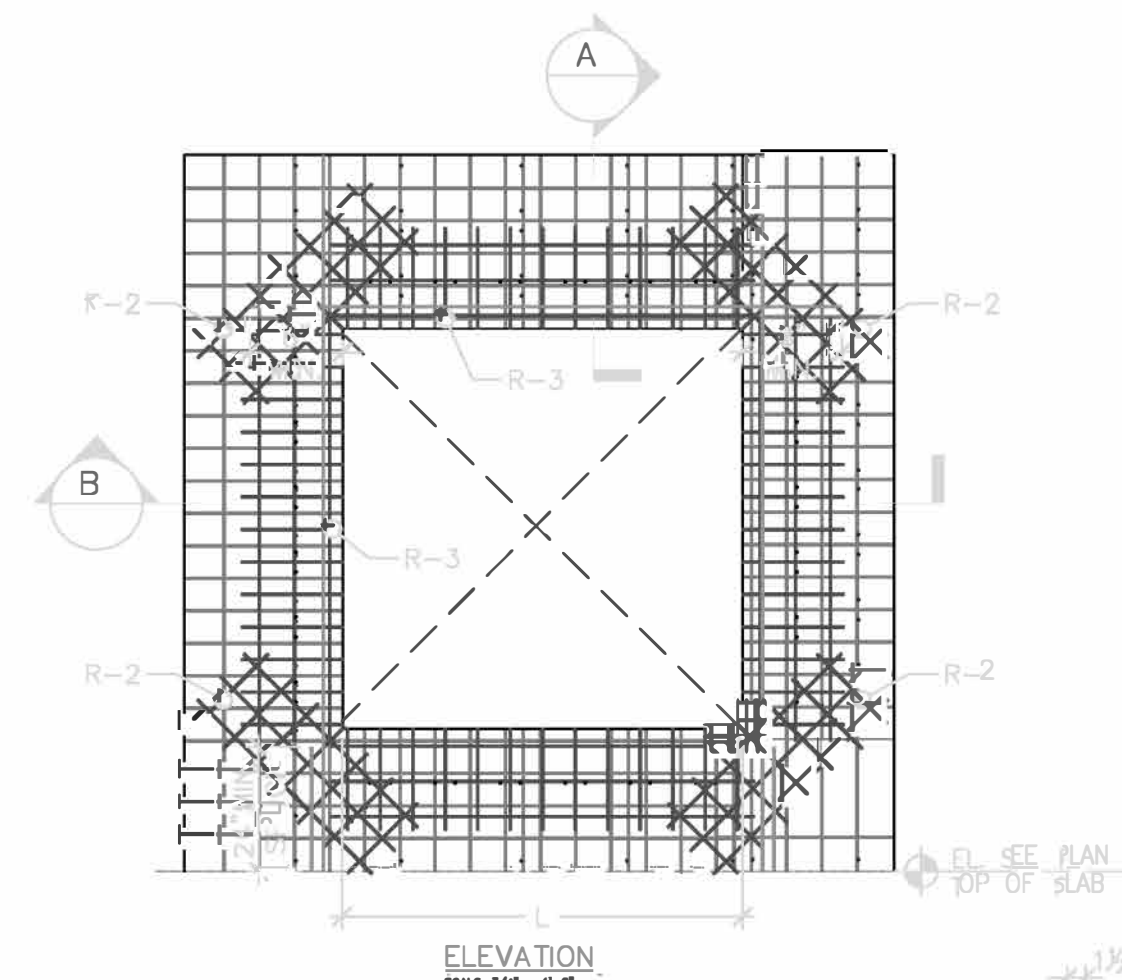
SCALE : 3/4" = 1'-0"

1

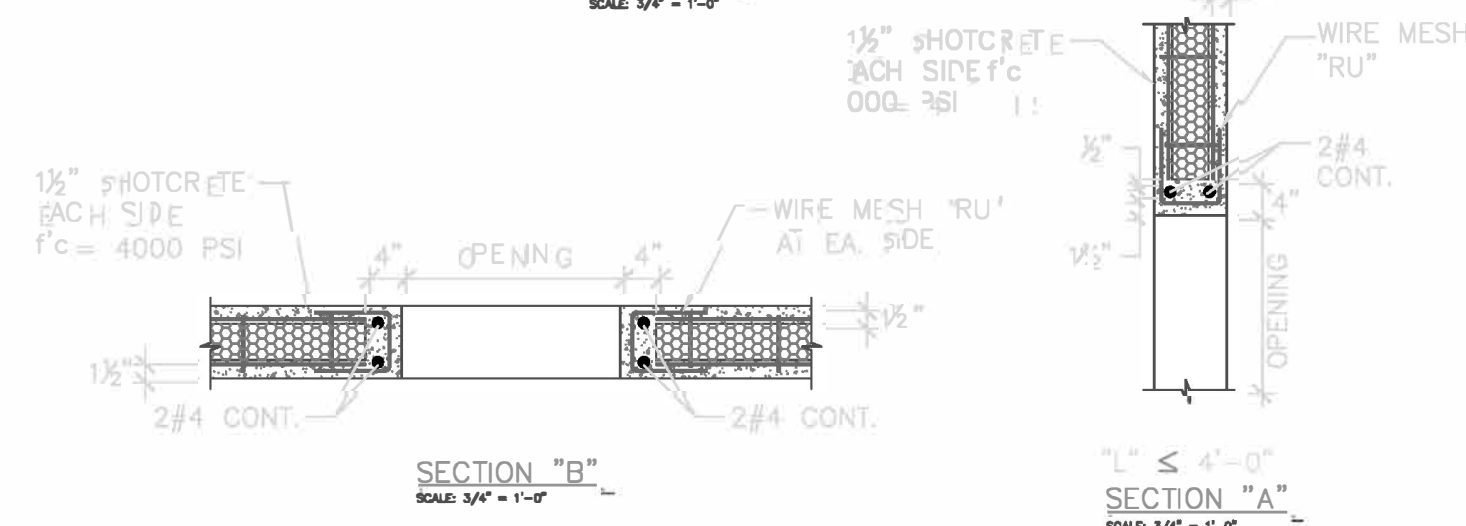
S-1

NOTES:

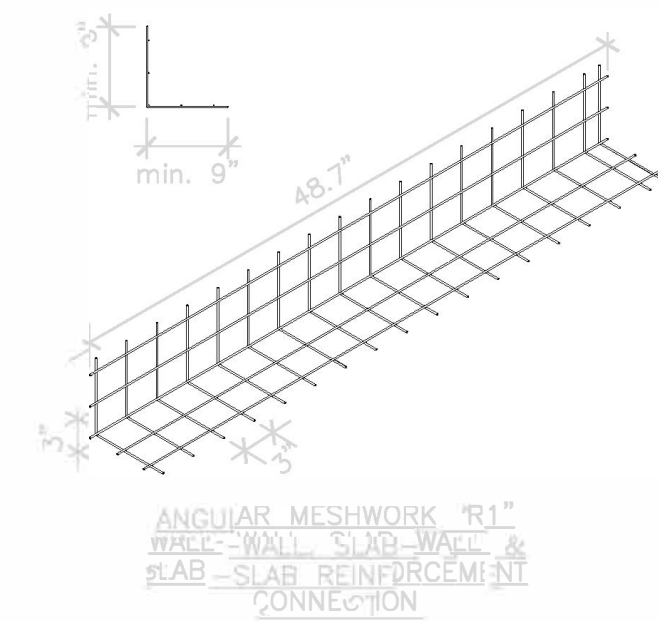
- 1.-PROVIDE #5 BOTTOM CORNERS BARS AT ALL CONT. FOOTING INTERSECTIONS, EXTEND 30" INTO EACH FOOTINGS.
- 2.- SEE SHEET S-4 FOR COLUMN SCHEDULE, BEAM SCHEDULE AND FOOTING SCHEDULE.
- 3.- SEE SHEET S-0 FOR GENERAL NOTES.
- 4.-CONTRACTOR MUST COORDINATE ALL DIMENSIONS WITH ARCHITECTURAL DRAWINGS.
- 5.-COORDINATE ALL SLAB DROPS AND DEPRESSIONS WITH ARCHITECTURAL AND MECHANICAL DRAWINGS.
- 6.-TOP OF SLAB ELEVATION = 0'-0" TYPICAL UNLESS NOTED OTHERWISE ON PLAN AS THUS
- 7.-CONTRACTOR MUST NOTIFY ARCHITECT / ENGINEER PRIOR TO PROCEEDING WITH THE WORK ANY CONDITION DIFFERENT FROM WHAT IS SHOWN IN THESE PLANS AS ENCOUNTERED IN THE FIELD.
- 8.-DIMENSIONS SHOWN SHALL BE FIELD-VERIFIED. ANY DISCREPANCIES SHALL BE NOTED AND THE ENGINEER OF RECORD NOTIFIED BEFORE CONTINUING WITH THE WORK.
- 9.-PROVIDE #5 BOTTOM CORNERS BARS AT ALL CONT. THICKENED EDGE INTERSECTIONS, EXTEND 30" INTO EACH THICKENED EDGE SLAB



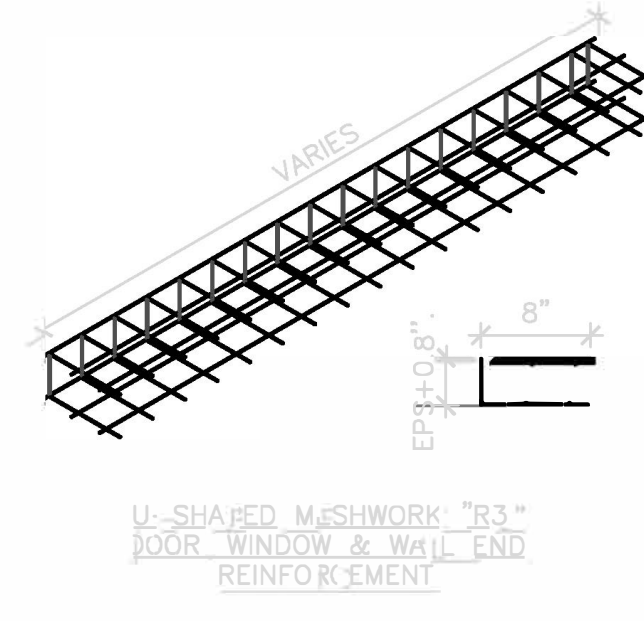
ELEVATION
SCALE: 1/4" = 1'-0"



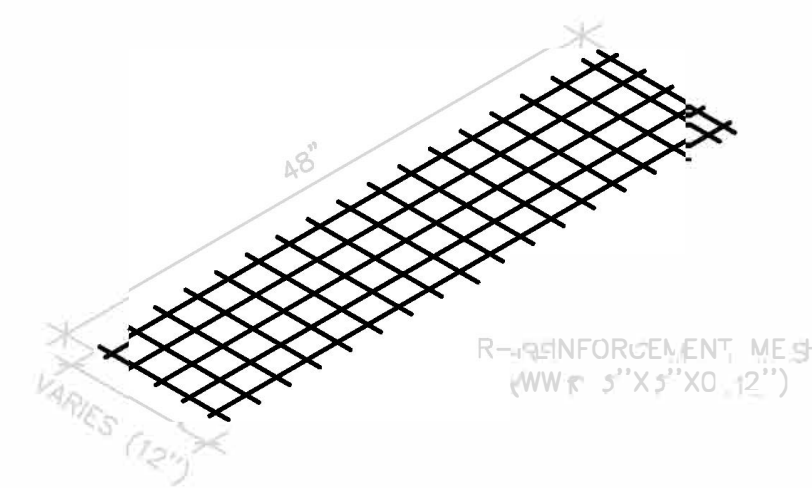
WINDOW/DOOR OPENING REINF. DETAIL
SCALE: N.T.S.



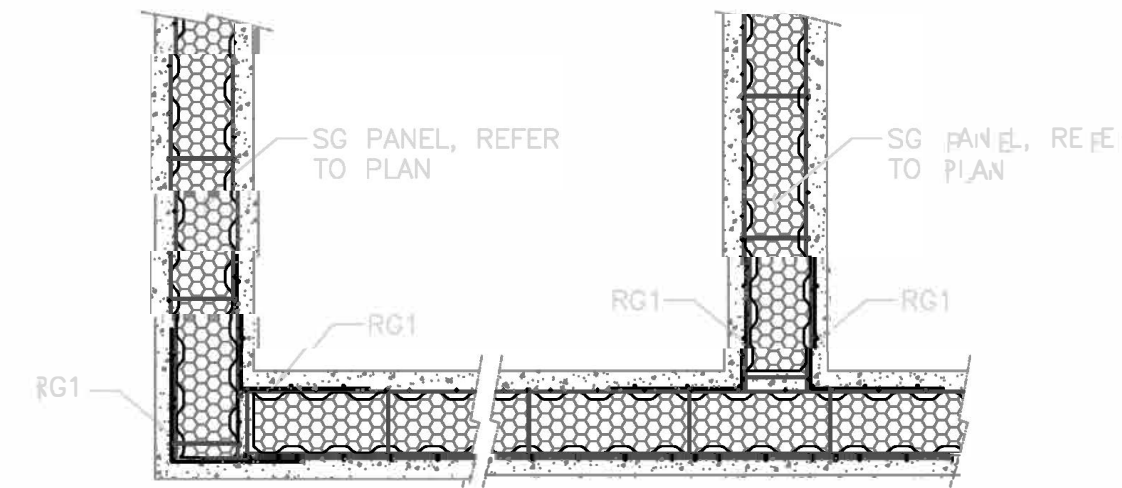
FLAT MESHWORK "R2"



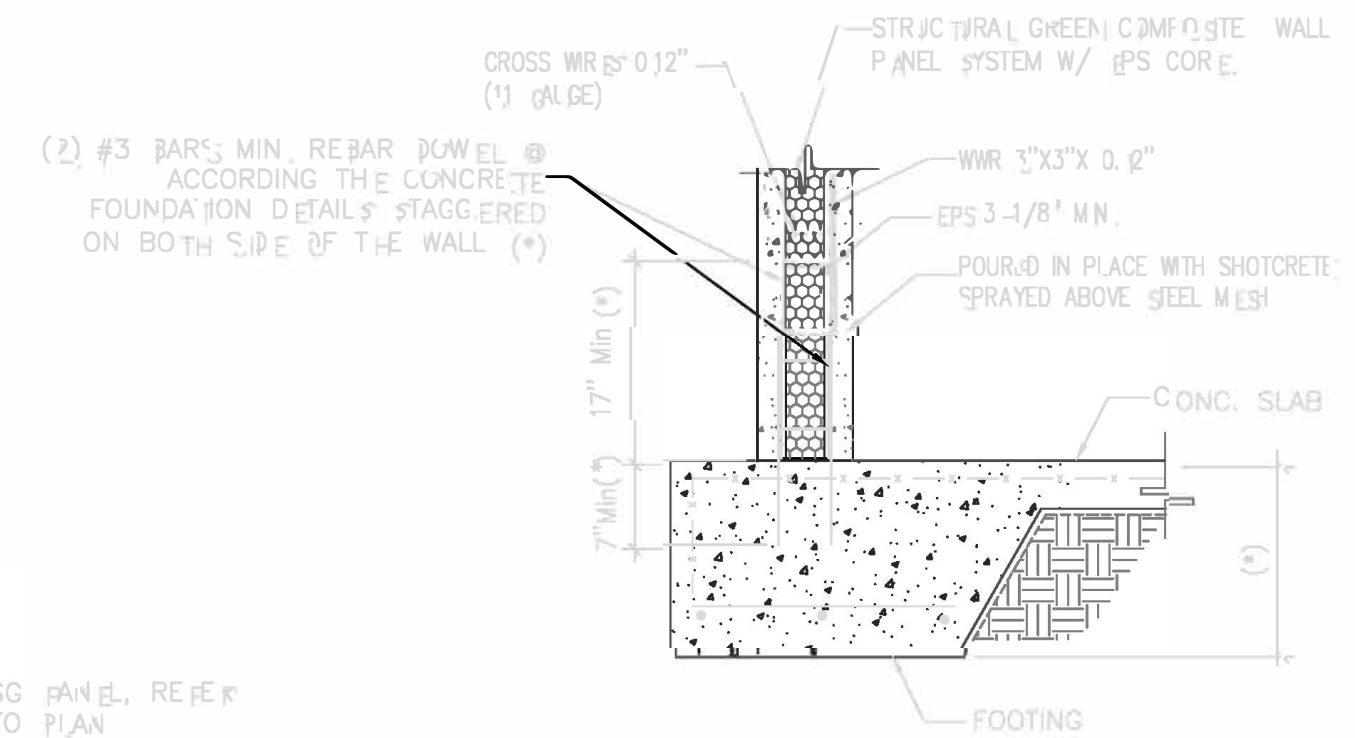
BRACING MESHWORK TYPICAL DETAIL
SCALE: N.T.S.



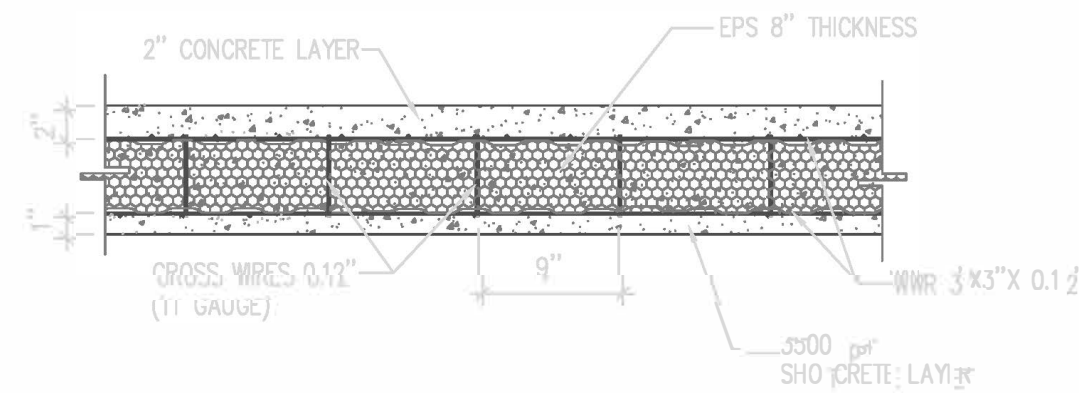
TYPICAL REINFORCEMENT DETAIL USED
ON WALL PANEL ASSEMBLIES
SCALE: N.T.S.



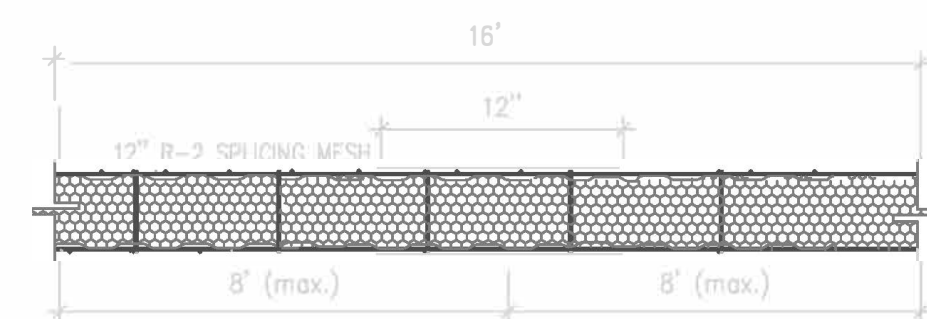
WALL PANEL JOINT DETAIL



TYPICAL CONCRETE FOUNDATION WITH
ANCHOR DOWELS LAYOUT
SCALE: N.T.S.

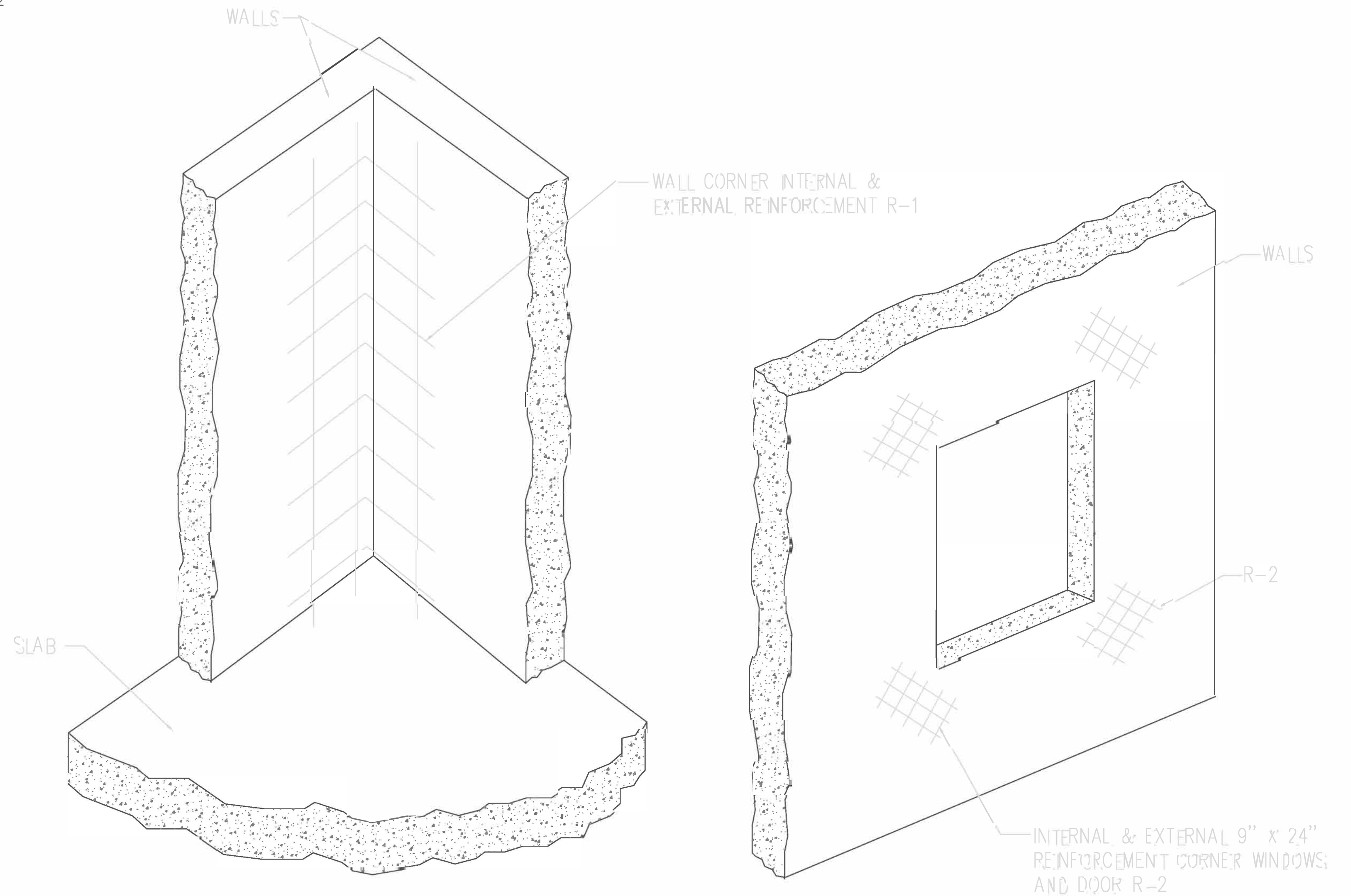


CONCREWALL COMPOSITE ROOF
PANEL SYSTEM
SCALE: N.T.S.

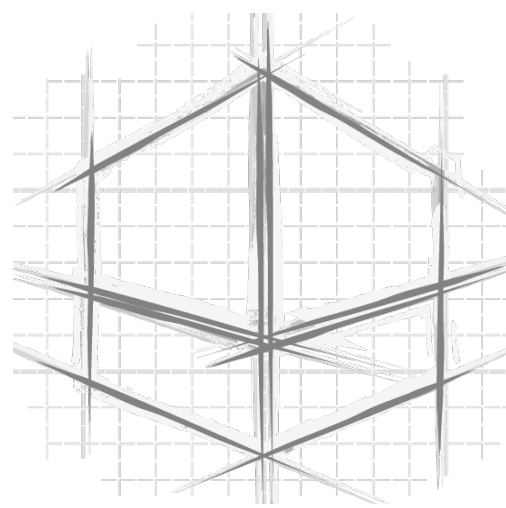


SECTION VIEW OF TYPICAL SLAB ROOF REINF. JOINT DETAILS "C1"

*NOTE: MAXIMUM STANDARD SLAB ROOF PANEL DIMENSIONS IS 16'-0" X 12'-0". WHEN THE WALL EXCEED 12' OF LENGTH, WWR TYPE R-2 FLAT REINF. MESH OF 12 INCHES WIDE WILL BE INSTALLED ON BOTH SIDES OF THE PANELS IN THE ROOF EACH 8' UP TO A MAXIMUM OF 16' ACCORDING TO REINF. ROOF DETAILS "C1"



PROPOSED RENOVATION & ADDITION



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(850) 380-0528
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PREPARED FOR: **JOHNSON CONSTRUCTION**
PROPOSED RENOVATION AND ADDITION
1491 N E ST PENSACOLA, FL
ESCAMBIA COUNTY

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JOB # 24-0516
DRAWN BY: KEB
DATE: 5/17/2024

A-1



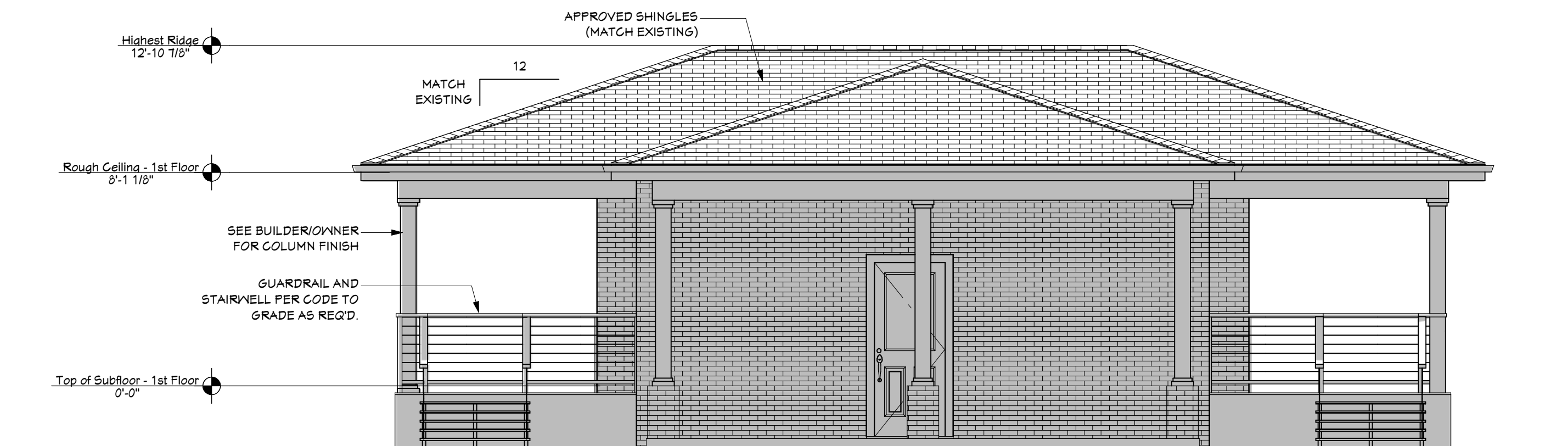
FRONT ELEVATION

SCALE: 1/4" = 1'-0"



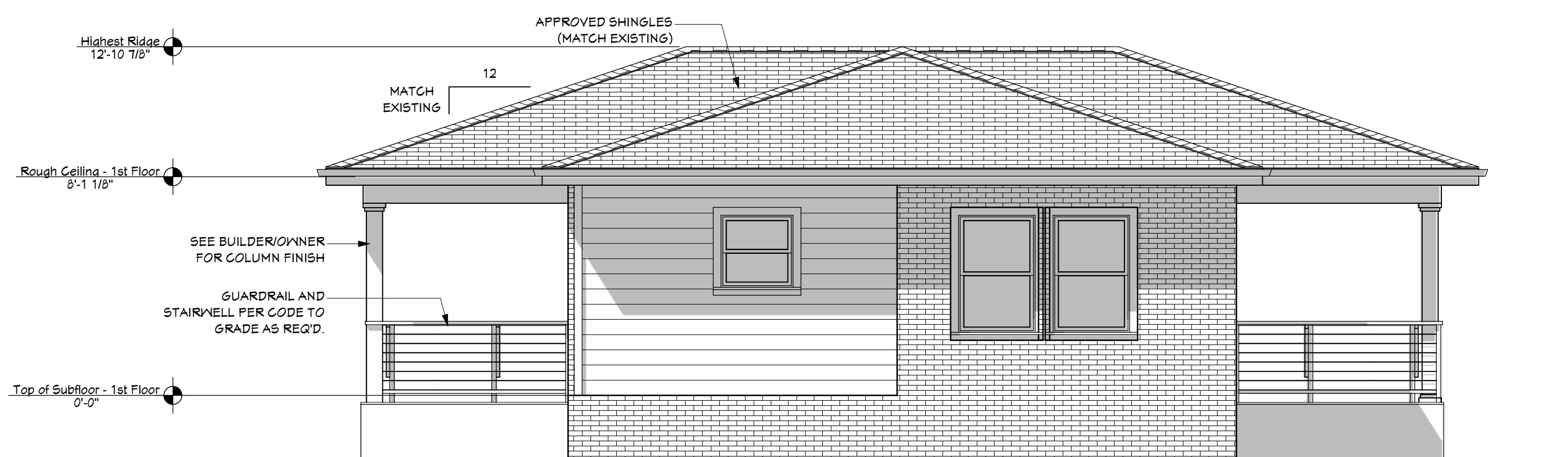
REAR ELEVATION

SCALE: 1/4" = 1'-0"



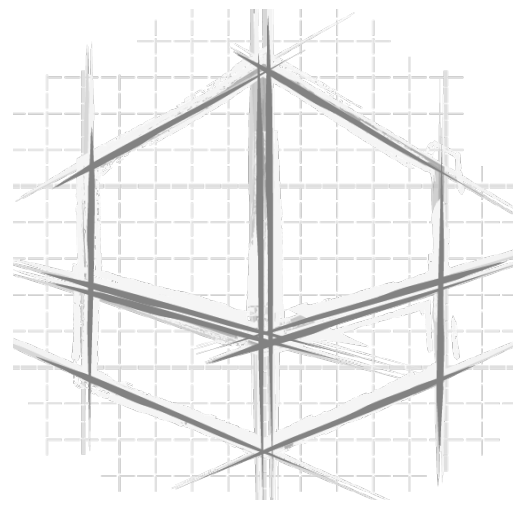
LEFT ELEVATION

SCALE: 1/4" = 1'-0"



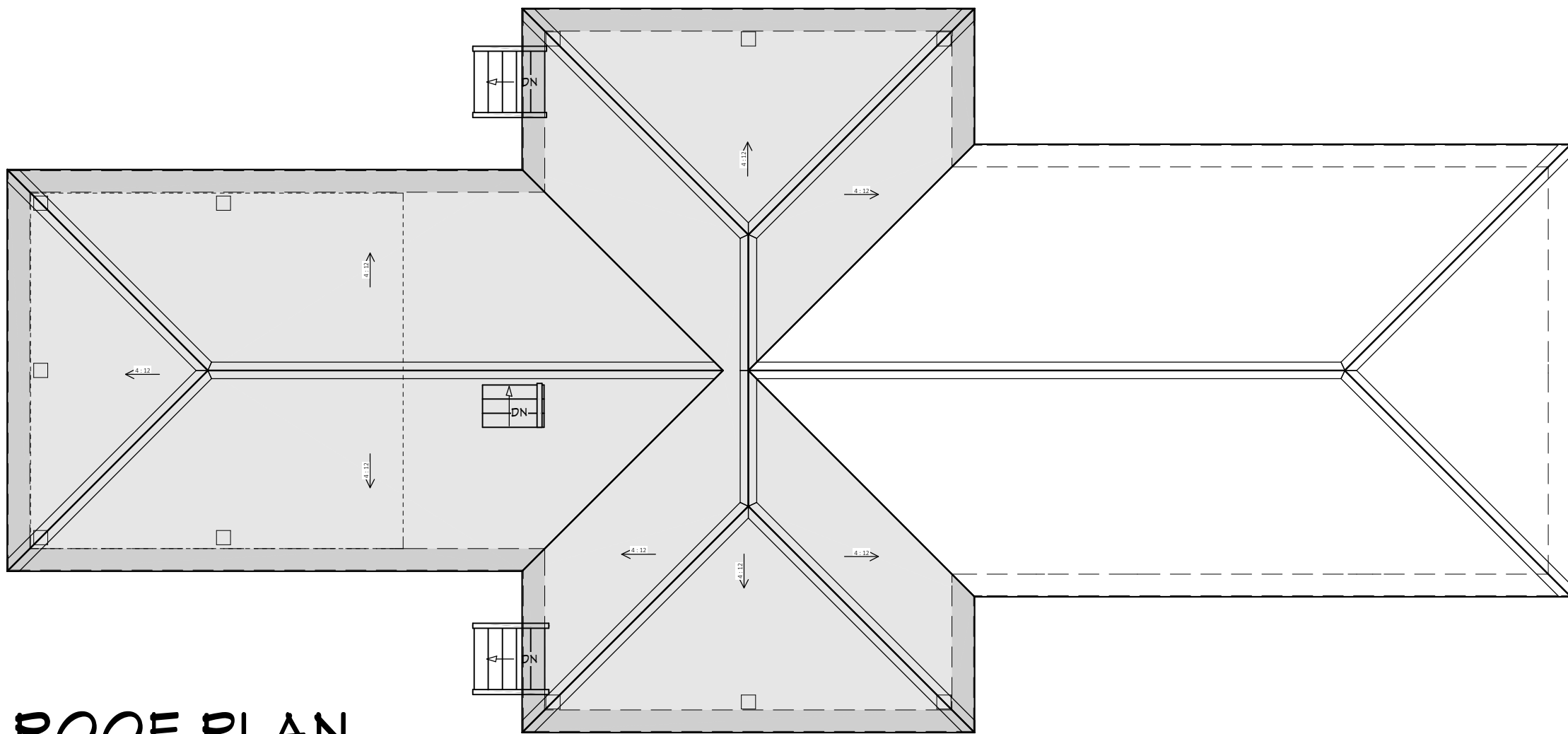
RIGHT ELEVATION

SCALE: 1/4" = 1'-0"



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ESCAMBIA COUNTY



ROOF PLAN

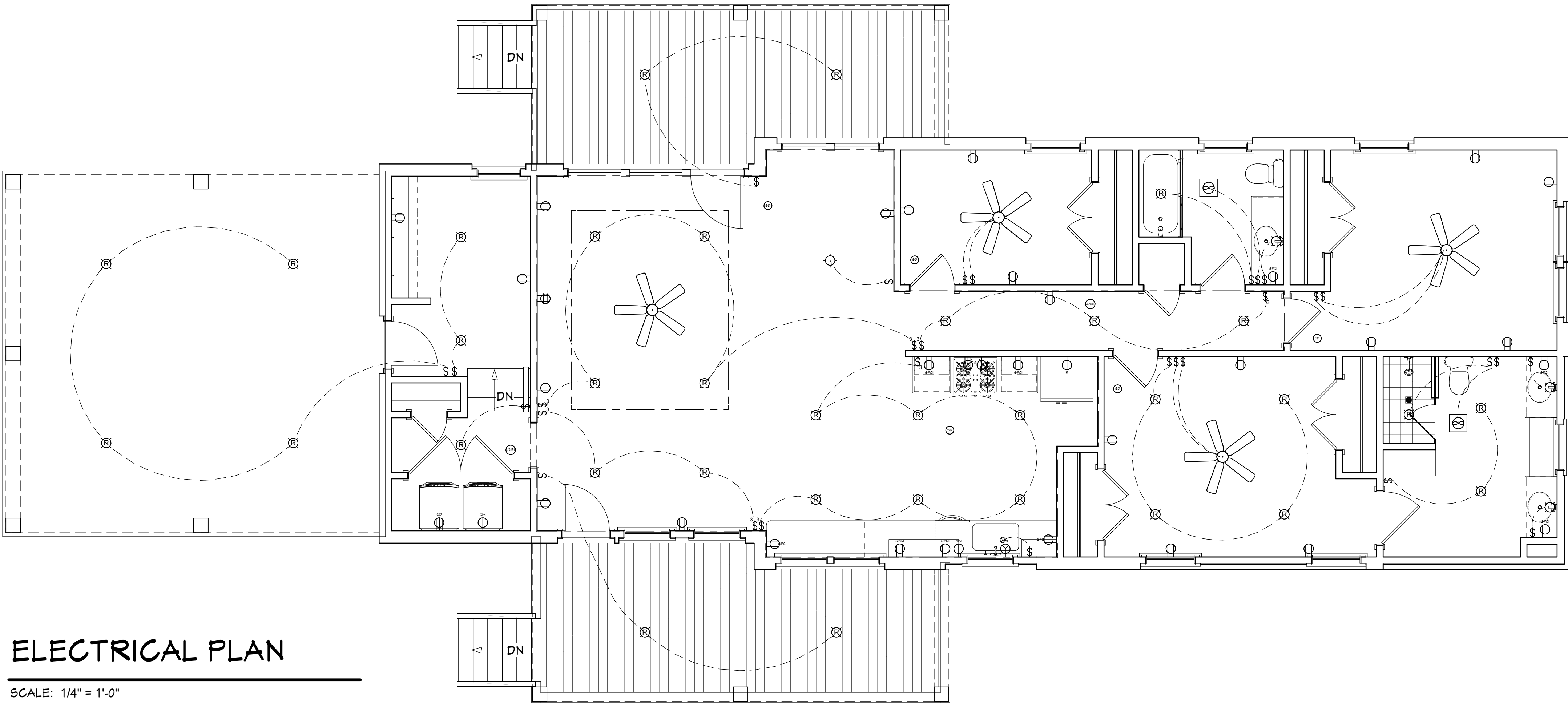
SCALE: 1/8" = 1'-0"

NOTE:
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JOB # 24-0516
DRAWN BY: KEB
DATE: 5/17/2024

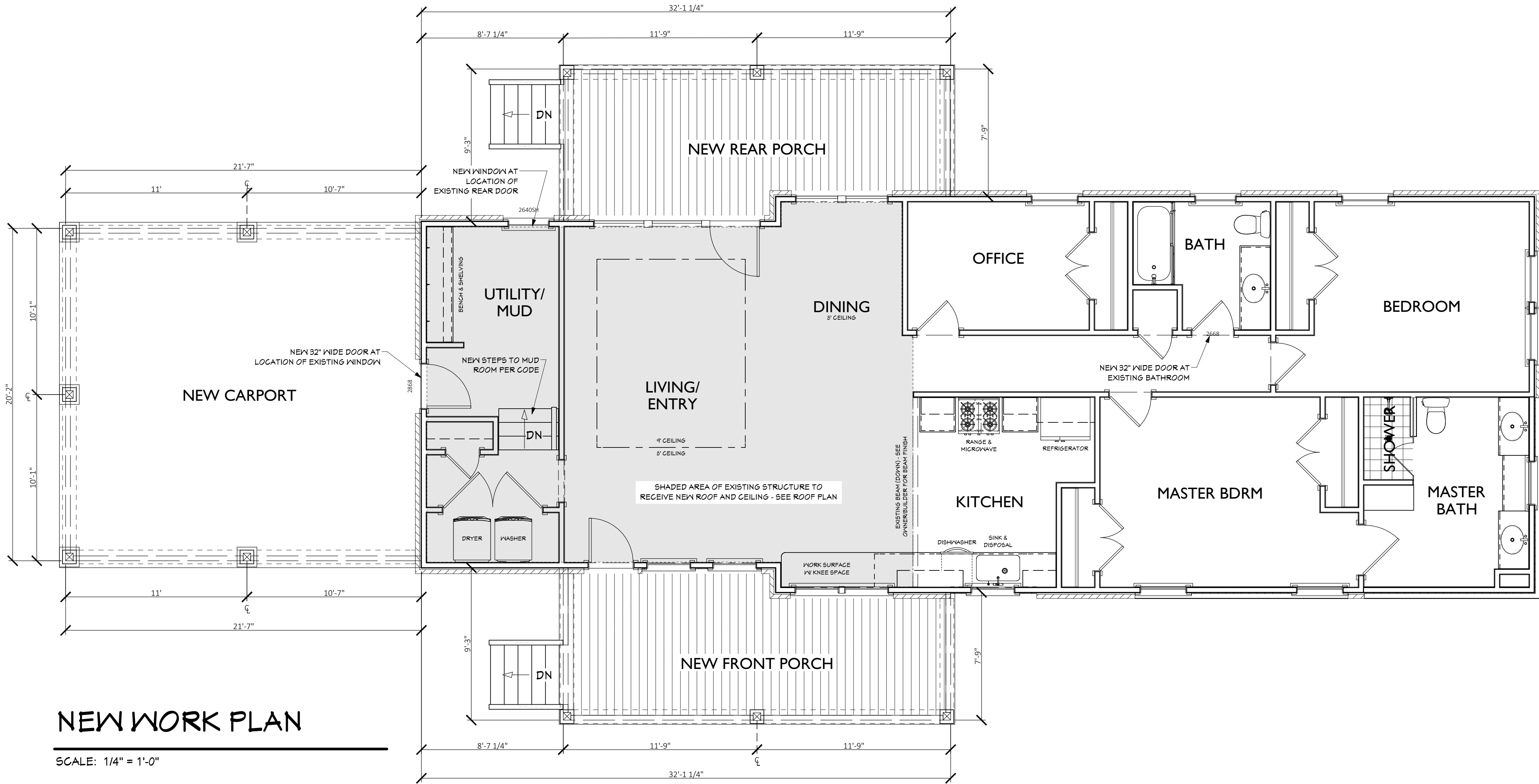
A-2

- ELECTRICAL NOTES:**
HOME OWNER SHALL DO A WALK-THRU WITH RELEVANT INSTALLERS TO VERIFY THE EXACT LOCATION FOR OUTLETS, LIGHTS, SWITCHES, CABLE, DATA, PHONE, AUDIO, ETC.
- ELECTRICAL NOTES:**
1. ELECTRICAL RECEPTACLES IN BATHROOMS, KITCHENS AND GARAGES SHALL BE G.F.I. OR G.F.I.C. PER NATIONAL ELECTRICAL CODE REQUIREMENTS.
2. PROVIDE ONE SMOKE DETECTOR IN EACH ROOM. IN ADDITION, PROVIDE ONE SMOKE DETECTOR AS WELL AS ONE CARBON MONOXIDE DETECTOR IN EACH CORRIDOR ACCESSING BEDROOMS AND/OR ANY MAIN HALLWAY. SMOKE DETECTORS SHALL BE HARD WIRED, INTERCONNECTED, AND HAVE BATTERY BACK UP.
3. CIRCUITS SHALL BE VERIFIED WITH HOME OWNER PRIOR TO WIRE INSTALLATION.
4. FINAL SWITCHES FOR TIMERS AND DIMMERS SHALL BE VERIFIED WITH HOME OWNER.
5. ELECTRICAL DIAGRAM IS SUGGESTIVE ONLY. CONSULT OWNERS FOR FURTHER INFORMATION ON TYPE, NUMBER, AND LOCATION OF ALL ELECTRICAL RELATED UNITS. FIXTURES TO BE SELECTED BY HOME OWNER.
6. WATER HEATER MAY BE TANK-LESS TYPE, SPECIFIED AND LOCATED BY CONTRACTOR.



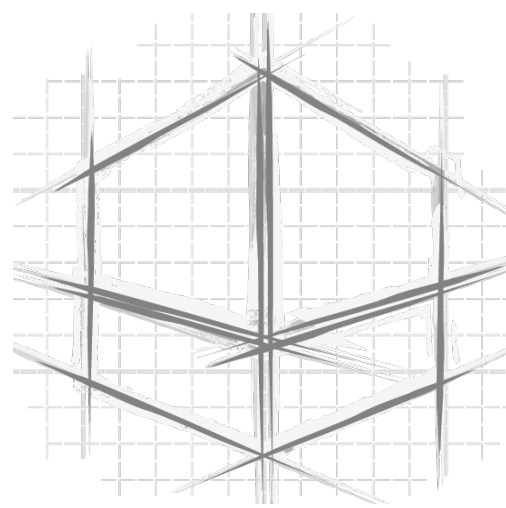
ELECTRICAL PLAN

SCALE: 1/4" = 1'-0"



NEW WORK PLAN

SCALE: 1/4" = 1'-0"



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JOB # 24-0516
DRAWN BY: KEB
DATE: 5/17/2024

A-3



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-499

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

PRELIMINARY RATE RESOLUTION TO IMPOSE AN ANNUAL STORMWATER ASSESSMENT ON REAL PROPERTY IN THE CITY OF PENSACOLA

RECOMMENDATION:

That City Council adopt Resolution No. 2024-45.

A RESOLUTION OF THE CITY OF PENSACOLA, FLORIDA, RELATING TO THE PROVISION OF STORMWATER MANAGEMENT SERVICES; ESTIMATING THE COST OF STORMWATER MANAGEMENT SERVICES PROVIDED BY THE CITY'S STORMWATER UTILITY; DESCRIBING THE METHOD OF CHARGING THE STORMWATER SERVICE COST OF STORMWATER MANAGEMENT SERVICES AGAINST ASSESSED PROPERTY; DIRECTING THE STORMWATER UTILITY DIRECTOR TO PREPARE OR DIRECT THE PREPARATION OF A STORMWATER ASSESSMENT ROLL; AUTHORIZING A PUBLIC HEARING FOR THE PROPOSED STORMWATER SERVICE ASSESSMENTS AND DIRECTING THE PROVISION OF NOTICE THEREOF; PROVIDING FOR COLLECTION; AND PROVIDING AN EFFECTIVE DATE.

HEARING REQUIRED:

SUMMARY:

The City of Pensacola established a stormwater assessment fee in 2001 to provide a dedicated funding source for stormwater management costs. Since its inception, the fee has generated over \$51 million in revenue and anticipates an average of approximately \$5,180,136 per fiscal year for the next five fiscal years. The fee has allowed the City to provide critical maintenance and upkeep of City stormwater facilities that would not otherwise be completed. The assessment charge is based on the amount of impervious area located on properties and is derived from data provided by the Escambia County Property Appraiser. The City may charge an amount sufficient to recover the annual operating costs incurred to manage the impact of stormwater throughout the City. In 2024, the City's stormwater assessment consultant, Government Services Group, Inc. (GSG) prepared a study to determine what the City would need to charge for stormwater management, according to an updated analysis of stormwater operating costs inclusive of contracted stormwater vault and pond maintenance.

Based on the study, it was determined that to fully fund the needs of the stormwater maintenance program the City would need to charge the stormwater assessment rate of \$120.49 per Equivalent Stormwater Unit (ESU) per 2,998 square feet of impervious area for the next five fiscal years. Including the costs for capital equipment replacement would increase the needed assessment to \$136.01 per ESU annually for the next five fiscal years. The rate of \$120.49 per ESU would generate an average of approximately \$5.18 million annually. Historically, this rate has been set well below the assessments recommended by the study.

At the City Council meeting on August 8, 2024, Council will need to hold a public hearing and adopt the final annual assessment resolution setting the desired assessment rate for FY 2024-25 and approving the 2025 assessment roll.

A summary of current and proposed residential and commercial charges is provided below:

Residential	Assigned ESU's	Current Rate	Proposed Rate	Maximum Rate
Small	.44	\$35.20	\$53.02	\$59.84
Small-Medium	.68	\$54.40	\$81.93	\$92.49
Medium	1.00	\$80.00	\$120.49	\$136.01
Large	1.53	\$122.40	\$184.35	\$208.10
Very Large	Measured			

Commercial Example Properties*	Current	New
Small	\$2,324.00	\$3,500.29
Medium	\$4,447.20	\$6,698.15
Large	\$9,622.40	\$14,492.78
Very Large	\$25,093.60	\$37,794.73

* Commercial properties are individually assessed by dividing the impervious surface area by 2,998 square feet. The above properties are actual properties and are shown only as examples of commercial assessments.

PRIOR ACTION:

May 27, 2021 - City Council passed Resolution No. 2021-31 indicating the Council's intent to increase the City's stormwater assessment rate for FY 2021-22 to \$76.12 per Equivalent Stormwater Unit (ESU).

August 12, 2021 - City Council Resolution 2021-55 increasing the base ESU rate to \$76.12.

August 18, 2022 - City Council Resolution 2022-70 increasing the base ESU rate to \$80.00.

FUNDING:

Budget:	<u>\$5,180,136</u>	ESU = \$120.49
Actual:	\$2,487,057	Personnel
	1,953,929	Operating
	0	Capital
	843,750	Other
	<u>(104,600)</u>	Offsetting Revenues
	<u>\$5,180,136</u>	TOTAL
Budget:	<u>\$5,847,223</u>	ESU =\$136.01
Actual:	\$2,487,057	Personnel
	1,953,929	Operating
	612,651	Capital
	898,186	Other
	<u>(104,600)</u>	Offsetting Revenues
	<u>\$5,847,223</u>	TOTAL

FINANCIAL IMPACT:

If the ESU rate is \$120.49, annual revenue will be estimated at \$5,180,136. If the ESU rate is \$136.01, annual revenue will be estimated at \$5,847,223.

LEGAL REVIEW ONLY BY CITY ATTORNEY: No

5/15/2024

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Lovoy, Finance Director
Amy Tootle - Public Works Director

ATTACHMENTS:

1. Resolution No. 2024-45

PRESENTATION: No

**RESOLUTION
NO. 2024-45**

**A RESOLUTION
TO BE ENTITLED:**

**A RESOLUTION OF THE CITY OF PENSACOLA, FLORIDA,
RELATING TO THE PROVISION OF STORMWATER
MANAGEMENT SERVICES; ESTIMATING THE COST OF
STORMWATER MANAGEMENT SERVICES PROVIDED
BY THE CITY'S STORMWATER UTILITY; DESCRIBING
THE METHOD OF CHARGING THE STORMWATER
SERVICE COST OF STORMWATER MANAGEMENT
SERVICES AGAINST ASSESSED PROPERTY; DIRECTING
THE STORMWATER UTILITY DIRECTOR TO PREPARE
OR DIRECT THE PREPARATION OF A STORMWATER
ASSESSMENT ROLL; AUTHORIZING A PUBLIC HEARING
FOR THE PROPOSED STORMWATER SERVICE
ASSESSMENTS AND DIRECTING THE PROVISION OF
NOTICE THEREOF; PROVIDING FOR COLLECTION;
AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City Council of Pensacola, Florida, has enacted Ordinance No. 52-00 (the "Ordinance"), which authorizes the imposition of Stormwater Service Assessments against real property specially benefited by the City's Stormwater Management Services;

WHEREAS, the City Council desires to reimpose a Stormwater Service Assessment program using the tax bill collection method for the Fiscal Year beginning on October 1, 2024;

WHEREAS, pursuant to Section 3.08 of the Ordinance, in order to reimpose Stormwater Service Assessments for the Fiscal Year beginning October 1, 2024, the City Council must adopt an Annual Stormwater Assessment Resolution during its budget adoption process for each Fiscal Year, which establishes the rate of assessment and approves the updated Stormwater Assessment Roll for the upcoming Fiscal Year;

WHEREAS, in accordance with the Ordinance and Section 197.3632, Florida Statutes, if the proposed Stormwater Service Assessment for any Tax Parcel of Developed Property exceeds the maximum established amount or will be imposed against property not previously assessed,

then the City must provide notice to the owner of such property in accordance with Section 3.05 and 3.06 of the Ordinance; and

WHEREAS, due to the increased costs of Stormwater Management Services experienced by the City, the City Council is adopting this Preliminary Rate Resolution to establish new maximum Stormwater Service Assessment rates, establish a public hearing to consider the implementation of those new maximum rates, and provide for the provision of notice to the owner of such property in accordance with Section 3.05 and 3.06 of the Ordinance.

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

SECTION 1. RECITALS. The above recitals are true and correct and are incorporated herein by reference.

SECTION 2. AUTHORITY. This Resolution is adopted pursuant to the provisions of the Ordinance, Resolution No. 18-10 (the "Amended and Restated Initial Assessment Resolution"), Resolution No. 36-10 (the "Amended and Restated Final Assessment Resolution"), Article VIII, Section 2(b), Florida Constitution, sections 166.021 and 166.041, Florida Statutes, the City Charter of the City of Pensacola, and other applicable provisions of law.

SECTION 3. PURPOSE AND DEFINITIONS.

(A) This Resolution constitutes a preliminary rate resolution (the "Preliminary Rate Resolution") to initiate the annual process for updating the Stormwater Assessment Roll, including the establishment of new maximum Stormwater Service Assessment rates for the Fiscal Year beginning October 1, 2024 and future Fiscal Years, establishment of a public hearing to consider the implementation of those new maximum rates, and provide for the provision of notice to the owner of such property in accordance with Section 3.05 and 3.06 of the Ordinance.

(B) All capitalized words and terms not otherwise defined herein shall have the meanings

set forth in the Ordinance, the Amended and Restated Initial Assessment Resolution, and the Amended and Restated Final Assessment Resolution.

(C) Unless the context indicates otherwise, words imparting the singular number, include the plural number, and vice versa; and the term "hereafter" means after, and the term "heretofore" means before, the effective date of this resolution. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

SECTION 4. LEGISLATIVE DETERMINATIONS.

(A) The legislative determinations embodied in the Ordinance, the Amended and Restated Initial Assessment Resolution, and the Amended and Restated Final Assessment Resolution are affirmed and incorporated herein by reference.

(B) It is hereby ascertained, determined, and declared that each parcel of Assessed Property within the Stormwater Service Area will be specially benefited by the City's Stormwater Management Services in an amount not less than the Stormwater Assessment for such Tax Parcel, computed in the manner set forth in the Amended and Restated Initial Assessment Resolution, and set forth in the updated Stormwater Assessment Roll.

(C) In accordance with Section 163.3162(3), Florida Statutes, the City is prohibited from charging a Stormwater Service Assessment on certain agricultural property, if such farm operation has a National Pollution Discharge Elimination System Permit, an environmental resource permit, a works-of-the-district permit, or if it has implemented best management practices adopted as rules by the Florida Department of Environmental Protection, the Department of Agricultural and Consumer Services, or an appropriate water management district. Accordingly, any Owner of such agricultural property demonstrating that they meet the outlined requirements shall be exempted from the Stormwater Service Assessment.

SECTION 5. PROVISION OF STORMWATER MANAGEMENT SERVICES; DETERMINATION OF STORMWATER SERVICE COST; ESTABLISHMENT OF STORMWATER ASSESSMENTS.

(A) The Stormwater Service Cost to be assessed and apportioned among benefited parcels for the Fiscal Year beginning October 1, 2024, is \$5,180,136.00. The approval of this Preliminary Rate Resolution determines the amount of the Stormwater Service Cost. The remainder of such Fiscal Year budget for Stormwater Management Services shall be funded from available City revenue other than Stormwater Service Assessments.

(B) A Stormwater Service Assessment shall be imposed against all Assessed Property within the Stormwater Service Area. For the Fiscal Year in which Stormwater Service Assessments for Stormwater Management Services are imposed, the estimated Stormwater Service Cost shall be allocated among all Tax Parcels of Assessed Property within the Stormwater Service Area based upon each parcel's number of Net ESUs as determined in the manner set forth in the Amended and Restated Initial Assessment Resolution.

(C) An annual rate of assessment equal to \$120.49 per Net ESU for Stormwater Management Services is hereby approved for each Tax Parcel of Developed Property for the Fiscal Year beginning October 1, 2024.

(D) The maximum rate of assessment equal to \$136.01 per Net ESU for Stormwater Management Services is hereby approved for future Fiscal Years.

(E) The rate of the Stormwater Service Assessments established in this Preliminary Rate Resolution shall be the rates applied by the Stormwater Utility Director in the preparation of the updated Stormwater Assessment Roll for the Fiscal Year commencing October 1, 2024, as provided in Section 6 of this Preliminary Rate Resolution.

(F) Upon the imposition of Stormwater Service Assessments for Stormwater

Management Services against Tax Parcels located within the Stormwater Service Area, the Stormwater Utility created in Section 2.01 of the Ordinance shall provide Stormwater Management Services to such property. All or any portion of the Stormwater Service Cost to provide such Stormwater Management Services shall be funded from proceeds of the Stormwater Service Assessments. The remaining cost, if any, required to provide Stormwater Management Services shall be funded by legally available City revenues.

(G) The Stormwater Service Area, as established in Section 2.01 of the Amended and Restated Initial Assessment Resolution, includes the entire incorporated area of the City. This Stormwater Service area is hereby confirmed and established as the service area for the Fiscal year beginning on October 1, 2024.

SECTION 6. STORMWATER ASSESSMENT ROLL.

(A) The Stormwater Utility Director is hereby directed to prepare, or direct the preparation of, the updated Stormwater Assessment Roll for the Fiscal Year beginning October 1, 2024, in the manner provided in Section 3.04 of the Ordinance.

(B) Such updated Stormwater Assessment Roll shall contain the following: (1) a summary description of all Assessed Property within the Stormwater Service Area conforming to the description contained on the Tax Roll; (2) the name and address of the Owner of each Tax Parcel as shown on the Tax Roll, if available; (3) the number of ESUs attributable to the Tax Parcel; and (4) the maximum amount of the Stormwater Service Assessment for Stormwater Management Services to become due in any Fiscal Year.

(C) The updated Stormwater Assessment Roll shall be open to public inspection. The foregoing shall not be construed to require that the Stormwater Assessment Roll be in printed form if the amount of the Stormwater Service Assessment for each Tax Parcel can be determined by use of

computer terminal available to the public.

SECTION 7. AUTHORIZATION OF PUBLIC HEARING. There is hereby established a public hearing to be held at 5:30 p.m. on August 8, 2024, in the City Council Chambers in City Hall, 222 West Main Street, Pensacola, Florida, for the purpose of (1) receiving and considering any comments on the Stormwater Service Assessments from affected property owners; and (2) authorizing the imposition of such Stormwater Service Assessments for Stormwater Management Services and collection on the same bill as ad valorem taxes.

SECTION 8. NOTICE BY PUBLICATION. The Stormwater Utility Director shall publish a notice of the public hearing authorized by Section 7 of this resolution, as required by Section 3.05 of the Ordinance, in substantially the form attached hereto as Appendix A. Such notice shall be published not later than July 18, 2024, in a newspaper generally circulated in the City.

SECTION 9. NOTICE BY MAIL.

(A) The Stormwater Utility Director shall provide notice of the public hearing authorized by Section 7 of this resolution by first class mail to the owner of each Tax Parcel of Assessed Property, as required by Section 3.06 of the Ordinance, in substantially the form attached hereto as Appendix B. Such notices shall be mailed not later than July 18, 2024.

(B) For Tax Parcels with exempt "home addresses" pursuant to Section 119.071(4), Florida Statutes, the Stormwater Utility Director shall work with the Property Appraiser and/or Tax Collector for provision of notice.

SECTION 10. METHOD OF COLLECTION.

(A) The Stormwater Service Assessments shall be collected from all Assessed Property, except Government Property, pursuant to the Uniform Assessment Collection Act as provided in Section 4.01 of the Ordinance.

(B) The Stormwater Service Assessments shall be collected from all Government Property in accordance with Section 4.04 of the Ordinance.

SECTION 11. EFFECTIVE DATE. This resolution 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.

DULY ADOPTED this 13th day of June, 2024.

CITY OF PENSACOLA, FLORIDA

Casey Jones
President of the City Council

ATTEST:

Ericka L. Burnett
City Clerk

APPENDIX A

FORM OF NOTICE TO BE PUBLISHED

To Be Published by July 18, 2024

[MAP OF STORMWATER SERVICE AREA]

**NOTICE OF HEARING TO IMPOSE AND
PROVIDE FOR COLLECTION OF NON-AD VALOREM ASSESSMENTS**

Notice is hereby given that the City Council of the City of Pensacola, Florida, will conduct a public hearing to consider reimposing Stormwater Service Assessments in the area receiving Stormwater Management Service from the City, as shown above, for the fiscal year beginning October 1, 2024, and future fiscal years. The hearing will be held at 5:30 p.m. on Thursday, August 8, 2024, in the City Council Chambers in City Hall, 222 West Main Street, Pensacola, Florida. 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 (850) 435-1606 (or TDD 435-1666) for further information. The request must be made at least 48 hours in advance of the event in order to allow the City time to provide requested services. All affected property owners have a right to appear at the hearing and to file written objections with the City Council. All written objections to the non-ad valorem assessments must be filed with the City Council of Pensacola within twenty (20) days of this notice. Please include your name, parcel number, and the reason you object to the assessment on all written objections. Address all written objections as follows: The Purchasing Office; Objections to Non-ad Valorem Assessment; Post Office Box 12910, Pensacola, Florida 32521. Any person wishing to appeal any decision of the City Council with respect to any matter considered will need a record of the proceedings and may wish to ensure that a verbatim record of the proceedings is made.

The Stormwater Service Assessments have been imposed to fund the City's cost to provide Stormwater Management Service in the area shown above. The Stormwater Service Assessments

are based upon the estimated amount of stormwater runoff generated by impervious surface on the property. Impervious surfaces include the roof top, patios, driveways, parking lots and similar areas. The City has determined that the median single-family residence in the Stormwater Service Area includes 2,998 square feet of impervious surface, which is defined as the "equivalent stormwater unit value" or "ESU Value." The annual Stormwater Service Assessment rate for the upcoming Fiscal Year will be \$120.49 for each Net ESU. The maximum Stormwater Service Assessment rate that can be imposed in future fiscal years is \$136.01 per net ESU.

Generally, the number of ESUs for other properties were calculated individually for each parcel of property by dividing the impervious surface area by 2,998 square feet. Single-family residential properties are categorized into one of five ESU tiers based on the estimated amount of impervious area associated with each parcel (computed by using the building footprint of the residence). Condominium units are charged generally by calculating the total number of ESUs applicable to the condominium complex as a whole, then dividing that total number of ESUs by the total number of condominium residential or non-residential units on the property. For general parcels, such as commercial parcels, the number of ESUs has been calculated individually for each parcel of property by dividing the impervious surface area by 2,998 square feet. Credit for privately maintained Stormwater management facilities and other factors affecting the quantity or quality of Stormwater runoff has also been applied, resulting in an assignment of Net ESUs. A more specific description is set forth in the Amended and Restated Initial Stormwater Assessment Resolution adopted by the City Council on July 22, 2010. Copies of the Stormwater Services Assessment Ordinance (Ordinance No. 52-00), Amended and Restated Initial Assessment Resolution (Resolution No. 18-10), Amended and Restated Final Assessment Resolution (Resolution No. 36-10), the Preliminary Rate Resolution (2024-45), and the updated assessment

roll are available for inspection at the Office of the City Clerk, 222 West Main Street, 7th Floor, Pensacola, Florida.

The Stormwater Service Assessment, except for those imposed on government property, will be collected on the annual ad valorem tax bill that is mailed in November by the Escambia County Tax Collector. Failure to pay the Stormwater Service Assessment will cause a tax certificate to be issued against the assessed property which may result in a loss of title. Unless proper steps are initiated in a court of competent jurisdiction to secure relief within 20 days from the date of City Council action at the above hearing (including the method of apportionment, the rate of assessment and the imposition of assessments), such action shall be the final adjudication of the issues presented.

If you have any questions, please contact Customer Service at (850) 435-1800.

THE CITY OF PENSACOLA, FLORIDA

APPENDIX B

FORM OF NOTICE TO BE MAILED

City of Pensacola
P.O. Box 12910
Pensacola, FL 32521-0001

CITY OF PENSACOLA, FLORIDA

NOTICE OF PUBLIC HEARING FOR ADOPTION OF
STORMWATER SERVICE ASSESSMENT

NOTICE DATE: JULY 18, 2024

Owner Name
Address
Address
City, State Zip

Parcel ID#: _____
Legal Description: _____
Sequence Number: _____

*****NOTICE TO PROPERTY OWNER*****

Dear City of Pensacola Property Owner:

The past decades have brought increased awareness of the detrimental environmental impacts associated with stormwater runoff from developed property including degradation of surface waters, land erosion, flooding and collection of standing water on streets and property. In 2001, in response to public demand and increased federal regulations, the City initiated efforts to improve stormwater management services and provide a dedicated funding source for these services by creating a stormwater service assessment program to generate revenues. The original stormwater service assessments were imposed and collected on the November 2001 tax bill and subsequent years. The City updated the stormwater service assessment program in 2010. **THIS IS NOT A NEW ASSESSMENT PROGRAM; THE STORMWATER SERVICE ASSESSMENT HAS BEEN IMPOSED SINCE 2001.**

Stormwater service assessments are based upon the estimated amount of stormwater runoff generated by impervious surface on your property. Impervious surfaces include the rooftop, patios, driveways, parking lots and similar areas. The City has determined that the median single-family residence in the Stormwater Service Area includes 2,998 square feet of impervious surface, which is the value of one "equivalent stormwater unit" or "ESU Value." Single-family residential properties are categorized into one of five ESU tiers based on the estimated amount of impervious area associated with each parcel (computed by using the building footprint of the residence). Condominium and townhouse residential units are charged generally by calculating the total number of ESUs applicable to the condominium or townhouse complex as a whole, then dividing that total number of ESUs by the total number of condominium residential units on the property. For general parcels, such as commercial parcels, the number of ESUs has been calculated individually for each parcel of property by dividing the impervious surface area by 2,998 square feet. Credit for privately maintained stormwater management facilities and other factors affecting the quantity or quality of stormwater runoff has also been calculated, if applicable, resulting in the assignment of Net ESUs. The annual Stormwater Service Assessment rate for Fiscal Year 2024-25 will be \$120.49 for each Net ESU. The maximum Stormwater Service Assessment rate that can be imposed without further mailed notice for future fiscal years is \$136.01 for each Net ESU. It is estimated that the City will collect \$5,180,136.00 from the Stormwater Service Assessments for Fiscal Year 2024-25.

The above referenced parcel has been assigned the following Net ESUs and assessment amounts:

Number of Net Equivalent Stormwater Units (ESUs): _____

The FY 2024-25 annual stormwater service assessment for the above parcel is \$._.

The maximum annual stormwater service assessment that can be imposed without further notice for future fiscal years is \$._.

The City Council will hold a public hearing at 5:30 p.m. on August 8, 2024, in the City Council Chambers located at City Hall, 222 West Main Street, Pensacola, Florida. Comments will be received on the proposed Stormwater Service Assessments, including their collection on the ad valorem tax bill. You are invited to attend and participate in the hearing. You may also file written objections with the City Council within twenty (20) days of the date of this notice. Please include your name, parcel number, and the reason you object to the assessment on all written objections. Objections should be forwarded as follows: Mayor; Objections to Non-ad Valorem Assessments; P.O. Box 12910, Pensacola, Florida 32521. If you decide to appeal any decision made by the City Council with respect to any matter considered at the hearing, you will need a record of the proceedings and may need to ensure that a verbatim record is made, including the testimony and evidence upon which the appeal is to be made. In accordance with the Americans with Disabilities Act, if you need a special accommodation or an interpreter to participate in this proceeding, please

contact the City Clerk at (850) 435-1606 at least 48 hours prior to the date of the hearing. Unless proper steps are initiated in a court of competent jurisdiction to secure relief within 20 days from the date of City Council action at the above hearing (including the method of apportionment, the rate of assessment and the imposition of assessments), such action shall be the final adjudication of the issues presented.

Because the Stormwater Service Assessment will be collected on the annual ad valorem tax bill by the Tax Collector of Escambia County, pursuant to Chapter 197, Florida Statutes, failure to pay the Stormwater Service Assessment will cause a tax certificate to be issued against the assessed property, which may result in a loss of title to your property.

If you have any questions regarding the number of Net ESUs assigned to your property or the amount of the Stormwater Service Assessment, please contact Customer Service by telephone at (850) 435-1800.

*******THIS IS NOT A BILL*******



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-512

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

DECLARATION OF SURPLUS AND DISPOSITION OF REAL PROPERTY - 101 WEST MAIN STREET (SHORT TERM LEASE)

RECOMMENDATION:

That City Council declare as surplus the real property located at 101 West Main Street (Parcel ID No. 000S009100080026) and authorize the CRA to dispose of the parcel via direct negotiation with Hixardt Technologies, Inc. for a short term lease in the interim of previously-approved redevelopment of the site. Also, that City Council authorize the Mayor to take all action necessary to administer the transaction consistent with the Mayor's Executive Powers as granted by the City Charter.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The 101 West Main Street property is owned by the CRA, though the City Council has authority over the surplus and disposition of all real property owned by our municipality, including the CRA. The previous lease with Pensacola Sports Association (PSA) at this location was administered by the CRA. The PSA lease was terminated mutually in September 2023. The determination as surplus allows CRA and the City to proceed with both this short term lease and the eventual long term lease for redevelopment, which will be brought back to CRA and City Council at a later date and prior to any conveyance.

In consideration of any reasonable development timeline, staff contacted a realtor and listed this site as available for lease prior to its redevelopment. This short term lease of one year is not expected to hinder the upcoming demolition of the building and redevelopment of this site. As a benefit, this lease will also offset the costs associated with keeping the building activated in the pre-redevelopment interim, costs that would normally be borne by the CRA. A companion action item on the June 10, 2024 CRA agenda for the approval of this short term lease authorizes the CRA Chairperson to execute the lease agreement.

PRIOR ACTION:

September 11, 2023 - CRA approved the termination of lease with Pensacola Sports Association

January 16, 2024 - CRA approved the issuance of the Request for Letters of Interest in redevelopment of 101 W. Main St.

May 6, 2024 - CRA approved the issuance of Notice of Intent to dispose of 101 W. Main St via direct negotiation with a developer (long term lease)

FUNDING:

N/A

FINANCIAL IMPACT:

Upon approval and execution, the lessee will pay \$4,500 per month in revenue for its duration.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

5/29/2024

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Lovoy, Finance Director
Victoria D'Angelo, CRA Manager
Deana Stallworth, Property Lease Manager

ATTACHMENTS:

None

PRESENTATION: No



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-530

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Council Member Jennifer Brahier

SUBJECT:

APPROVAL OF SHORT TERM LEASE AGREEMENT WITH HIXARDT TECHNOLOGIES, INC. FOR 101 W. MAIN STREET

RECOMMENDATION:

That City Council ratify the CRA Board's recommendation to approve a lease agreement with Hixardt Technologies, Inc. for the property located at 101 West Main Street for a period of twelve (12) months, terminating on June 15, 2025, reverting to month-to-month lease thereafter, until terminated.

HEARING REQUIRED: No Hearing Required

SUMMARY:

On September 20, 2023, the Community Redevelopment Agency (CRA) lease agreement with Pensacola Sports Association (PSA) for the property located at 101 West Main Street was terminated to allow the CRA to require the full rights of ownership necessary to redevelop the property with the need to wait an additional three (3) years for the Lease Agreement to expire.

In October 2023, the parcel was advertised for short term lease and a potential tenant submitted a Letter of Intent to Lease in April 2024. If approved, the tenant would occupy the building on a short term basis (approximately one (1) year) while the CRA proceeds with selection of a development partner and ultimately redevelopment.

PRIOR ACTION:

September 11, 2023 -- The CRA approved the termination of Lease Agreement with Pensacola Sports Association

September 14, 2023 -- City Council approved the termination of Lease Agreement with Pensacola Sports Association

FUNDING:

N/A

FINANCIAL IMPACT:

Lease payments would be \$4,500 per month for a minimum of 12 months. The first month of lease payments would be due to the listing agent. Ad Valorem Tax and Tax Increment Financing (TIF) revenue production would occur through the payment of property taxes during the lease term.

LEGAL REVIEW ONLY BY CITY ATTORNEY: No

STAFF CONTACT:

Don Kraher, Council Executive
David Forte, Deputy City Administrator
Sherry Morris, Development Services Director
Victoria D'Angelo, CRA Division Manager
Hilary Halford, CRA Division Assistant Manager

ATTACHMENTS:

1. Lease - 101 W. Main Street - final 5.31.2024

PRESENTATION: No

LEASE

LEASE AGREEMENT

THIS LEASE AGREEMENT (this “**Lease**”) is made and entered into this _____ (the “**Effective Date**”) by and between **COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PENSACOLA** (hereinafter referred to as “**Lessor**”) and **HIXARDT TECHNOLOGIES, INC.**, a Florida for profit corporation (hereinafter referred to as “**Lessee**”).

WITNESSETH:

WHEREAS, Lessee is the owner of that certain land (the “**Land**”) and the building and other improvements situated on the Land (the “**Building**”) located at 101 W Main Street, Pensacola, Florida 32502 and depicted in Exhibit “A” attached hereto and incorporated herein by reference (the Land, Building and such other improvements being referred to herein collectively as the “**Property**”); and

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, Lessor and Lessee hereby agree as follows:

Section 1. Recitals

The recitals set forth above are hereby acknowledged by Lessor and Lessee as true and correct and are incorporated into the body of this Agreement by this reference.

Section 2. Description of Leased Area

Upon the terms and subject to the conditions set forth in this Lease, Lessor, in exchange for the payment of rent and the performance of the promises made by Lessee in this Lease, leases to Lessee, and Lessee agrees to rent from Lessor the Building, consisting of approximately 5,156 square feet of rentable space, together with the non-exclusive right and easement for the use and enjoyment of the parking lots, drives, sidewalks and other areas on the Land (collectively, the “**Premises**”). For avoidance of doubt, the premises shall include the roll-up door storage located at the Property, as well.

Section 3. Term of Lease

(a) Lessee shall have the right to occupy and use the Premises for a term of 1 year, commencing on June 15, 2024 (the “**Commencement Date**”) (the “**Initial Term**”). If the Commencement Date is not the first (1st) day of a month, then for purposes of determining the Initial Term the month in which this Lease commences shall not be counted and the Initial Term shall be considered to begin on the first (1st) day of the following month.

(b) Provided that Lessee is not in default under the terms and conditions of this Lease, Lessee upon expiration of the Initial Term shall have the option to rent month to month

(“**Renewal Term**”), by providing written notice to Lessor of Lessee’s desire to renew the Lease not less than 30 days prior to the expiration of the Initial Term. The Initial Term and the Renewal Term, if exercised, shall collectively be referred to herein, at times, as the “Lease Term.” Following the Initial Term, the Lease shall be terminable by either party upon 30 days written notice to the other.

Section 4. Base Rent

(a) In exchange for Lessor's giving Lessee the right to use and occupy the Premises for the Lease Term, Lessee promises to pay Lessor “Base Rent” for each month of the Lease Term in the amounts set forth in Section 4(b) below, plus all applicable sales tax, payable in advance on or before the first (1st) day of each month at the office address of Lessor set forth in Section 25 below, and in addition thereto promises to pay Lessor at said address such amounts as may otherwise become due and payable to Lessor under this Lease, including without limitation, those amounts as determined under Section 5, Section 10, and Section 13. In the event the Commencement Date is not the first (1st) day of the calendar month, Rent shall be due and payable on the Commencement Date but shall be prorated for the number of days from the Commencement Date through the expiration of the first calendar month of the Lease Term.

(b) Lessee shall pay Lessor Base Rent in the amount of \$4,500 per month, plus all applicable sales tax (3.5% as of June 1, 2024).

(c) If any payment of rent under this Section 4 is not received by the Lessor in good funds within fifteen (15) days after its due date, Lessee will pay Lessor a late charge of five percent (5%) of the amount due. From and after the fifteenth (15th) day after the due date, delinquent Rent shall accrue interest at twelve percent (12%) per annum. The term “Rent” shall include all payments and charges made or incurred pursuant to this Section 4 and all other additional rent or any other charges due from Lessee to Lessor under this Lease, including without limitation, applicable sales or use taxes, if any.

Section 5. Taxes

(a) **Real Property Taxes.** Lessor shall pay prior to delinquency all ad valorem property taxes assessed against the Land and Building during the Lease Term.

(b) **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Lessee contained in the Premises. When possible, Lessee shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay the taxes attributable to Lessee not less than ten (10) days prior to the delinquency date for payment of such taxes.

(c) **Sales Tax.** Lessee shall pay or reimburse to Lessor any sales or use tax imposed by applicable Florida law on the Base Rent or any other amounts due under this Lease.

Section 6. Use of Premises

(a) Lessee shall use the Premises for information technology company office space and uses ancillary thereto and for no other use without the prior written consent of Lessor, which consent may be withheld in Lessor's sole discretion in compliance with all documents of record and all applicable laws, regulations, and ordinances.

(b) Lessee agrees not to commit or allow to be committed any nuisance or other act against public policy. Lessee agrees not to deface or damage the Premises in any manner or overload the floors of the Premises.

(c) Lessee agrees not to knowingly use or keep any substance or material in or about the Premises which may impair the insurance on the Building or increase the hazard of the insurance risk or which is offensive or annoying to other Lessees of the Building.

Section 7. Alterations

With the exception of improvements which are required to satisfy Lessee's obligations under Section 11 below which are made in strict accordance with the terms and conditions set forth in Section 11, Lessee shall make no exterior or interior alterations, changes or improvements in or to the Premises without the prior written approval of Lessor, which approval shall not be unreasonably withheld, conditioned or delayed. Any such alterations, changes or improvements so approved by Lessor, shall be made by Lessee at its sole cost and expense and shall be accomplished in accordance with the terms of this Lease and in a good and workmanlike manner in compliance with all applicable laws and building regulations. Lessee hereby completely and fully indemnifies Lessor against all mechanics' and materialmen's liens and other liens or claims which may arise in connection with the making of alterations, changes or improvements to the Premises; provided, however, that no person or party providing labor or materials with respect to such alterations, changes or improvements shall be entitled to claim any lien therefor upon the Property. Except as otherwise agreed by Lessor in writing, only the signage, furnishings, equipment, machinery and trade fixtures installed in the Premises by Lessee and paid for by Lessee shall remain the property of the Lessee and shall be removed by the Lessee upon the termination of this Lease; provided, however, that Lessee shall promptly repair all damage caused by the installation and removal thereof and provided further that Lessee shall have fully performed all of the covenants and agreements to be performed by Lessee under the provisions of this Lease. For clarity, the parties agree that Lessee shall have the ability to place a sign over the existing sign facing Main Street, subject in all respects to Section 42, Lessee Work Requirements or place one free standing sign perpendicular to the road as allowed by City code.

Section 8. Quiet Enjoyment

Lessor hereby covenants with Lessee that upon the performance by Lessee of the agreements herein set forth, Lessee may quietly hold and occupy the Premises without any interruption by Lessor or persons claiming through or under Lessor.

Section 9. Right to Entry

Lessee shall permit Lessor and Lessor's representatives and independent contractors at any time during usual business hours (or after hours if reasonably deemed necessary by Lessor) and without interfering with Lessee's business operations to enter the Building for the purpose of inspecting same, making repairs, removing alterations and additions not in conformity with this Lease, and exhibiting the property for sale, lease, appraisal, or mortgage. Lessee understands and agrees that the Land is currently listed for long-term lease and redevelopment, and to that end, and notwithstanding the foregoing, agrees Lessor and Lessor's invitees and other interested parties and contractors shall have access to at all times the Land, to inspect and investigate.

Section 10. Utilities and Janitorial Services

Lessee shall pay for all water, sewer, gas, heat, electricity (including without limitation electricity for exterior lighting), power, steam, telephone or other utilities and services supplied to the Premises, together with any taxes thereon. Lessee shall also be responsible for all janitorial services to the Premises.

Section 11. Possession and Maintenance

Lessee acknowledges that Lessee has inspected the said Premises and accepts it and all improvements, equipment and machinery in the condition that exists as of the date hereof with no obligation of the Lessor to make any improvements, repairs, or replacements thereto, other than Lessor shall remove all office furniture from the Premises prior to the Commencement Date. Lessee shall, at all times, keep the Premises (including the Property), which shall include but not be limited to all partitions, doors, flooring, fixtures, mechanical equipment, plumbing and electrical facilities, heating, ventilating, and air conditioning, parking lot, planted areas, landscaping, roof, foundation, and all interior and exterior (including all structural and non-structural elements) of the Premises, in good order, condition and repair with all appropriate maintenance and replacement as shall be necessary to comply herewith, and regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital, or noncapital, or the fault or not the fault of Lessee its agents, employees, invitees, visitors, and contractors, all at Lessee's sole cost and expense. Notwithstanding the foregoing, if the repairs, maintenance or replacement costs exceed \$10,000 in the aggregate, Lessee may, as an alternative to expending any funds over \$10,000, elect to terminate this Lease by written notice to Lessor along with documentation reasonably demonstrating the costs for repairs, maintenance or replacements required under this Lease would exceed \$10,000. In pursuance of this obligation of maintenance, Lessee agrees to cause the Property to comply with all laws and ordinances and all valid rules and regulations of any federal, state, municipal or other public authority having jurisdiction in the Premises and further agrees to make all repairs, restorations, and replacements as is necessary in connection with the same and in the same quality and class equal to the original work or installations, and to conduct its business in the Premises in all respects in a dignified manner and in accordance with high standards of business operation and in compliance with all applicable laws, regulations and ordinances.

Lessee shall provide written notice to Lessor prior to the performance by Lessee, Lessee's agents or contractors of any structural repairs, structural renovation and/or structural maintenance to the Premises, except as expressly set forth below. Such notice shall include a detailed description of the work contemplated. Lessee shall not perform, or cause to be performed, any such structural repair, renovation and/or maintenance without the prior written consent of Lessor, and, if such consent is granted, the structural repair, renovation and/or maintenance must be performed in accordance with the terms of Lessor's consent, provided, however, that the foregoing shall not require Lessee to obtain prior consent in the event repair or maintenance is immediately required to preserve the Premises and/or to ensure that Lessee's business is not disrupted and in such an event, Lessee shall provide Lessor with notice of the repair or maintenance as soon as reasonably possible.

Lessee shall indemnify, defend, and hold harmless Lessor from and against any and all claims or liability arising from the performance of the repair, renovation, and/or maintenance described above. This indemnity shall include, but not be limited to, claims or liabilities asserted against Lessor based upon negligence, strict liability or other liability by operation of law to any third party or government entity, and all costs, attorney's fees, expenses, and liabilities incurred by Lessor in the defense of any such claim. Lessor shall defend any such claim at Lessee's expense by counsel selected or approved by Lessor.

Should Lessee fail to perform any of its obligations under this Section 11 for a period of twenty (20) days after written notice from Lessor, the Lessor shall have the right, but not the obligation, in addition to and without waiving its rights under Section 20 below, to enter onto the Premises and perform such obligations and assess the cost thereof to Lessee, which cost will accrue interest at nine percent (9%) per annum until paid.

Section 12. Force Majeure

All time deadlines in this Lease are subject to extension for delays caused by force majeure. The term "force majeure" as used in this Lease shall include acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, riots, acts of armed forces, epidemics, delays by carriers, inability to obtain materials, acts of public authorities, and any other causes, whether or not enumerated in this Section 12, which causes are beyond the control of the party required to perform.

Section 13. Liability, Indemnity and Insurance

(a) **Lessee's Liability Insurance.** Lessee shall maintain public liability and property damage insurance with liability limits of One Million Dollars (\$1,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate insuring against claims for bodily injury, death or property damage occurring in or upon the Building or the Land and shall name Lessor as an additional insured thereunder. Not more frequently than during each year of the Lease Term, if, in the opinion of Lessor's insurance broker, the amount of public liability and property damage insurance coverage required to be maintained by Lessee at that time is not adequate, Lessor may by written notice to Lessee increase the amount of insurance coverage

required to be maintained by Lessee to the amount determined by Lessor's insurance broker to be adequate.

(b) **Evidence of Insurance.** Upon Lessor's request from time to time, Lessee shall provide to Lessor satisfactory evidence of the insurance required to be maintained by Lessee hereunder. All insurance required to be maintained by Lessee shall be primary and non-contributory and shall be on terms and with insurers reasonably acceptable to Lessor. Each policy of liability insurance shall include Lessor, all mortgagees and lenders of Lessor, and others Lessor may from time to time designate as additional insureds. Each policy of property insurance shall contain a waiver by the insurer of any rights of subrogation or indemnity or any other claim to which the insurer might otherwise be entitled against Lessor, or its agents, officials, or employees. Each policy of insurance shall contain an endorsement which provides an undertaking by the insurer that no material change adverse to Lessor or Lessee will be made, and the policy will not lapse or be cancelled, except after not less than thirty (30) days' notice to Lessor of the intended change, lapse or cancellation. Lessee shall furnish to Lessor, if and whenever requested by it, copies of policies, policy endorsements, certificates or other evidences acceptable to Lessor as to the insurance from time to time effected by Lessee and its renewal or continuation in force.

Section 14. Liens

Notwithstanding any contrary provision in this Lease, the interest of Lessor in the Building, Premises and Land shall not be subject to statutory construction liens arising by reason of improvements made by Lessee, and Lessee shall have no authority to create liens for labor or material on or against Lessor's interest in the Building, Premises or Land. Lessee agrees to notify any materialman, supplier, contractor, mechanic or laborer involved with work on the Building, Premises or Land at Lessee's request that he must look only to Lessee for payment and that Lessee has no authority whatsoever to bind Lessor or Lessor's property interests.

Section 15. Damage by Fire or Other Casualty

(a) If the Building or the Premises are damaged to such extent that rebuilding to substantially the same condition which existed prior to the damage cannot reasonably be completed substantially within 30 working days after Lessor's receipt of written notification by Lessee of the damage, and Lessee is unable to use the Building or Premises by reason of such damage or destruction, then this Lease may be terminated by either Lessor or Lessee by such party giving written notice of termination to the other party, and, in such event, the rent shall be abated as of the date of the occurrence of such damage for the unexpired portion of the Lease Term and any and all insurance proceeds, including without limitation, insurance proceeds, together with applicable deductibles, shall be paid to Lessor. Notwithstanding the foregoing, Lessee shall not be entitled to an abatement of Rent nor shall Lessee be entitled to terminate this Lease if the casualty is due to a Default by Lessee hereunder.

Section 16. Eminent Domain

(a) In the event that the Premises, the Building, the parking lot or the Land or any part thereof are taken for any public or quasi-public use by condemnation or by right of

eminent domain, or purchase in avoidance or settlement of a condemnation or eminent domain proceeding, Lessor and Lessee agree as follows:

(1) If all or such part of the Premises, the Building, the parking lot or the Land are taken so as to render the Premises unsuitable, in Lessee's good faith judgment, for the business of the Lessee, then this Lease shall be deemed canceled as of the date of taking, and rent shall abate as of the date of taking.

(2) In the event of a partial taking of the Premises, the Building, the parking lot or the Land that substantially impacts Lessee's use of the Premises, a fair and just proportion of the rent shall abate as of the date of taking. Further, in the event of such a partial taking, either Lessor or Lessee may cancel this Lease, by giving written notice to the other within thirty (30) days after the occurrence of such partial taking. If neither Lessor nor Lessee elects to so terminate this Lease, Lessor shall repair the Premises remaining after the taking, and the rent shall continue at the aforementioned reduced rate.

(3) In the event of a partial taking of the Premises, the Building, the parking or the Land that does not substantially impact Lessee's use of the Premises, neither party shall be entitled to terminate this Lease. Lessor shall repair the Premises remaining after the taking, and the rent shall continue without abatement, in whole or in part.

(4) Lessor shall be entitled to receive all such sums as may be awarded by the court, except sums paid to satisfy any claims for specific business losses made by Lessee.

Section 17. Subordination

This Lease shall automatically be subordinate to any mortgage presently existing or hereafter made on the Building (including the land and/or the improvements thereon) and to any renewal, extension, or replacement of said mortgage lien. Within ten (10) days after receipt, Lessee covenants to execute any agreement requested by any mortgagee to evidence the agreements of this Section which is reasonably acceptable to Lessee's attorney and which provides that so long as the Lessee is not in default hereunder, its quiet enjoyment of the Premises will not be disturbed. Lessee further covenants to execute such certificates and otherwise provide such assurances regarding this Lease as Lessor shall reasonably request in connection with any mortgage; provided, however, that Lessee shall be bound by this covenant only if all of the provisions of any such certificate or assurance are true and accurate. Lessee shall be responsible for its own attorneys' fees in reviewing any agreement or certificate provided for in this section.

Section 18. Assignment and Subletting

Lessee shall not assign any interest in this Lease (whether by sale of assets, merger, consolidation, or otherwise, or by sale or disposition of control or beneficial ownership of Lessee if Lessee is a corporation, partnership, limited liability company, professional association, or some other entity) and/or mortgage or encumber the Premises without first having obtained the prior written consent of Lessor, which consent may be given or withheld in Lessor's sole and absolute

discretion, and any such assignment or mortgage or encumbrance made without Lessor's consent shall be void and, at the option of Lessor, shall terminate this Lease. Lessee shall not sublet the Premises or any part thereof without the prior written consent of Lessor, which consent may be given or withheld in Lessor's sole and absolute discretion, and any such sublease made without Lessor's consent shall be void and, at the option of Lessor, shall terminate this Lease.

Section 19. Insolvency or Bankruptcy

(a) Any assignment by Lessee for the benefit of creditors or by operation of law shall not be effective to transfer any rights under this Lease to the assignee, without the prior written consent of Lessor.

(b) If at any time during the Lease Term there shall be filed by or against Lessee in any court, pursuant to any statute either of the United States or any state, a petition in bankruptcy or insolvency or for reorganization or for appointment of a receiver or trustee of all or a portion of Lessee's property, or if Lessee makes an assignment for the benefit of creditors, then Lessee shall be deemed to have breached this Lease. In such an event, Lessor shall have the option to cancel and terminate this Lease with or without notice. If Lessor exercises its option to cancel and terminates this Lease, neither Lessee nor any person claiming through or under Lessee shall be entitled to possession or to remain in possession of the Premises but shall forthwith quit and surrender the Premises.

Section 20. Defaults and Remedies

(a) Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

- (1) The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, provided that such non-payment shall not be an event of default if Lessee pays the full amount due within fifteen (15) days after written notice from Lessor;
- (2) The failure of Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than described in subparagraph (a) above, where such failure shall continue for a period of twenty (20) days after written notice thereof from Lessor to Lessee; provided however, that if the nature of Lessee's default is such that more than twenty (20) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said twenty (20) day period and thereafter diligently pursues such cure to completion, provided that in no event shall the cure period exceed sixty (60) days;
- (3) The making by Lessee of any general assignment for the benefit of creditors;

- (4) The filing by or against Lessee of a petition to have Lessee adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within ninety (90) days);
- (5) The appointment of a trustee or receiver to take possession of all or substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease;

(b) Remedies. In the event of any such default or breach by Lessee, Lessor may at any time thereafter, with or without notice or demand (except as specified in subsection 20(a) above) and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default or breach:

- (1) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default; including but not limited to the cost of recovering possession of the Premises; expenses of re-letting, including necessary renovation and alteration of the Premises, reasonable attorney's fees and any real estate commission actually paid; and the worth at the time of award by the court having jurisdiction thereof of (i) the unpaid rent which had been earned at the time of termination, (ii) the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss for the same period which the Lessee proves could have been reasonably avoided, and (iii) the amount by which the unpaid rent for the balance of the Lease term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided. The worth at the time of award of the sums referred to in clauses (i) and (ii) above, shall be computed by allowing interest from the due date at the legal rate applicable to money judgments entered by the courts of the State of Florida. The worth at the time of award of the amount referred to in clause (iii) above shall be computed by discounting such amount at a reasonable discount rate based upon the circumstances existing at the time of the award. As used herein rent shall include charges equivalent to rent.
- (2) Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

- (3) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state where the Premises are located, including any right or remedy available to a creditor under the Florida Uniform Commercial Code.

Section 21. Fixtures and Personal Property

Lessee shall have the right to install office furniture and fixtures and machinery and equipment necessary or convenient to the use permitted under Section 6, all of which shall remain the property of Lessee, but if any damage results to the Premises by reason of installation or removal of such office furniture, office fixtures and machinery and equipment, Lessee shall repair the same at its own expense prior to the expiration of the Lease term and immediately upon quitting the Premises.

All personal property and fixtures placed or moved on the Premises shall be at risk of Lessee or the owner of said property, and Lessor shall not be liable to Lessee for any damage to said property, or for any damage arising from the bursting of or leaking of water pipes or from any act of negligence of any co-Lessee or other occupants of the Building, or of any other person whomsoever.

In the event that Lessor consents as required under Section 7 to any alterations, additions, and improvements to the Premises, then, subject to the provisions of Section 7, all such alterations, additions, and improvements shall immediately become and remain part of the Building and the property of the Lessor; provided, however, that as a condition to granting its consent as required under Section 7, Lessor may require that, upon the vacating of the Premises by Lessee, any such alterations, additions, and improvements shall be removed by Lessee and the Premises restored.

Section 22. Limitation of Liability

Notwithstanding anything to the contrary contained in this Lease, the liability of Lessor (and of any successor or assign of Lessor) to Lessee (or any person or entity claiming by, through or under Lessee) shall be limited to the interest of Lessor in the Building and the Premises. Lessee shall look solely to Lessor's interest in the Building and the Premises for the recovery of any judgment or award against Lessor. Neither Lessor nor any of its affiliates, subsidiaries, members, principals, beneficiaries, partners, officers, directors, shareholders, employees, mortgagee(s) and agents shall be personally liable for any judgment or deficiency.

Section 23. Waiver of Subrogation

Lessor and Lessee each waive any claim against the other for property damage to the extent that such claim is covered by valid and collectible insurance carried for the benefit of the party entitled to make such claims and provided that the insurer pays such claim. Further, each policy of property damage insurance maintained by either party shall include a waiver of subrogation endorsement.

Section 24. Surrender of Possession

Lessee agrees to vacate and surrender to Lessor possession of the Premises at the expiration or termination of this Lease, by lapse of time or otherwise, in as good a condition as when Lessee occupied the same at the commencement of the Lease Term, excepting only ordinary wear and tear and decay, or damage by the elements (occurring without the fault of Lessee or other persons permitted by Lessee to occupy or enter the Premises or any part thereof) or loss or damage by force majeure.

Section 25. Demands and Other Instruments

All notices, demands, requests, consents and other instruments required or permitted to be given pursuant to the term of this Lease shall be in writing and shall be personally delivered, sent by Federal Express or other overnight or same day courier service providing a return receipt, or mailed by first-class registered or certified mail, return receipt requested, postage prepaid (and shall be effective when received, when refused or when the same cannot be delivered, as evidenced on the return receipt):

Lessor: Community Redevelopment Agency
Attn: Victoria D'Angelo
222 W Main Street
Pensacola, Florida 32502

Lessee: Hixardt Technologies, Inc.
Attn: Michael E. Hicks, Jr.
264 S F Street
Pensacola, FL 32502

or at such other address in the United States as Lessor or Lessee may from time to time designate in writing and deliver to the other party.

Section 26. Intentionally Deleted

Section 27. Severability

If under present or future laws effective during the term of this Lease any clause or provision of this Lease is invalid or unenforceable, it is the intent of the parties that the remaining provisions of this Lease shall not be affected thereby. The captions of the paragraphs are added as a matter of convenience only and shall not be considered in construing any provisions of this Lease. The words, "Lessor" and "Lessee," and the words, "it" or "its," used with reference to the Lessor and Lessee, shall apply to individuals (male or female), partnerships, firms, associations and corporations, whichever is appropriate.

Section 28. Amendment or Modification

Lessee acknowledges and agrees that it has not relied upon any statement, representation or Agreement made by Lessor or any of its agents or representatives except as are expressed in this written Agreement and that no amendment, modification or extension of this Lease shall be valid or binding unless expressed in writing and executed by the parties hereto in the same manner as the execution of this Lease.

Section 29. Successors

All terms, conditions and agreements to be kept and performed by the parties hereto shall be applicable to and binding upon their respective heirs, personal representatives, successors and assigns.

Section 30. Radon Gas

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

Section 31. Hazardous Materials

(a) Lessee shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept or used in or about the Premises or the Building by Lessee, its agents, principals, employees, assigns, sublessees, contractors, consultants or invitees without the prior written consent of Lessor, which consent may be withheld for any reason whatsoever or for no reason at all. If Lessee breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Premises or around the Building caused by Lessee or the aforesaid others results in (a) any contamination of the Premises, the Building, the surrounding area(s), the soil or surface or ground water or (b) loss or damage to person(s) or property, or if contamination of the Premises or the Building or the surrounding area(s) by Hazardous Material otherwise occurs for which Lessee is legally liable or responsible to Lessor (or any party claiming by, through or under Lessor) for damages, losses, costs or expenses resulting therefrom, then Lessee shall fully and completely indemnify, defend and hold harmless Lessor (or any party claiming by, through or under Lessor) from any and all claims, judgments, damages, penalties, fines, costs liabilities or losses suffered or incurred by Lessor as a result thereof, including without limitation: (i) diminution in the value of the Premises and/or the Building and/or the Land; (ii) damages for the loss or restriction on use of rentable or usable space in the Premises, the Building or the Land; and (iii) any sums reasonably paid in settlement of claims, reasonable attorneys' and paralegals' fees (whether incurred in court, out of court, on appeal or in bankruptcy or administrative proceedings), consultants fees, and expert fees which arise during or after the Lease Term as a consequence of such contamination. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation or site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of such Hazardous Material present in the soil or ground water on or under the Premises or the Building.

(b) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises, the Building or the surrounding area(s) caused by Lessee or the aforesaid others results in (a) any contamination of the Premises, the Building, the surrounding area(s), the soil or surface or ground water or (b) loss or damage to person(s) or property, then Lessee shall immediately notify Lessor of any contamination, claim of contamination, loss or damage and, after consultation and approval by Lessor, take all actions at Lessee's sole expense as are necessary or appropriate to return the Premises, the Building, the surrounding area(s) and the soil or surface or ground water to the condition existing prior to the introduction of any such Hazardous Material thereto, such that the contaminated areas are brought into full compliance with all applicable statutory regulations and standards. The foregoing obligations and responsibilities of Lessee shall survive the expiration or earlier termination of this Lease.

(c) As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law. "Hazardous Material" includes any and all material or substances which are defined as "hazardous waste", "extremely hazardous waste" or a "hazardous substance" pursuant to local, state or federal governmental law. "Hazardous substance" includes, but is not restricted to, asbestos, polychlorobiphenyls ("PCB's"), petroleum, any and all material or substances which are classified as "biohazardous" or "biological waste" or "extremely hazardous waste" or "hazardous substance" pursuant to applicable federal, state or local government law.

(d) Lessor and its agents shall have the right, but not the duty, to inspect the Premises at any time to determine whether Lessee is complying with the terms of this Lease. If Lessee is not in compliance with this Lease, Lessor shall have the right to immediately enter upon the Premises to remedy any contamination caused by Lessee's failure to comply, notwithstanding any other provision of this Lease. Lessor shall use its best efforts to minimize interference with Lessee's business, but shall not be liable for any interference caused thereby.

(e) Subject to the other terms and conditions of this Lease, Lessee's use, storage, generation, or disposal of Hazardous Material which is customary in, and necessary for the operation of the use contemplated herein is hereby permitted so long as such use, storage, generation, and disposal is in strict compliance with all environmental laws governing Hazardous Materials.

Section 32. Headings

The headings to the various sections of this Lease have been inserted for purposes of reference only and shall not limit or define the express terms and provisions of this Lease.

Section 33. Counterparts

This Lease may be executed in any number of counterparts, each of which is an original, but all of which shall constitute one instrument.

Section 34. Applicable Law and Venue

This Lease shall be construed under and enforced in accordance with the laws of the State of Florida. The Parties agree to exclusive venue in the County and/or Circuit Courts of the First Judicial Circuit in and for Okaloosa County of any action to enforce, related to or arising out of this Lease.

Section 35. All Genders and Numbers Included

Whenever the singular or plural number, or masculine, feminine or neuter gender is used in this Lease, it shall equally apply to, extend to and include the other.

Section 36. Time of the Essence

It is specifically agreed that the timely payment of each and every installment of rent and performance of each and every one of the terms, covenants and conditions hereof is of the essence of this Lease.

Section 37. Intentionally Deleted

Section 38. Intentionally Deleted

Section 39. Estoppel

Lessee shall at any time and from time to time within fifteen (15) days after written request from Lessor execute and deliver to Lessor or any prospective lessor or lender a sworn and acknowledged estoppel certificate, in form reasonably satisfactory to Lessor and/or Lessor's Lender or prospective lender or prospective landlord certifying and stating as follows: (i) this Lease has not been modified or amended (or if modified or amended, setting forth such modifications or amendments); (ii) this Lease (as so modified or amended) is in full force and effect (or if not in full force and effect, the reasons therefor);(iii) the Lessee has no offsets or defenses to its performance of the terms and provisions of this Lease, including the payment of Rent (or if there are any such defenses or offsets, specifying the same); (iv) Lessee is in possession of the Premises if such be the case; (v) if an assignment of rents or leases has been served upon Lessee by a Lender or prospective lender, Lessee has received such assignment and agrees to be bound by the provisions thereof; and (vi) any other information reasonably required by Lessor or its Lender or prospective lender or any prospective landlord. It is intended that any such statement delivered pursuant to this subsection may be relied upon by Lessor and by any lender or prospective landlord or lender and their respective successors and assigns. In addition to any other remedy Lessor may have hereunder, if Lessee shall fail to execute and return such statement within the time required herein, such failure shall be a Default (for which there is no cure period), and Lessee shall be deemed to have agreed with the matters set forth therein (without limiting Lessor's other remedies).

Section 40. Intentionally Deleted

Section 41. Intentionally Deleted

Section 42. Lessee Work Requirements

With regard to the construction and completion by Lessee of any improvements or alterations required hereunder or permitted by Lessor under the terms of this Lease, (the “Lessee Work”), Lessee agrees to comply with the following covenants and requirements:

(a) Lessee shall, at its own cost and expense, obtain all required building permits and occupancy permits. Lessee's failure to obtain such permits shall not cause a delay in the commencement of the Term or the obligation to pay Rent or any other obligations set forth in the Lease.

(b) Lessee's contractors shall be licensed contractors, possessing good labor relations, capable of performing quality workmanship and working in harmony with Lessor's contractors and subcontractors and with other contractors and subcontractors in the Building.

(c) Lessee shall use only new, first-class materials in the Lessee Work. All Lessee Work shall be done in a good and workmanlike manner. Lessee shall obtain contractors' warranties of at least one year duration from the completion of the Lessee Work against defects in workmanship and materials on all work performed and equipment installed in the Premises as part of the Work.

(d) In addition to any insurance which may be required under the Lease, Lessee shall secure, pay for and maintain or cause Lessee's contractors to secure, pay for and maintain during the continuance of construction and fixturing work within the Building or Premises, insurance in the following minimum coverages and the following minimum limits of liability:

(i) Worker's Compensation and Employer's Liability Insurance with limits of not less than \$1,000,000.00, or such higher amounts as may be required from time to time by any Employee Benefit Acts or other statutes applicable where the Lessee Work is to be performed, and in any event sufficient to protect Lessee's Contractors from liability under the aforementioned acts.

(ii) Comprehensive General Liability Insurance (including Contractors' Protective Liability) in an amount not less than \$1,000,000.00 per occurrence, whether involving bodily injury liability (or death resulting therefrom) or property damage liability or a combination thereof with a minimum aggregate limit of \$1,000,000.00, and with umbrella coverage with limits not less than \$5,000,000.00. Such insurance shall provide for explosion and collapse, completed operations coverage and broad form blanket contractual liability coverage and shall insure Lessee's contractors against any and all claims for bodily injury, including death resulting

therefrom, and damage to the property of others and arising from its operations under the contracts whether such operations are performed by Lessee's contractors or by anyone directly or indirectly employed by any of them.

(iii) All policies (except the worker's compensation policy) shall be endorsed to include as additional insured parties the parties listed on, or required by, the Lease to be named as additional insureds, Lessor's contractors, Lessor's architects, and their respective beneficiaries, partners, directors, officers, employees and agents, and such additional persons as Lessor may designate. The waiver of subrogation provisions contained in the Lease shall apply to all insurance policies (except the worker's compensation policy) to be obtained by Lessee pursuant to this paragraph. The insurance policy endorsements shall also provide that all additional insured parties shall be given thirty (30) days' prior written notice of any reduction, cancellation or non-renewal of coverage (except that ten (10) days' notice shall be sufficient in the case of cancellation for non-payment of premium) and shall provide that the insurance coverage afforded to the additional insured parties thereunder shall be primary to any insurance carried independently by said additional-insured parties. Additionally, where applicable, each policy shall contain a cross-liability and severability of interest clause.

(e) Without limitation of the indemnification provisions contained in the Lease, to the fullest extent permitted by law Lessee agrees to indemnify, protect, defend and hold harmless Lessor, the parties listed, or required by, the Lease to be named as additional insureds, Lessor's contractors, Lessor's architects, and their respective beneficiaries, partners, directors, officers, employees and agents, from and against all claims, liabilities, losses, damages and expenses of whatever nature arising out of or in connection with the Lessee Work or the entry of Lessee or Lessee's contractors into the Building and the Premises, including, without limitation, mechanics' liens, the cost of any repairs to the Premises or Building necessitated by activities of Lessee or Lessee's contractors, bodily injury to persons or damage to the property of Lessee, its employees, agents, invitees, licensees or others. It is understood and agreed that the foregoing indemnity shall be in addition to the insurance requirements set forth above and shall not be in discharge of or in substitution for same or any other indemnity or insurance provision of the Lease.

Section 43. Florida Public Records Act

The parties acknowledge, understand and agree that this Agreement, all closing documents, and all written and electronic communications between the parties are subject to public disclosure pursuant to Chapter 119, Florida Statutes ("Florida Public Records Act").

[SIGNATURES ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the day and year first above written.

LESSOR:

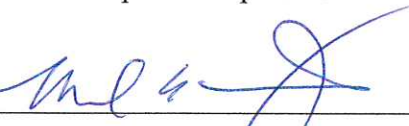
**Community Redevelopment Agency of the City
of Pensacola**

By: _____
Jennifer Brahier, as chairperson

Signature page – Lease Agreement

LESSEE:

HIXARDT TECHNOLOGIES, INC
a Florida for profit corporation

By: _____

Print Name: MICHAEL E HIXARD JR

Title: PIRS - CEO

Signature page – Lease Agreement

EXHIBIT "A"





City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-513

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

ACQUISITION OF REAL PROPERTY - 2301 WEST CERVANTES STREET

RECOMMENDATION:

That City Council approve the purchase of real property located at 2301 West Cervantes Street (Parcel No. 000S009060030173) from Rosario Danzie dba Amerasian LLC for \$18,000 plus an estimated \$7,500 in closing costs and lien abatement, for a total amount not to exceed \$25,500. Also, that City Council authorize the Mayor to take the necessary actions to execute and administer the acquisition, consistent with the Mayor's Executive Powers as granted in the City Charter.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The real property located at 2301 West Cervantes Street is a corner lot measuring approximately 0.12 acres and zoned C-3. The parcel is located in the Westside CRA Redevelopment district and is adjacent to the former Pensacola Motor Lodge.

The City recently acquired the former Pensacola Motor Lodge property for the redevelopment of the parcel to further our mission to increase attainable housing for our area. After the acquisition in February, the CRA advertised the parcel as available for redevelopment and issued a notice requesting letters of interest (RLOI) in the parcel's redevelopment. In several of the RLOI submittals, the acquisition of this adjacent corner parcel was mentioned as desirable, if not essential, to the redevelopment of the Pensacola Motor Lodge site.

After contacting the owner to express the City's interest in acquiring the parcel, a negotiated price of \$18,000 was reached. The City also agreed to settle or abate the pending liens on this specific parcel of the owner as part of this acquisition. Per the City's policy for acquisitions of real property, an appraisal was not obtained as the Escambia County Property Appraiser assessed value is \$8,625 (slightly less than the threshold amount of \$10,000). An accompanying Resolution on the June 10, 2024 Community Redevelopment Agency meeting delineates the authorization of the use of CRA funds for this acquisition.

PRIOR ACTION:

June 10, 2024 - CRA adopted a resolution authorizing the use of CRA funds for the acquisition of 2301 W. Cervantes St.

FUNDING:

Budget: \$18,000 2017 Westside Bond Proceeds
\$7,500 Westside TIF or 2017 Westside Bond Proceeds
\$25,500

Actual: \$18,000 Property Purchase Price
\$7,500 Est. Closing and Lien Costs
\$25,500 Total

FINANCIAL IMPACT:

Funds are available from the 2017 Westside Redevelopment Bonds and the Westside TIF Fund. Funding from the bonds is derived from the former Lee St/W Moreno Stormwater Park Improvement project which has been discontinued. All or a portion of closing costs may be paid by Westside TIF funds subject to the restrictions on the bonds. With the acquisition of the property and subsequent reuse, the City and CRA will receive the benefit of the redevelopment being added to the tax rolls.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

5/29/2024

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Lovoy, Finance Director
Deana Stallworth, Property Lease Manager

ATTACHMENTS:

1. Property Appraiser Info - 2301 W Cervantes

PRESENTATION: No

General Information						Assessments					
Parcel ID:	000S009060030173					Year	Land	Imprv	Total	<u>Cap Val</u>	
Account:	151503000					2023	\$8,625	\$0	\$8,625	\$8,625	
Owners:	AMERASIAN LLC					2022	\$8,625	\$0	\$8,625	\$8,625	
Mail:	C/O ROSARIO DANZIE 736 FAIRFLELD DR PENSACOLA, FL 32505					2021	\$8,625	\$0	\$8,625	\$8,625	
Situs:	2301 W CERVANTES ST 32505					Disclaimer					
Use Code:	VACANT COMMERCIAL					Tax Estimator					
Taxing Authority:	PENSACOLA CITY LIMITS					File for Exemption(s) Online					
Tax Inquiry:	Open Tax Inquiry Window					Report Storm Damage					
Tax Inquiry link courtesy of Scott Lunsford Escambia County Tax Collector											
Sales Data						2023 Certified Roll Exemptions					
Sale Date	Book	Page	Value	Type	Official Records (New Window)	None					
09/11/2019	8163	459	\$100	WD							
06/24/2019	8118	1701	\$100	WD							
10/22/2013	7091	1683	\$8,000	WD							
08/02/2011	6748	1085	\$2,100	TD							
06/2005	5657	896	\$11,000	WD							
05/1998	4259	1653	\$100	WD							
05/1998	4259	1652	\$7,300	WD							
10/1987	2477	754	\$100	CJ							
Official Records Inquiry courtesy of Pam Childers Escambia County Clerk of the Circuit Court and Comptroller											
Legal Description											
N 90 FT OF E 60 FT OF N 150 FT BLK 173 WEST KING TRACT OR 7091 P 1683 CA 126											
Extra Features											
None											
Parcel Information											
Section Map Id: CA126											
Approx. Acreage: 0.1245											
Zoned: C-3											
Evacuation & Flood Information Open Report											
View Florida Department of Environmental Protection(DEP) Data											

Buildings
Images
None

The primary use of the assessment data is for the preparation of the current year tax roll. No responsibility or liability is assumed for inaccuracies or errors.



Parcel ID: 000S009060030173
Account: 151503000
Section Map: CA126
Situs: 2301 W CERVANTES ST
Complex: WEST KING TRACT
Owner: AMERASIAN LLC
Mailing Address:
C/O ROSARIO DANZIE
736 FAIRFIELD DR
PENSACOLA, FL 32505
Last Sale: 9/11/2019, \$100
Property Use: VACANT COMMERCIAL
Approx. Acreage: 0.1245 ac
Bldg. Count: 0
Total Heated Area: 0 sf
Zoned: C-3
Taxing Auth: PENSACOLA CITY LIMITS
Schools:
Elem: GLOBAL LEARNING ACADEMY
Int: WARRINGTON
High: PENSACOLA



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-514

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

RESOLUTION NO. 2024-46 - ACQUISITION OF REAL PROPERTY AT 2301 WEST CERVANTES STREET WITH COMMUNITY REDEVELOPMENT AGENCY (CRA) FUNDS

RECOMMENDATION:

That City Council adopt Resolution No. 2024-46:

A RESOLUTION OF THE CITY OF PENSACOLA, FLORIDA RELATING TO COMMUNITY REDEVELOPMENT WITHIN THE WESTSIDE COMMUNITY REDEVELOPMENT AREA; PROVIDING FINDINGS; APPROVING AND AUTHORIZING THE EXPENDITURE OF CRA FUNDS TO ACQUIRE CERTAIN REAL PROPERTY THEREIN LOCATED AT 2301 WEST CERVANTES STREET IN FURTHERANCE OF THE PURPOSES ESTABLISHED IN CHAPTER 163, PART III, FLORIDA STATUTES AND THE WESTSIDE REDEVELOPMENT PLAN; AND PROVIDING AN EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The real property located at 2301 West Cervantes Street is a corner lot measuring approximately 0.12 acres and zoned C-3. The parcel is located in the Westside CRA Redevelopment district and is adjacent to the former Pensacola Motor Lodge.

The City recently acquired the former Pensacola Motor Lodge property for the redevelopment of the parcel to further our mission to increase attainable housing for our area. After the acquisition in February, the CRA advertised the parcel as available for redevelopment and issued a notice requesting letters of interest (RLOI) in the parcel's redevelopment. In several of the RLOI submittals, the acquisition of this adjacent corner parcel was mentioned as desirable, if not essential, to the redevelopment of the Pensacola Motor Lodge site.

After contacting the owner to express the City's interest in acquiring the parcel, a negotiated price of \$18,000 was reached. The City also agreed to settle or abate the pending liens on this specific parcel of the owner as part of this acquisition. Per the City's policy for acquisitions of real property, an appraisal was not obtained as the Escambia County Property Appraiser

assessed value is \$8,625 (slightly less than the threshold amount of \$10,000).

PRIOR ACTION:

June 10, 2024 - CRA adopted a resolution authorizing the use of CRA funds for the acquisition of 2301 W. Cervantes St.

FUNDING:

Budget: \$18,000	2017 Westside Bond Proceeds
<u>\$7,500</u>	Westside TIF or 2017 Westside Bond Proceed
\$25,500	

Actual: \$18,000	Property Purchase Price
<u>\$7,500</u>	Est. Closing and Lien Costs
\$25,500	Total

FINANCIAL IMPACT:

Funds are available from the 2017 Westside Redevelopment Bonds and the Westside TIF Fund. Funding from the bonds is derived from the former Lee St/W Moreno Stormwater Park Improvement project which has been discontinued. All or a portion of closing costs may be paid by Westside TIF funds subject to the restrictions on the bonds. With the acquisition of the property and subsequent reuse, the City and CRA will receive the benefit of the redevelopment being added to the tax rolls.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

5/29/2024

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Lovoy, Finance Director
Deana Stallworth, Property Lease Manager

ATTACHMENTS:

1. Resolution No. 2024-46
2. Property Appraiser Info - 2301 W Cervantes

PRESENTATION: No

**RESOLUTION
NO. 2024-46**

**A RESOLUTION
TO BE ENTITLED:**

**A RESOLUTION OF THE CITY OF PENSACOLA, FLORIDA
RELATING TO COMMUNITY REDEVELOPMENT WITHIN
THE WESTSIDE COMMUNITY REDEVELOPMENT AREA;
PROVIDING FINDINGS; APPROVING AND AUTHORIZING
THE EXPENDITURE OF CRA FUNDS TO ACQUIRE
CERTAIN REAL PROPERTY THEREIN LOCATED AT 2301
WEST CERVANTES STREET IN FURTHERANCE OF THE
PURPOSES ESTABLISHED IN CHAPTER 163, PART III,
FLORIDA STATUTES AND THE WESTSIDE
REDEVELOPMENT PLAN; AND PROVIDING AN
EFFECTIVE DATE.**

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

SECTION 1. AUTHORITY. This Resolution is adopted pursuant to the Constitution of the State of Florida, the Community Redevelopment Act of 1969 codified in Part III, Chapter 163, Florida Statutes (the "Act"), Chapter 166, Florida Statutes, and other applicable provisions of law.

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

(A) On September 25, 1980, the City Council (the "City Council") of the City of Pensacola, Florida (the "City") adopted Resolution No. 55-80 which created the Community Redevelopment Agency (the "Agency") of the City of Pensacola, Florida and declared the City Council to be the Agency as provided in Section 163.357, Florida Statutes.

(B) Pursuant to Resolution No. 04-07 enacted on January 25, 2007, the City Council designated the boundaries and found and determined that an area designated therein as the "Westside Community Redevelopment Area" (the "Redevelopment Area") is a blighted area as therein described.

(C) On May 24, 2007, the City Council adopted Resolution No. 13-07, which adopted the Westside Community Redevelopment Plan, (the "Redevelopment Plan").

(D) On January 17, 2008, the City Council enacted Ordinance No. 01-08 which created and established the Westside Redevelopment Trust Fund (the "Trust Fund").

(E) On August 28, 2014, the City Council adopted Ordinance No. 31-14, which amended the Redevelopment Plan by repealing and reestablishing the base year for appropriations to the Trust Fund.

(F) The acquisition of property for commercial, mixed use and/or housing redevelopment, preservation and conservation of the district and remediation of blight in the Redevelopment Area is contemplated by and is an objective of the Redevelopment Plan and Chapter 163, Part III, Florida Statutes.

(G) Rosario Danzie dba Amerasian LLC (the potential "Seller") owns a parcel of real property located in the Redevelopment Area, at 2301 W Cervantes Street, Pensacola, Florida, Parcel ID# 000S009060030173 (the "Property") and adjacent to the former Pensacola Motor Lodge parcel recently acquired by the City. The City has expressed its interest in acquiring the Property for the negotiated price of \$18,000 plus settlement of the liens issued by City of Pensacola Code Enforcement on the parcel.

(H) The City of Pensacola, Florida hereby determines that acquisition of the Property will facilitate the goals and objectives of the Redevelopment Plan and Chapter 163, Part III, Florida Statutes.

SECTION 3. PURCHASE OF THE PROPERTY AUTHORIZED.

(A) The City hereby determines that it is necessary and in the best interests of the health, safety and welfare of the City, the Redevelopment Area and the inhabitants thereof to acquire the Property, that such acquisition shall advance the community redevelopment objectives of the Redevelopment Plan and shall constitute and serve the purposes of "community redevelopment" within the meaning of and in accordance with the Act, and such acquisition is hereby authorized.

(B) The cost to acquire the Property shall be paid with CRA funds consisting of Trust Fund revenues and/or bond funds.

(C) Upon acquisition of the Property, the Property shall be utilized by the City solely to further the goals and objectives of the redevelopment plan and Chapter 163, Part III Florida Statutes and will be used for such purposes, including but not limited to affordable housing and preservation and conservation of the district. Any conveyance of the Property, or portion thereof, by the City to a third party for such purposes shall be conveyed with instrument(s) effectuating such conveyance, which may include restrictions upon, and covenants, conditions, and obligations assumed by, the third party to ensure that the Property is developed and/or used for the purposes outlined in Chapter 163, Part III, Florida Statutes and the then effective Redevelopment Plan.

(D) The City Council President is hereby authorized and directed to take all actions necessary to effectuate the provisions of this Resolution.

SECTION 4. SEVERABILITY. 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.

SECTION 5. CONFLICTS. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 6. EFFECTIVE DATE. This Resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the Charter of the City.

Adopted: _____

Approved: _____
Casey Jones, City Council President

ATTEST:

Ericka L. Burnett, City Clerk

General Information						Assessments					
Parcel ID:	000S009060030173					Year	Land	Imprv	Total	<u>Cap Val</u>	
Account:	151503000					2023	\$8,625	\$0	\$8,625	\$8,625	
Owners:	AMERASIAN LLC					2022	\$8,625	\$0	\$8,625	\$8,625	
Mail:	C/O ROSARIO DANZIE 736 FAIRFLELD DR PENSACOLA, FL 32505					2021	\$8,625	\$0	\$8,625	\$8,625	
Situs:	2301 W CERVANTES ST 32505					Disclaimer					
Use Code:	VACANT COMMERCIAL					Tax Estimator					
Taxing Authority:	PENSACOLA CITY LIMITS					File for Exemption(s) Online					
Tax Inquiry:	Open Tax Inquiry Window					Report Storm Damage					
Tax Inquiry link courtesy of Scott Lunsford Escambia County Tax Collector											
Sales Data						2023 Certified Roll Exemptions					
Sale Date	Book	Page	Value	Type	Official Records (New Window)	None					
09/11/2019	8163	459	\$100	WD							
06/24/2019	8118	1701	\$100	WD							
10/22/2013	7091	1683	\$8,000	WD							
08/02/2011	6748	1085	\$2,100	TD							
06/2005	5657	896	\$11,000	WD							
05/1998	4259	1653	\$100	WD							
05/1998	4259	1652	\$7,300	WD							
10/1987	2477	754	\$100	CJ							
Official Records Inquiry courtesy of Pam Childers Escambia County Clerk of the Circuit Court and Comptroller											
Legal Description											
N 90 FT OF E 60 FT OF N 150 FT BLK 173 WEST KING TRACT OR 7091 P 1683 CA 126											
Extra Features											
None											
Parcel Information											
Section Map Id: CA126											
Approx. Acreage: 0.1245											
Zoned: C-3											
Evacuation & Flood Information Open Report											
View Florida Department of Environmental Protection(DEP) Data											

Buildings
Images
None

The primary use of the assessment data is for the preparation of the current year tax roll. No responsibility or liability is assumed for inaccuracies or errors.



Parcel ID: 000S009060030173
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Zoned: C-3
Taxing Auth: PENSACOLA CITY LIMITS
Schools:
Elem: GLOBAL LEARNING ACADEMY
Int: WARRINGTON
High: PENSACOLA



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-455

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

PENSACOLA INTERNATIONAL AIRPORT - STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION PUBLIC TRANSPORTATION GRANT AGREEMENT NO. 446645-1-94-01 TAXIWAY A7 & TAXIWAY A/B INTERSECTION RECONFIGURATION

RECOMMENDATION:

That City Council accept the Florida Department of Transportation, Public Transportation Grant Agreement No. 446645-1-94-01 for the Taxiway A7 & Taxiway A/B Intersection Reconfiguration in the amount of \$450,000 with a \$545,160 local match and \$8,961,840 federal ask for a total grant value of \$9,957,000. 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.

HEARING REQUIRED: No Hearing Required

SUMMARY:

On March 23, 2023, City Council approved Resolution 2023-019 authorizing the Mayor to coordinate with Florida Department of Transportation (FDOT) to allocate funding for FDOT grant 446645-1 to assist with the reconfiguration of the Airport's Taxiway A7 & Taxiway A/B intersection.

Taxiway A7 & Taxiway A/B intersection is a complex intersection due to its expansive pavement and multiple direct access to runways. This combination increases the likelihood of a runway incursion by pilots entering the runway environment. This project will reconfigure the Taxiway A7 & Taxiway A/B intersection to meet current FAA taxiway design geometry by eliminating the 3-way intersection and eliminating any excess pavement to reduce the possibility of runway incursions.

The grant would provide partial funding for the proposed reconfiguration of Taxiway A7 & Taxiway A/B intersection. Such work would include the rehabilitation of all taxiway connectors to near edge of runway safety area, new taxiway edge lights and associated cans and cables to accommodate LED fixtures, new taxiway signage and associated cables to accommodate LED fixtures, pavement markings, and miscellaneous grading. The grant would cover

construction as well as construction administration services. The remaining funding will come from the Federal Aviation Administration (FAA) and the Airport's capital improvement account.

FDOT requires an authorizing resolution accepting the grant award and authorizing the Mayor to execute the grant. Item 2024-41 will be brought before City Council to meet this requirement.

PRIOR ACTION:

March 23, 2023 – City Council approved Resolution 2023-019 authorizing the Mayor to coordinate with FDOT to change the project title, funding, scope and deliverables for FDOT grant 446645-1.

FUNDING:

Budget:	\$8,961,840	FAA
	450,000	FDOT Grant 446645-1-94-01
	<u>545,160</u>	Airport Capital Funds
	<u>\$9,957,000</u>	
Actual:	<u>\$9,957,600</u>	Taxiway A7 & Taxiway A/B Intersection Reconfiguration
	<u>\$9,957,600</u>	

FINANCIAL IMPACT:

Pensacola International Airport routinely request grant funding from the FDOT as part of a five-year work program. In anticipation of this grant, funds were allocated in the fiscal year 2024 budget. In fiscal year 2024, funding in the amount of \$450,000 has been appropriated in the Airport's State grant account and funding in the amount \$545,160 has been appropriated in the Airport's capital improvement account.

The Airport has submitted a request for funding to the FAA and upon grant award, a supplemental budget resolution will be brought before City Council to appropriate funding in the Airport's Federal grant account.

Funds will be provided from the FDOT on a reimbursable basis.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

5/22/2024

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Miller, Deputy City Administrator - Administration and Finance
Matthew F. Coughlin, Airport Director

ATTACHMENTS:

1. State of Florida Department of Transportation Public Transportation Grant Agreement
No. 446645-1-94-01
2. Resolution No. 2024-41

PRESENTATION: No

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

- *Exhibit H: Audit Requirements for Awards of Federal Financial Assistance
— *Exhibit I: Certification of Disbursement of Payment to Vehicle and/or Equipment Vendor
— *Additional Exhibit(s):

*Indicates that the Exhibit is only attached and incorporated if applicable box is selected.

5. Time. Unless specified otherwise, all references to “days” within this Agreement refer to calendar days.

6. Term of Agreement. This Agreement shall commence upon full execution by both Parties (“Effective Date”) and continue through June 30, 2028. If the Agency does not complete the Project within this time period, this Agreement will expire unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed prior to the Effective Date or after the expiration date of this Agreement will not be reimbursed by the Department.

a. ☐ If this box is checked the following provision applies:

Unless terminated earlier, work on the Project shall commence no later than the day of , or within days of the issuance of the Notice to Proceed for the construction phase of the Project (if the Project involves construction), whichever date is earlier. The Department shall have the option to immediately terminate this Agreement should the Agency fail to meet the above-required dates.

7. Amendments, Extensions, and Assignment. This Agreement may be amended or extended upon mutual written agreement of the Parties. This Agreement shall not be renewed. This Agreement shall not be assigned, transferred, or otherwise encumbered by the Agency under any circumstances without the prior written consent of the Department.

8. Termination or Suspension of Project. The Department may, by written notice to the Agency, suspend any or all of the Department’s obligations under this Agreement for the Agency’s failure to comply with applicable law or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected.

- a. Notwithstanding any other provision of this Agreement, if the Department intends to terminate the Agreement, the Department shall notify the Agency of such termination in writing at least thirty (30) days prior to the termination of the Agreement, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- b. The Parties to this Agreement may terminate this Agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions.
- c. If the Agreement is terminated before performance is completed, the Agency shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed the equivalent percentage of the Department’s maximum financial assistance. If any portion of the Project is located on the Department’s right-of-way, then all work in progress on the Department right-of-way will become the property of the Department and will be turned over promptly by the Agency.
- d. In the event the Agency fails to perform or honor the requirements and provisions of this Agreement, the Agency shall promptly refund in full to the Department within thirty (30) days of the termination of the Agreement any funds that were determined by the Department to have been expended in violation of the Agreement.
- e. The Department reserves the right to unilaterally cancel this Agreement for failure by the Agency to comply with the Public Records provisions of Chapter 119, Florida Statutes.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

9. Project Cost:

- a. The estimated total cost of the Project is \$9,957,600. This amount is based upon **Exhibit "B", Schedule of Financial Assistance**. The timeline for deliverables and distribution of estimated amounts between deliverables within a grant phase, as outlined in **Exhibit "B", Schedule of Financial Assistance**, may be modified by mutual written agreement of the Parties and does not require execution of an **Amendment to the Public Transportation Grant Agreement**. The timeline for deliverables and distribution of estimated amounts between grant phases requires an amendment executed by both Parties in the same form as this Agreement.
- b. The Department agrees to participate in the Project cost up to the maximum amount of \$450,000 and, the Department's participation in the Project shall not exceed 4.52% of the total eligible cost of the Project, and as more fully described in **Exhibit "B", Schedule of Financial Assistance**. The Agency agrees to bear all expenses in excess of the amount of the Department's participation and any cost overruns or deficits involved.

10. Compensation and Payment:

- a. **Eligible Cost.** The Department shall reimburse the Agency for allowable costs incurred as described in **Exhibit "A", Project Description and Responsibilities**, and as set forth in **Exhibit "B", Schedule of Financial Assistance**.
- b. **Deliverables.** The Agency shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in **Exhibit "A", Project Description and Responsibilities**. Modifications to the deliverables in **Exhibit "A", Project Description and Responsibilities** requires a formal written amendment.
- c. **Invoicing.** Invoices shall be submitted no more often than monthly by the Agency in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable, and verifiable deliverables as established in **Exhibit "A", Project Description and Responsibilities**. Deliverables and costs incurred must be received and approved by the Department prior to reimbursement. Requests for reimbursement by the Agency shall include an invoice, progress report, and supporting documentation for the deliverables being billed that are acceptable to the Department. The Agency shall use the format for the invoice and progress report that is approved by the Department.
- d. **Supporting Documentation.** Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and must also establish that the required minimum standards or level of service to be performed based on the criteria for evaluating successful completion as specified in **Exhibit "A", Project Description and Responsibilities** has been met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of charges as described in **Exhibit "F", Contract Payment Requirements**.
- e. **Travel Expenses.** The selected provision below is controlling regarding travel expenses:

☒ Travel expenses are NOT eligible for reimbursement under this Agreement.

☐ Travel expenses ARE eligible for reimbursement under this Agreement. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061,

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

Florida Statutes, and the most current version of the Department's Disbursement Handbook for Employees and Managers.

- f. Financial Consequences.** Payment shall be made only after receipt and approval of deliverables and costs incurred unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes, or the Department's Comptroller under Section 334.044(29), Florida Statutes. If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Agency shall, within thirty (30) days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency will not be reimbursed. If the deficiency is subsequently resolved, the Agency may bill the Department for the amount that was previously not reimbursed during the next billing period. If the Agency is unable to resolve the deficiency, the funds shall be forfeited at the end of the Agreement's term.

- g. Invoice Processing.** An Agency receiving financial assistance from the Department should be aware of the following time frames. Inspection or verification and approval of deliverables shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the deliverables are received, inspected or verified, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agency who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

- h. Records Retention.** The Agency shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the Project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the Project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- i. Progress Reports.** Upon request, the Agency agrees to provide progress reports to the Department in the standard format used by the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of the Project and of details thereof.
- j. Submission of Other Documents.** The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

may require as listed in **Exhibit "E", Program Specific Terms and Conditions** attached to and incorporated into this Agreement.

- k. **Offsets for Claims.** If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement that it has with the Agency owing such amount if, upon written demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- l. **Final Invoice.** The Agency must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- m. **Department's Performance and Payment Contingent Upon Annual Appropriation by the Legislature.** The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, a notice of availability of funds from the Department's project manager must be received prior to costs being incurred by the Agency. See **Exhibit "B", Schedule of Financial Assistance** for funding levels by fiscal year. Project costs utilizing any fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.
- n. **Limits on Contracts Exceeding \$25,000 and Term more than 1 Year.** In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."
- o. **Agency Obligation to Refund Department.** Any Project funds made available by the Department pursuant to this Agreement that are determined by the Department to have been expended by the Agency in violation of this Agreement or any other applicable law or regulation shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the Agency files shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.
- p. **Non-Eligible Costs.** In determining the amount of the payment, the Department will exclude all Project costs incurred by the Agency prior to the execution of this Agreement, costs incurred after the expiration of the Agreement, costs that are not provided for in **Exhibit "A", Project Description and Responsibilities**, and as set forth in **Exhibit "B", Schedule of Financial Assistance**, costs agreed to be borne by the Agency or its contractors and subcontractors for

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangement that has not been approved in writing by the Department. Specific unallowable costs may be listed in **Exhibit "A", Project Description and Responsibilities**.

11. General Requirements. The Agency shall complete the Project with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement and all applicable laws.

- a. **Necessary Permits Certification.** The Agency shall certify to the Department that the Agency's design consultant and/or construction contractor has secured the necessary permits.
- b. **Right-of-Way Certification.** If the Project involves construction, then the Agency shall provide to the Department certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has been obtained. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, even if no right-of-way is required.
- c. **Notification Requirements When Performing Construction on Department's Right-of-Way.** In the event the cost of the Project is greater than \$250,000.00, and the Project involves construction on the Department's right-of-way, the Agency shall provide the Department with written notification of either its intent to:
 - i. Require the construction work of the Project that is on the Department's right-of-way to be performed by a Department prequalified contractor, or
 - ii. Construct the Project utilizing existing Agency employees, if the Agency can complete said Project within the time frame set forth in this Agreement.
- d. ☐ If this box is checked, then the Agency is permitted to utilize its own forces and the following provision applies: **Use of Agency Workforce.** In the event the Agency proceeds with any phase of the Project utilizing its own forces, the Agency will only be reimbursed for direct costs (this excludes general overhead).
- e. ☐ If this box is checked, then the Agency is permitted to utilize **Indirect Costs: Reimbursement for Indirect Program Expenses** (select one):
 - i. ☐ Agency has selected to seek reimbursement from the Department for actual indirect expenses (no rate).
 - ii. ☐ Agency has selected to apply a de minimus rate of 10% to modified total direct costs. Note: The de minimus rate is available only to entities that have never had a negotiated indirect cost rate. When selected, the de minimus rate must be used consistently for all federal awards until such time the agency chooses to negotiate a rate. A cost policy statement and de minimis certification form must be submitted to the Department for review and approval.
 - iii. ☐ Agency has selected to apply a state or federally approved indirect cost rate. A federally approved rate agreement or indirect cost allocation plan (ICAP) must be submitted annually.
- f. **Agency Compliance with Laws, Rules, and Regulations, Guidelines, and Standards.** The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project.

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- g. Claims and Requests for Additional Work.** The Agency shall have the sole responsibility for resolving claims and requests for additional work for the Project. The Agency will make best efforts to obtain the Department's input in its decisions. The Department is not obligated to reimburse for claims or requests for additional work.

12. Contracts of the Agency:

- a. Approval of Third Party Contracts.** The Department specifically reserves the right to review and approve any and all third party contracts with respect to the Project before the Agency executes or obligates itself in any manner requiring the disbursement of Department funds, including consultant and purchase of commodities contracts, or amendments thereto. If the Department chooses to review and approve third party contracts for this Project and the Agency fails to obtain such approval, that shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same. If Federal Transit Administration (FTA) funds are used in the Project, the Department must exercise the right to third party contract review.
- b. Procurement of Commodities or Contractual Services.** It is understood and agreed by the Parties hereto that participation by the Department in a project with the Agency, where said project involves the purchase of commodities or contractual services where purchases or costs exceed the Threshold Amount for CATEGORY TWO per Section 287.017, Florida Statutes, is contingent on the Agency complying in full with the provisions of Section 287.057, Florida Statutes. The Agency's Authorized Official shall certify to the Department that the Agency's purchase of commodities or contractual services has been accomplished in compliance with Section 287.057, Florida Statutes. It shall be the sole responsibility of the Agency to ensure that any obligations made in accordance with this Section comply with the current threshold limits. Contracts, purchase orders, task orders, construction change orders, or any other agreement that would result in exceeding the current budget contained in **Exhibit "B", Schedule of Financial Assistance**, or that is not consistent with the Project description and scope of services contained in **Exhibit "A", Project Description and Responsibilities** must be approved by the Department prior to Agency execution. Failure to obtain such approval, and subsequent execution of an amendment to the Agreement if required, shall be sufficient cause for nonpayment by the Department, in accordance with this Agreement.
- c. Consultants' Competitive Negotiation Act.** It is understood and agreed by the Parties to this Agreement that participation by the Department in a project with the Agency, where said project involves a consultant contract for professional services, is contingent on the Agency's full compliance with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. In all cases, the Agency's Authorized Official shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.
- d. Disadvantaged Business Enterprise (DBE) Policy and Obligation.** It is the policy of the Department that DBEs, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The Agency and its contractors agree to ensure that DBEs have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBEs have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

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13. Maintenance Obligations. In the event the Project includes construction or the acquisition of commodities then the following provisions are incorporated into this Agreement:

- a. The Agency agrees to accept all future maintenance and other attendant costs occurring after completion of the Project for all improvements constructed or commodities acquired as part of the Project. The terms of this provision shall survive the termination of this Agreement.

14. Sale, Transfer, or Disposal of Department-funded Property:

- a. The Agency will not sell or otherwise transfer or dispose of any part of its title or other interests in real property, facilities, or equipment funded in any part by the Department under this Agreement without prior written approval by the Department.
- b. If a sale, transfer, or disposal by the Agency of all or a portion of Department-funded real property, facilities, or equipment is approved by the Department, the following provisions will apply:
 - i. The Agency shall reimburse the Department a proportional amount of the proceeds of the sale of any Department-funded property.
 - ii. The proportional amount shall be determined on the basis of the ratio of the Department funding of the development or acquisition of the property multiplied against the sale amount, and shall be remitted to the Department within ninety (90) days of closing of sale.
 - iii. Sale of property developed or acquired with Department funds shall be at market value as determined by appraisal or public bidding process, and the contract and process for sale must be approved in advance by the Department.
 - iv. If any portion of the proceeds from the sale to the Agency are non-cash considerations, reimbursement to the Department shall include a proportional amount based on the value of the non-cash considerations.
- c. The terms of provisions "a" and "b" above shall survive the termination of this Agreement.
 - i. The terms shall remain in full force and effect throughout the useful life of facilities developed, equipment acquired, or Project items installed within a facility, but shall not exceed twenty (20) years from the effective date of this Agreement.
 - ii. There shall be no limit on the duration of the terms with respect to real property acquired with Department funds.

15. Single Audit. The administration of Federal or State resources awarded through the Department to the Agency by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of Federal awards or State financial assistance or limit the authority of any state agency inspector general, the State of Florida Auditor General, or any other state official. The Agency shall comply with all audit and audit reporting requirements as specified below.

Federal Funded:

- a. In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to Federal awards provided

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through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO), or State of Florida Auditor General.

- b. The Agency, a non-Federal entity as defined by 2 CFR Part 200, Subpart F – Audit Requirements, as a subrecipient of a Federal award awarded by the Department through this Agreement, is subject to the following requirements:
 - i. In the event the Agency expends a total amount of Federal awards equal to or in excess of the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, the Agency must have a Federal single or program-specific audit conducted for such fiscal year in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements. **Exhibit “H”, Audit Requirements for Awards of Federal Financial Assistance**, to this Agreement provides the required Federal award identification information needed by the Agency to further comply with the requirements of 2 CFR Part 200, Subpart F – Audit Requirements. In determining Federal awards expended in a fiscal year, the Agency must consider all sources of Federal awards based on when the activity related to the Federal award occurs, including the Federal award provided through the Department by this Agreement. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F – Audit Requirements. An audit conducted by the State of Florida Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, will meet the requirements of this part.
 - ii. In connection with the audit requirements, the Agency shall fulfill the requirements relative to the auditee responsibilities as provided in 2 CFR Part 200, Subpart F – Audit Requirements.
 - iii. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards, the Agency is exempt from Federal audit requirements for that fiscal year. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency’s audit period for each applicable audit year. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 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 the Agency’s resources obtained from other than Federal entities).
 - iv. The Agency must electronically submit to the Federal Audit Clearinghouse (FAC) at <https://harvester.census.gov/facweb/> the audit reporting package as required by 2 CFR Part 200, Subpart F – Audit Requirements, within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by 2 CFR Part 200, Subpart F – Audit Requirements. However, the Department requires a copy of the audit reporting package also be submitted to FDOTSingleAudit@dot.state.fl.us within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period as required by 2 CFR Part 200, Subpart F – Audit Requirements.
 - v. Within six months of acceptance of the audit report by the FAC, the Department will review the Agency’s audit reporting package, including corrective action plans and

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management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the Federal award provided through the Department by this Agreement. If the Agency fails to have an audit conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:

1. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department;
 2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
 3. Wholly or partly suspend or terminate the Federal award;
 4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and Federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the Federal awarding agency);
 5. Withhold further Federal awards for the Project or program;
 6. Take other remedies that may be legally available.
- vi. As a condition of receiving this Federal award, the Agency shall permit the Department or its designee, the CFO, or State of Florida Auditor General access to the Agency's records, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.
- vii. The Department's contact information for requirements under this part is as follows:

Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0450
FDOTSingleAudit@dot.state.fl.us

State Funded:

- a. In addition to reviews of audits conducted in accordance with Section 215.97, Florida Statutes, monitoring procedures to monitor the Agency's use of state financial assistance may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to state financial assistance awarded through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, the Department of Financial Services (DFS), or State of Florida Auditor General.
- b. The Agency, a "nonstate entity" as defined by Section 215.97, Florida Statutes, as a recipient of state financial assistance awarded by the Department through this Agreement, is subject to the following requirements:
 - i. In the event the Agency meets the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency must have a State single or project-specific audit conducted for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and

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Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. **Exhibit "G", Audit Requirements for Awards of State Financial Assistance**, to this Agreement indicates state financial assistance awarded through the Department by this Agreement needed by the Agency to further comply with the requirements of Section 215.97, Florida Statutes. In determining the state financial assistance expended in a fiscal year, the Agency shall consider all sources of state financial assistance, including state financial assistance received from the Department by this Agreement, 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.

- ii. In connection with the audit requirements, the Agency shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
- iii. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency is exempt for such fiscal year from the state single audit requirements of Section 215.97, Florida Statutes. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency's audit period for each applicable audit year. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, in a fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the Agency's resources (*i.e.*, the cost of such an audit must be paid from the Agency's resources obtained from other than State entities).
- iv. In accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0405
FDOTSingleAudit@dot.state.fl.us

And

State of Florida Auditor General
Local Government Audits/342
111 West Madison Street, Room 401
Tallahassee, FL 32399-1450
Email: flaudgen_localgovt@aud.state.fl.us

- v. Any copies of financial reporting packages, reports, or other information required to be submitted to the Department shall be submitted timely in accordance with Section 215.97, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- vi. The Agency, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or

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10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date the reporting package was delivered to the Agency in correspondence accompanying the reporting package.

vii. Upon receipt, and within six months, the Department will review the Agency's financial reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the state financial assistance provided through the Department by this Agreement. If the Agency fails to have an audit conducted consistent with Section 215.97, Florida Statutes, the Department may take appropriate corrective action to enforce compliance.

viii. As a condition of receiving state financial assistance, the Agency shall permit the Department or its designee, DFS, or the Auditor General access to the Agency's records, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.

c. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department or its designee, DFS, or State of Florida Auditor General access to such records upon request. The Agency shall ensure that the audit working papers are made available to the Department or its designee, DFS, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

16. Notices and Approvals. Notices and approvals referenced in this Agreement must be obtained in writing from the Parties' respective Administrators or their designees.

17. Restrictions, Prohibitions, Controls and Labor Provisions:

a. Convicted Vendor List. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

b. Discriminatory Vendor List. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

c. Non-Responsible Contractors. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied, or have further been determined by the Department to be a non-responsible contractor, may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.

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- d. **Prohibition on Using Funds for Lobbying.** No funds received pursuant to this Agreement may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.
- e. **Unauthorized Aliens.** The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
- f. **Procurement of Construction Services.** If the Project is procured pursuant to Chapter 255, Florida Statutes, for construction services and at the time of the competitive solicitation for the Project, 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Agency must comply with the requirements of Section 255.0991, Florida Statutes.
- g. **E-Verify.** The Agency shall:
 - i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the contract; and
 - ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- h. **Executive Order 20-44.** Pursuant to Governor's Executive Order 20-44, if the Agency is required by the Internal Revenue Code to file IRS Form 990 and is named in statute with which the Department must form a sole-source, public-private agreement; or through contract or other agreement with the State, annually receives 50% or more of its budget from the State or from a combination of State and Federal funds, Recipient shall submit an Annual Report to the Department, including the most recent IRS Form 990, detailing the total compensation for each member of the Agency executive leadership team. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Agency shall inform the Department of any changes in total executive compensation during the period between the filing of Annual Reports within 60 days of any change taking effect. All compensation reports shall detail the percentage of executive leadership compensation received directly from all State and/or Federal allocations to the Agency. Annual Reports shall be in the form approved by the Department and shall be submitted to the Department at fdotsingleaudit@dot.state.fl.us within 180 days following the end of each tax year of the Agency receiving Department funding.
- i. **Design Services and Construction Engineering and Inspection Services.** If the Project is wholly or partially funded by the Department and administered by a local governmental entity, except for a seaport listed in Section 311.09, Florida Statutes, or an airport as defined in Section 332.004, Florida Statutes, the entity performing design and construction engineering and inspection services may not be the same entity.

18. Indemnification and Insurance:

- a. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The Agency guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Agency or any

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subcontractor, in connection with this Agreement. Additionally, to the extent permitted by law and as limited by and pursuant to the provisions of Section 768.28, Florida Statutes, the Agency shall indemnify, defend, and hold harmless the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Agency and persons employed or utilized by the Agency in the performance of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the Department's or the Agency's sovereign immunity. This indemnification shall survive the termination of this Agreement. Additionally, the Agency agrees to include the following indemnification in all contracts with contractors/subcontractors and consultants/subconsultants who perform work in connection with this Agreement:

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

This indemnification shall survive the termination of this Agreement."

- b. The Agency shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultant(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation Insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships, or partners are covered by insurance required under Florida's Workers' Compensation law.
- c. If the Agency elects to self-perform the Project, then the Agency may self-insure. If the Agency elects to hire a contractor or consultant to perform the Project, then the Agency shall carry, or cause its contractor or consultant to carry, Commercial General Liability insurance providing continuous coverage for all work or operations performed under this Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. The Agency shall cause, or cause its contractor or consultant to cause, the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Agency is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the

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coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.

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

19. Miscellaneous:

- a. **Environmental Regulations.** The Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith.
- b. **Non-Admission of Liability.** In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- c. **Severability.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- d. **Agency not an agent of Department.** The Agency and the Department agree that the Agency, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- e. **Bonus or Commission.** By execution of the Agreement, the Agency represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

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- f. **Non-Contravention of State Law.** Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing so that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.
- g. **Execution of Agreement.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- h. **Federal Award Identification Number (FAIN).** If the FAIN is not available prior to execution of the Agreement, the Department may unilaterally add the FAIN to the Agreement without approval of the Agency and without an amendment to the Agreement. If this occurs, an updated Agreement that includes the FAIN will be provided to the Agency and uploaded to the Department of Financial Services' Florida Accountability Contract Tracking System (FACTS).
- i. **Inspector General Cooperation.** The Agency agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.
- j. **Law, Forum, and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The Agency agrees to waive forum and venue and that the Department shall determine the forum and venue in which any dispute under this Agreement is decided.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written above.

AGENCY City of Pensacola

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Name: _____

Name: Tim Smith, P. E.

Title: _____

Title: Director of Transportation Development

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
Legal Review:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 4/25/2023

EXHIBIT A

Project Description and Responsibilities

A. Project Description (description of Agency's project to provide context, description of project components funded via this Agreement (if not the entire project)): Taxiway A7 & Taxiway A/B Intersection Reconfiguration - Construction/Construction Administration - See Attachment 1

B. Project Location (limits, city, county, map): Pensacola International Airport/Pensacola, FL/Escambia

C. Project Scope (allowable costs: describe project components, improvement type/service type, approximate timeline, project schedule, project size): See Attachment 1

D. Deliverable(s): See Attachment 1

The project scope identifies the ultimate project deliverables. Deliverables for requisition, payment and invoice purposes will be the incremental progress made toward completion of project scope elements. Supporting documentation will be quantifiable, measurable, and verifiable, to allow for a determination of the amount of incremental progress that has been made, and provide evidence that the payment requested is commensurate with the accomplished incremental progress and costs incurred by the Agency.

E. Unallowable Costs (including but not limited to): Travel

F. Transit Operating Grant Requirements (Transit Only):

Transit Operating Grants billed as an operational subsidy will require an expenditure detail report from the Agency that matches the invoice period. The expenditure detail, along with the progress report, will be the required deliverables for Transit Operating Grants. Operating grants may be issued for a term not to exceed three years from execution. The original grant agreement will include funding for year one. Funding for years two and three will be added by amendment as long as the grantee has submitted all invoices on schedule and the project deliverables for the year have been met.

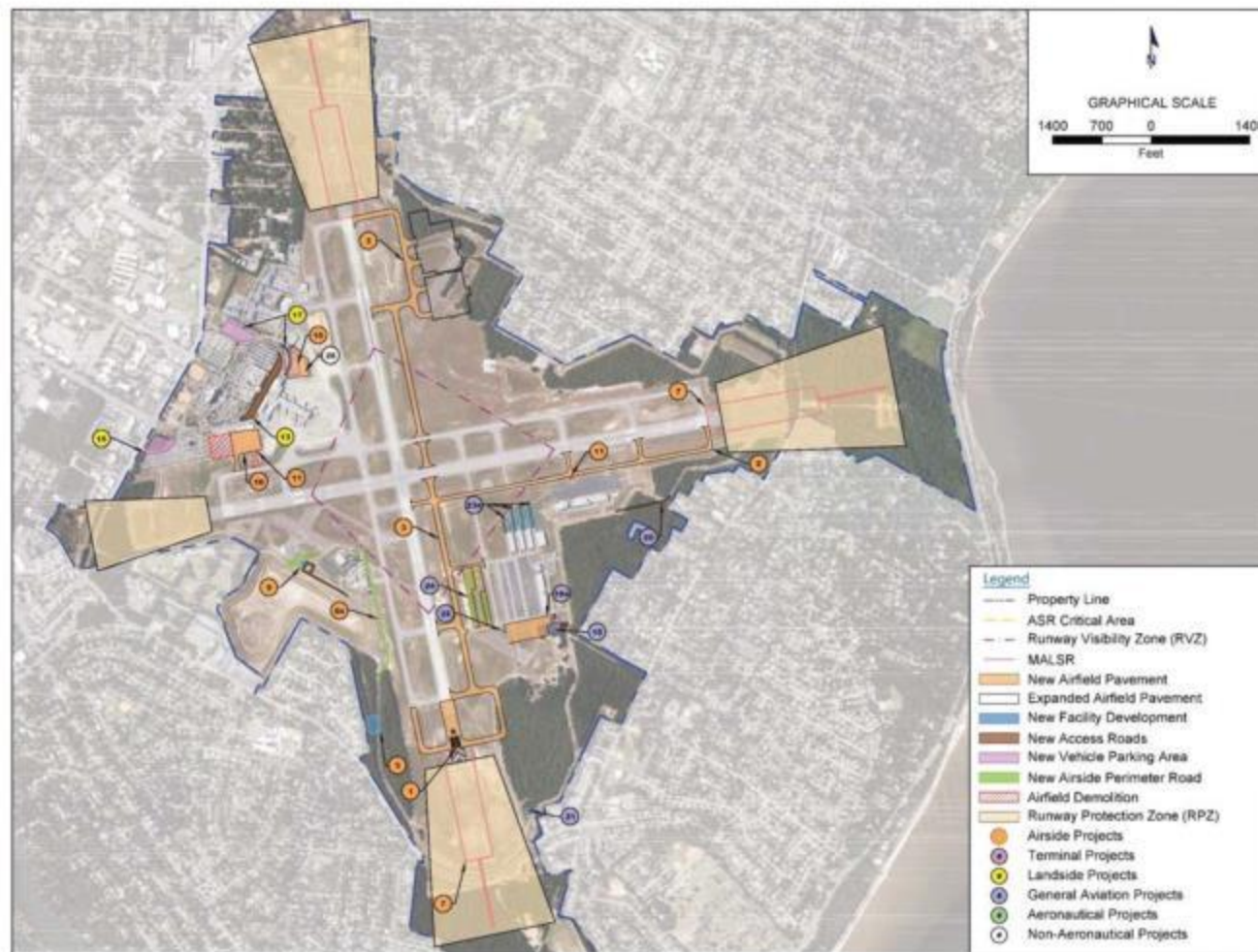


FIGURE 5-26
RECOMMENDED DEVELOPMENT PHASING
0-5 YEARS FUTURE

Project

- 1 Runway 17-35 Extension
- 2 Taxiway D Upgrade to ADG-III
- 3 New Parallel Taxiway
- 4 Relocated RTR
- 5 New MALSR
- 6 New Airside Perimeter Road
- 7 New Jet A Fuel Farm
- 8 New Remain-Over-Night (RON) Apron
- 9 Airfield Demolition
- 10 Curbside Reconfiguration
- 11 Expansion of Economy 1 and Cell Lot
- 12 Relocation of Employee Lot
- 13 GA CBP FIS Facility
- 14 New Apron
- 15 Realignment of Maygarden Road
- 16 New GA Fuel Farm
- 17 Self-Serve AvGas Fueling Station
- 18 T-Hangar Expansion
- 19 Relocation of Helicopter Hardstand
- 20 Demolish Abandoned TRACON Building

Source: Pensacola International Airport, 2007; RS&H, 2017

RS&H

Project Description and Budget
4466451 Taxiway A7 & Taxiway A/B Intersection Reconfiguration – Construction &
Construction Administration
Pensacola International Airport, Florida

SECTION A: PROJECT DESCRIPTION

The proposed project consists of reconfiguration of Taxiway A7 & Taxiway A/B intersection to comply with current FAA design standards; rehabilitation of all taxiway connectors to near edge of runway safety area; new taxiway edge lights and associated cans and cables to accommodate LED fixtures; new taxiway signage and associated cables to accommodate LED fixtures; pavement markings; and miscellaneous grading.

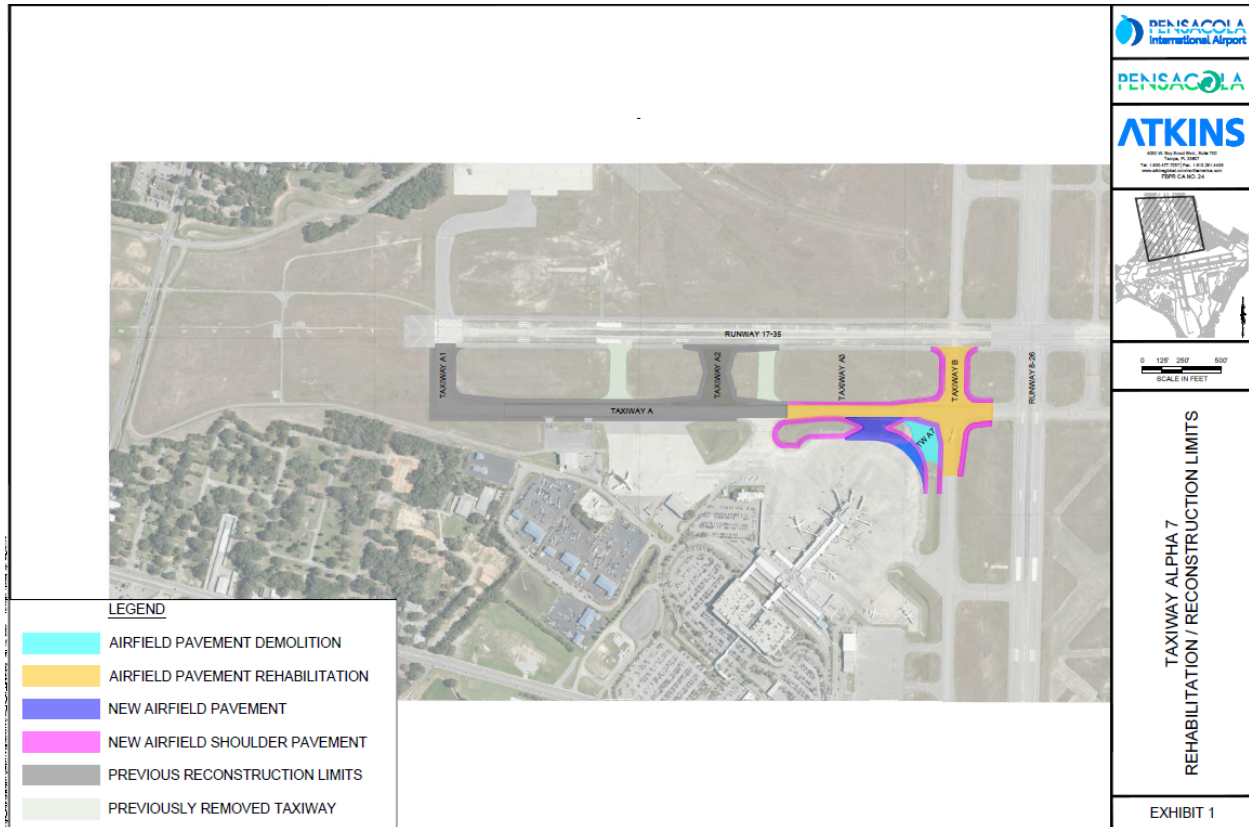
As required by 215.971, F.S., this scope of work includes but is not limited to consultant and construction administration fees, the survey and geotechnical costs, construction inspection and material testing costs, mobilization and demobilization, permitting, pavement demolition, surface course improvements (such as concrete, asphalt, rejuvenators, or sealants), joint construction, runway grooving, pavement markings and striping, airfield lighting and signage improvements, recalculation of the pavement PCN, updating the new PCN numbers on the FAA Form 5010 and the FAD, sodding, and safety barricades, including all materials, equipment, labor, and incidentals required to rehabilitate the runway pavement. The Sponsor will comply with Aviation Program Assurances.

SECTION B: PROJECT JUSTIFICATION

To reduce the possibility of runway incursions at Hot Spot 1 by reconfiguring the Taxiway A7 & Taxiway A/B intersection to comply with current FAA design standards. This complex intersection currently adds to the confusion of the Runway 8/26 & 17/35 intersection by producing expansive pavements and direct access taxiways as pilots are entering the runway environment. This combination increases the likelihood of a runway incursion. FAA identified 25 runway incursions in this area from 2007 through 2018, with a peak of six occurring in one year. This project will enhance safety in the Taxiway A/B and Runways 8-26 & 17-35 intersection by eliminating direct access from the Air Carrier Ramp, and by eliminating expansive pavement at the Taxiway A/B intersection. The project will allow the taxiway system to meet current FAA taxiway design geometry and help prevent additional runway incursions from occurring at this intersection. Infrastructure Investment - FDOT assigned a PCI value of 57 indicating it as being in "Poor to "Fair" condition.

The most recent FDOT Pavement Evaluation Report for PNS is shown in Attachment 1. The proposed project is shown on the following page.

Project Description and Budget
4466451 Taxiway A7 & Taxiway A/B Intersection Reconfiguration – Construction &
Construction Administration
Pensacola International Airport, Florida



SECTION C: DESCRIPTION OF PROFESSIONAL SERVICES

The following elements describe the specific tasks to be provided as part of this scope:

TASK C-I: CONSTRUCTION PHASE SERVICES

Consultant shall prepare “Release for Construction” conformed documents, attend Pre-Construction Conference, evaluate/review contractor submittals, participate in periodic site visits, review contractor pay requests, prepare substantial completion punch-list, perform final inspection, and prepare Record Drawings and Close-Out Documents. Payments for the above-listed task will be made after the following deliverables are received or milestones occur:

- Conformed Documents
- Pre-Construction Conference
- Verification of Site Visits
- Substantial Completion Punch-list
- Final Completion Inspection
- Record Drawings and Close-Out Documents
- “Pen-and-ink” change to the Airport Layout Drawing

TASK C-II: CONSTRUCTION

The construction contractor for this project will be determined via a public competitive bidding process. The contractor’s scope will include performing the installation of the project improvements as specified

Project Description and Budget
4466451 Taxiway A7 & Taxiway A/B Intersection Reconfiguration – Construction &
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Pensacola International Airport, Florida

in the contract documents. The contractor shall furnish all materials, labor, incidentals, and supplies required to construct the project and deliver an operable facility ready for use. Payment will be made to the Contractor based on actual constructed quantities at the contract unit prices. Upon completion of the work and prior to final payment, a final change order will be prepared and executed to reflect the final contract amount.

SECTION D: ANTICIPATED PROJECT SCHEDULE

The project schedule is anticipated to require approximately 13 months and is anticipated to progress from the project Notice-To-Proceed (NTP) as follows:

Task Order Preparation and Approvals	60 days
Task C-I – Construction Phase Services (and contracts)	90 days
Task C-II – Construction	180 days
Project Close-Out	<u>60 days</u>
Total Project Duration	390 days

SECTION E: PROJECT BUDGET ESTIMATES:

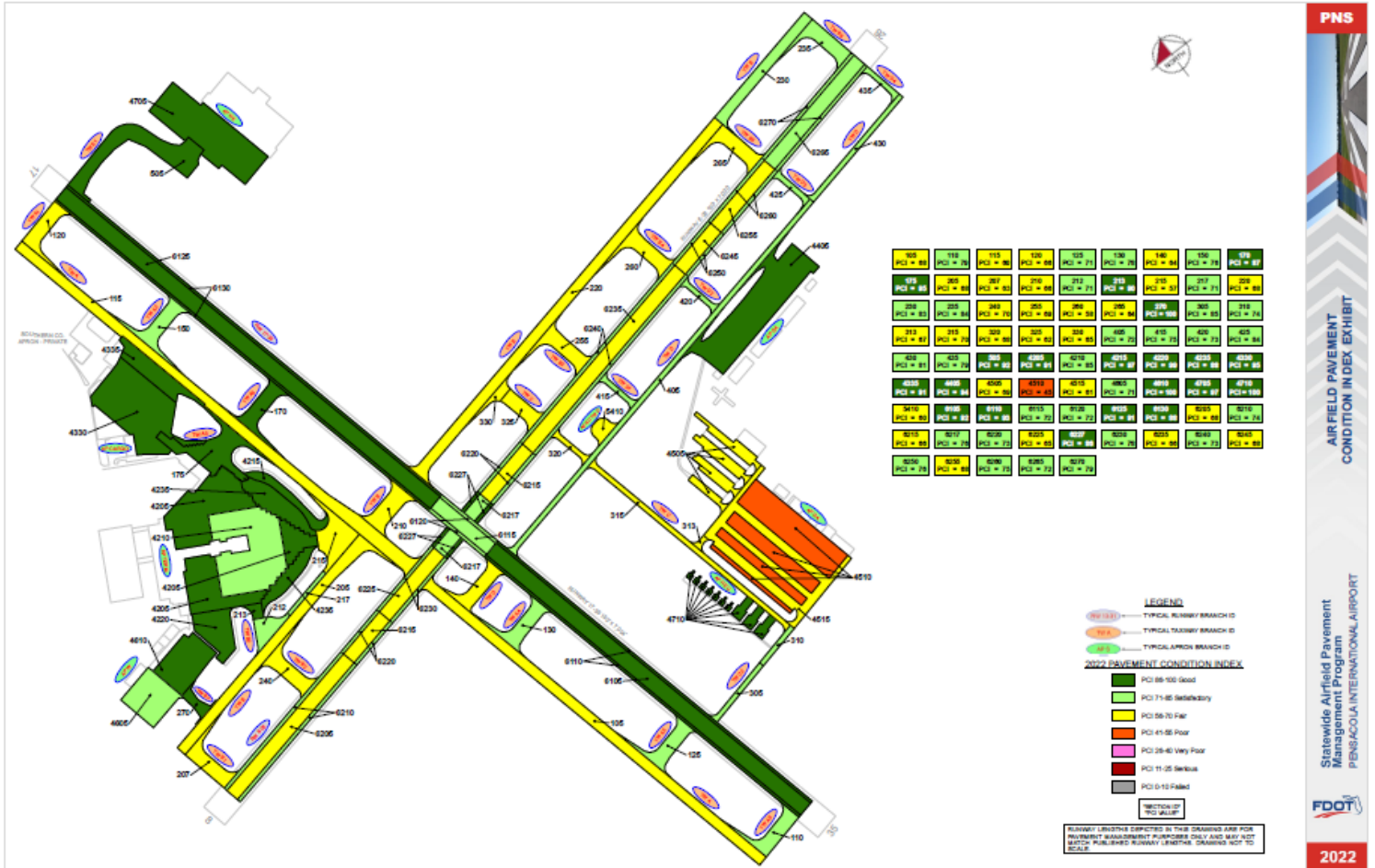
Construction Phase Services	\$995,000.00
Construction	<u>8,962,600.00</u>
Project Total	<u>\$9,957,600.00</u>
Funding Sources:	
FAA	\$8,961,840.00
FDOT	450,000.00
Local	<u>545,760.00</u>
Total	<u>\$9,957,600.00</u>

SECTION F: ATTACHMENTS

- Attachment 1— 2022 FDOT Pavement Evaluation Report

Project Description and Budget
4466451 Taxiway A7 & Taxiway A/B Intersection Reconfiguration – Construction &
Construction Administration
Pensacola International Airport, Florida

Attachment 1
2022 FDOT Pavement Evaluation Report



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

Form 725-000-02
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EXHIBIT B

Schedule of Financial Assistance

FUNDS AWARDED TO THE AGENCY AND REQUIRED MATCHING FUNDS PURSUANT TO THIS AGREEMENT
CONSIST OF THE FOLLOWING:

A. Fund Type and Fiscal Year:

Financial Management Number	Fund Type	FLAIR Category	State Fiscal Year	Object Code	CSFA/ CFDA Number	CSFA/CFDA Title or Funding Source Description	Funding Amount
446645-1-94-01	DDR	088719	2025	740100	N/A	N/A	\$450,000.00
446645-1-94-01	FAA	088719	2025	740100	N/A	N/A	\$8,961,840.00
446645-1-94-01	LF	088719	2025	740100	N/A	N/A	\$545,760.00
Total Financial Assistance							\$9,957,600.00

B. Estimate of Project Costs by Grant Phase:

Phases*	State	Local	Federal	Totals	State %	Local %	Federal %
Land Acquisition	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00	0.00
Planning	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00	0.00
Environmental/Design/Construction	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00	0.00
Capital Equipment/ Preventative Maintenance	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00	0.00
Match to Direct Federal Funding	\$450,000.00	\$545,760.00	\$8,961,840.00	\$9,957,600.00	4.52	5.48	90.00
Mobility Management (Transit Only)	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00	0.00
Totals	\$450,000.00	\$545,760.00	\$8,961,840.00	\$9,957,600.00			

*Shifting items between these grant phases requires execution of an Amendment to the Public Transportation Grant Agreement. **Funds will be reimbursed at 5%.

Scope Code and/or Activity Line Item (ALI) (Transit Only)	
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BUDGET/COST ANALYSIS CERTIFICATION AS REQUIRED BY SECTION 216.3475, FLORIDA STATUTES:

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

Quinton Williams

Department Grant Manager Name

Signature

Date

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS****EXHIBIT C****TERMS AND CONDITIONS OF CONSTRUCTION****1. Design and Construction Standards and Required Approvals.**

- a. The Agency understands that it is responsible for the preparation and certification of all design plans for the Project. The Agency shall hire a qualified consultant for the design phase of the Project or, if applicable, the Agency shall require their design-build contractor or construction management contractor to hire a qualified consultant for the design phase of the Project.
- b. Execution of this Agreement by both Parties shall be deemed a Notice to Proceed to the Agency for the design phase or other non-construction phases of the Project. If the Project involves a construction phase, the Agency shall not begin the construction phase of the Project until the Department issues a Notice to Proceed for the construction phase. Prior to commencing the construction work described in this Agreement, the Agency shall request a Notice to Proceed from the Department's Project Manager, Quinton Williams (email: quinton.williams@dot.state.fl.us) or from an appointed designee. Any construction phase work performed prior to the execution of this required Notice to Proceed is not subject to reimbursement.
- c. The Agency will provide one (1) copy of the final design plans and specifications and final bid documents to the Department's Project Manager prior to bidding or commencing construction of the Project.
- d. The Agency shall require the Agency's contractor to post a payment and performance bond in accordance with applicable law(s).
- e. The Agency shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that the construction work will meet all applicable Agency and Department standards.
- f. Upon completion of the work authorized by this Agreement, the Agency shall notify the Department in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineer's Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached to this Exhibit. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans or specifications, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

2. Construction on the Department's Right of Way. If the Project involves construction on the Department's right-of-way, then the following provisions apply to any and all portions of the Project that are constructed on the Department's right-of-way:

- a. The Agency shall hire a qualified contractor using the Agency's normal bid procedures to perform the construction work for the Project. The Agency must certify that the installation of the Project is completed by a Contractor prequalified by the Department as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2016), as amended, unless otherwise approved by the Department in writing or the Contractor exhibits past project experience in the last five years that are comparable in scale, composition, and overall quality to the site characterized within the scope of services of this Project.

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GRANT AGREEMENT EXHIBITS**

- b. Construction Engineering Inspection (CEI) services will be provided by the Agency by hiring a Department prequalified consultant firm including one individual that has completed the Advanced Maintenance of Traffic Level Training, unless otherwise approved by the Department in writing. The CEI staff shall be present on the Project at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by Department. The Department shall approve all CEI personnel. The CEI firm shall not be the same firm as that of the Engineer of Record for the Project. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. Notwithstanding the foregoing, the Department may issue a written waiver of the CEI requirement for portions of Projects involving the construction of bus shelters, stops, or pads.
- c. The Project shall be designed and constructed in accordance with the latest edition of the Department's Standard Specifications for Road and Bridge Construction, the Department Design Standards, and the Manual of Uniform Traffic Control Devices (MUTCD). The following guidelines shall apply as deemed appropriate by the Department: the Department Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, Florida Design Manual, Manual for Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the "Florida Green Book"), and the Department Traffic Engineering Manual. The Agency will be required to submit any construction plans required by the Department for review and approval prior to any work being commenced. Should any changes to the plans be required during construction of the Project, the Agency shall be required to notify the Department of the changes and receive approval from the Department prior to the changes being constructed. The Agency shall maintain the area of the Project at all times and coordinate any work needs of the Department during construction of the Project.
- d. The Agency shall notify the Department a minimum of 48 hours before beginning construction within Department right-of-way. The Agency shall notify the Department should construction be suspended for more than 5 working days. The Department contact person for construction is Quinton Williams.
- e. The Agency shall be responsible for monitoring construction operations and the maintenance of traffic (MOT) throughout the course of the Project in accordance with the latest edition of the Department Standard Specifications, section 102. The Agency is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the Department Design Standards, Index 600 series. Any MOT plan developed by the Agency that deviates from the Department Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.
- f. The Agency shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.
- g. The Agency will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.
- h. It is hereby agreed by the Parties that this Agreement creates a permissive use only and all improvements located on the Department's right-of-way resulting from this Agreement shall become the property of the Department. Neither the granting of the permission to use the Department right of way nor the placing of facilities upon the Department property shall operate to create or vest any property right to or in the Agency, except as may otherwise be provided in separate agreements. The Agency shall not acquire any right, title, interest or

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

estate in Department right of way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Agency's use, occupancy or possession of Department right of way. The Parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to Chapter 163, F.S.

- i. The Agency shall not cause any liens or encumbrances to attach to any portion of the Department's property, including but not limited to, the Department's right-of-way.
- j. The Agency shall perform all required testing associated with the design and construction of the Project. Testing results shall be made available to the Department upon request. The Department shall have the right to perform its own independent testing during the course of the Project.
- k. The Agency shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the Department, applicable Water Management District, Florida Department of Environmental Protection, the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Coast Guard and local governmental entities.
- l. If the Department determines a condition exists which threatens the public's safety, the Department may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from its right-of-way at the sole cost, expense, and effort of the Agency. The Agency shall bear all construction delay costs incurred by the Department.
- m. The Agency shall be responsible to maintain and restore all features that might require relocation within the Department right-of-way.
- n. The Agency will be solely responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.
- o. The acceptance procedure will include a final "walk-through" by Agency and Department personnel. Upon completion of construction, the Agency will be required to submit to the Department final as-built plans and an engineering certification that construction was completed in accordance to the plans. Submittal of the final as-built plans shall include one complete set of the signed and sealed plans on 11" X 17" plan sheets and an electronic copy prepared in Portable Document Format (PDF). Prior to the termination of this Agreement, the Agency shall remove its presence, including, but not limited to, all of the Agency's property, machinery, and equipment from Department right-of-way and shall restore those portions of Department right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.
- p. If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have thirty (30) days from the date of receipt of the Department's written notice, or such other time as the Agency and the Department mutually agree to in writing, to complete the Project and provide the Department with written notice of the same (the "Notice of Completion"). If the Agency fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department, within its discretion may: 1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Agency's sole cost and expense,

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without Department liability to the Agency for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice within thirty (30) days of the date of the invoice.

- q. The Agency shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. The Agency shall be responsible for the correction of any erosion, shoaling, or water quality problems that result from the construction of the Project.
- r. Portable Traffic Monitoring Site (PTMS) or a Telemetry Traffic Monitoring Site (TTMS) may exist within the vicinity of your proposed work. It is the responsibility of the Agency to locate and avoid damage to these sites. If a PTMS or TTMS is encountered during construction, the Department must be contacted immediately.
- s. During construction, highest priority must be given to pedestrian safety. If permission is granted to temporarily close a sidewalk, it should be done with the express condition that an alternate route will be provided, and shall continuously maintain pedestrian features to meet Americans Disability Act (ADA) standards.
- t. Restricted hours of operation will be as follows, unless otherwise approved by the Department's District Construction Engineer or designee (insert hours and days of the week for restricted operation):
- u. Lane closures on the state road system must be coordinated with the Public Information Office at least two weeks prior to the closure. The contact information for the Department's Public Information Office is:

Insert District PIO contact info:

850-330-1205

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

3. **Engineer's Certification of Compliance.** The Agency shall complete and submit and if applicable Engineer's Certification of Compliance to the Department upon completion of the construction phase of the Project.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS****ENGINEER'S CERTIFICATION OF COMPLIANCE**

PUBLIC TRANSPORTATION GRANT AGREEMENT
BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and _____

PROJECT DESCRIPTION: _____

DEPARTMENT CONTRACT NO.: _____

FINANCIAL MANAGEMENT NO.: _____

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

By: _____, P.E.

SEAL:

Name: _____

Date: _____

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EXHIBIT D

AGENCY RESOLUTION

PLEASE SEE ATTACHED

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**PUBLIC TRANSPORTATION
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EXHIBIT E

**PROGRAM SPECIFIC TERMS AND CONDITIONS - AVIATION
AVIATION PROGRAM ASSURANCES**

A. General.

1. The assurances herein shall form an integral part of the Agreement between the Department and the Agency.
2. These assurances delineate the obligations of the Parties to this Agreement to ensure their commitment and compliance with specific provisions of **Exhibit “A”, Project Description and Responsibilities**, and **Exhibit “B”, Schedule of Financial Assistance**, as well as serving to protect public investment in public-use airports and the continued viability of the Florida Aviation System.
3. The Agency shall comply with the assurances as specified in this Agreement.
4. The terms and assurances of this Agreement shall remain in full force and effect throughout the useful life of a facility developed; equipment acquired; or Project items installed within a facility for an airport development or noise compatibility program project, but shall not exceed 20 years from the effective date of this Agreement.
5. There shall be no limit on the duration of the terms and assurances of this Agreement regarding Exclusive Rights and Airport Revenue so long as the property is used as a public airport.
6. There shall be no limit on the duration of the terms and assurances of this Agreement with respect to real property acquired with funds provided by this Agreement.
7. Subject to appropriations, the Department shall continue to comply with its financial commitment to this Project under the terms of this Agreement, until such time as the Department may determine that the Agency has failed to comply with the terms and assurances of this Agreement.
8. An Agency that has been determined by the Department to have failed to comply with either the terms of these Assurances, or the terms of the Agreement, or both, shall be notified, in writing, by the Department, identifying the specifics of the non-compliance and any corrective action by the Agency to remedy the failure.
9. Failure by the Agency to satisfactorily remedy the non-compliance shall absolve the Department's continued financial commitment to this Project and immediately require the Agency to repay the Department the full amount of funds expended by the Department on this Project.
10. Any history of failure to comply with the terms and assurances of an Agreement will jeopardize the Agency's eligibility for further state funding of airport projects by the Department.

B. Agency Compliance Certification.

1. **General Certification.** The Agency hereby certifies, with respect to this Project, it will comply, within its authority, with all applicable, current laws and rules of the State of Florida and applicable local governments, as well as Department policies, guidelines, and requirements, including but not limited to, the following (latest version of each document):
 - a. **Florida Statutes (F.S.)**
 - Chapter 163, F.S., Intergovernmental Programs
 - Chapter 329, F.S., Aircraft: Title; Liens; Registration; Liens
 - Chapter 330, F.S., Regulation of Aircraft, Pilots, and Airports
 - Chapter 331, F.S., Aviation and Aerospace Facilities and Commerce
 - Chapter 332, F.S., Airports and Other Air Navigation Facilities
 - Chapter 333, F.S., Airport Zoning

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b. Florida Administrative Code (FAC)

- Chapter 73C-41, FAC, Community Planning; Governing the Procedure for the Submittal and Review of Local Government Comprehensive Plans and Amendments
- Chapter 14-60, FAC, Airport Licensing, Registration, and Airspace Protection
- Section 62-256.300, FAC, Open Burning, Prohibitions
- Section 62-701.320(13), FAC, Solid Waste Management Facility Permit Requirements, General, Airport Safety

c. Local Government Requirements

- Airport Zoning Ordinance
- Local Comprehensive Plan

d. Department Requirements

- Eight Steps of Building a New Airport
- Florida Airport Revenue Use Guide
- Florida Aviation Project Handbook
- Guidebook for Airport Master Planning
- Airport Compatible Land Use Guidebook

- 2. Construction Certification.** The Agency hereby certifies, with respect to a construction-related project, that all design plans and specifications will comply with applicable federal, state, local, and professional standards, as well as Federal Aviation Administration (FAA) Advisory Circulars (AC's) and FAA issued waivers thereto, including but not limited to, the following:

a. Federal Requirements

- FAA AC 70/7460-1, Obstruction Marking and Lighting
- FAA AC 150/5300-13, Airport Design
- FAA AC 150/5370-2, Operational Safety on Airports During Construction
- FAA AC 150/5370-10, Standards for Specifying Construction of Airports

b. Local Government Requirements

- Local Building Codes
- Local Zoning Codes

c. Department Requirements

- Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (Commonly Referred to as the "Florida Green Book")
- Manual on Uniform Traffic Control Devices
- Section 14-60.007, FAC, Airfield Standards for Licensed Airports
- Standard Specifications for Construction of General Aviation Airports
- Design Guidelines & Minimum Standard Requirements for T-Hangar Projects

- 3. Land Acquisition Certification.** The Agency hereby certifies, regarding land acquisition, that it will comply with applicable federal and/or state policies, regulations, and laws, including but not limited to the following:

a. Federal Requirements

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- National Environmental Policy of 1969
- FAA Order 5050.4, National Environmental Policy Act Implementing Instructions for Airport Projects
- FAA Order 5100.37B, Land Acquisition and Relocation Assistance for Airport Projects

b. Florida Requirements

- Chapter 73, F.S., Eminent Domain (re: Property Acquired Through Condemnation)
- Chapter 74, F.S., Proceedings Supplemental to Eminent Domain (re: Condemnation)
- Section 286.23, F.S., Public Business: Miscellaneous Provisions

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C. Agency Authority.

1. **Legal Authority.** The Agency hereby certifies, with respect to this Agreement, that it has the legal authority to enter into this Agreement and commit to this Project; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the airport sponsor's governing body authorizing this Agreement, including assurances contained therein, and directing and authorizing the person identified as the official representative of the governing body to act on its behalf with respect to this Agreement and to provide any additional information as may be required.
2. **Financial Authority.** The Agency hereby certifies, with respect to this Agreement, that it has sufficient funds available for that portion of the Project costs which are not paid by the U.S. Government or the State of Florida; that it has sufficient funds available to assure future operation and maintenance of items funded by this Project, which it will control; and that authority has been granted by the airport sponsor governing body to commit those funds to this Project.

D. Agency Responsibilities. The Agency hereby certifies it currently complies with or will comply with the following responsibilities:

1. Accounting System.

- a. The Agency shall create and maintain a separate account to document all of the financial transactions related to the airport as a distinct entity.
- b. The accounting records shall be kept by the Agency or its authorized representative in accordance with Generally Accepted Accounting Principles and in an accounting system that will facilitate an effective audit in accordance with the 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and Section 215.97, F.S., Florida Single Audit Act.
- c. The Department has the right to audit and inspect all financial records of the Agency upon reasonable notice.

2. Good Title.

- a. The Agency holds good title, satisfactory to the Department, to the airport or site thereof, or gives assurance, satisfactory to the Department, that good title will be obtained.
- b. For noise compatibility program projects undertaken on the airport sponsor's property, the Agency holds good title, satisfactory to the Department, to that portion of the property upon which state funds will be expended, or gives assurance, satisfactory to the Department, that good title will be obtained.

3. Preserving Rights and Powers.

- a. The Agency shall not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms and assurances of this Agreement without the written approval of the Department. Further, the Agency shall act promptly to acquire, extinguish, or modify, in a manner acceptable to the Department, any outstanding rights or claims of right of others which would interfere with such performance by the Agency.
- b. If an arrangement is made for management and operation of the airport by any entity or person other than the Agency or an employee of the Agency, the Agency shall reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with the terms and assurances of this Agreement.

4. Hazard Removal and Mitigation.

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- a. For airport hazards located on airport controlled property, the Agency shall clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.
- b. For airport hazards not located on airport controlled property, the Agency shall work in conjunction with the governing public authority or private land owner of the property to clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards. The Agency may enter into an agreement with surrounding property owners or pursue available legal remedies to remove potential hazards to air navigation.

5. Airport Compatible Land Use.

- a. The Agency assures that appropriate airport zoning ordinances are in place consistent with Section 333.03, F.S., or if not in place, that it will take appropriate action necessary to ensure local government adoption of an airport zoning ordinance or execution of an interlocal agreement with another local government body having an airport zoning ordinance, consistent with the provisions of Section 333.03, F.S.
- b. The Agency assures that it will disapprove or oppose any attempted alteration or creation of objects, natural or man-made, dangerous to navigable airspace or that would adversely affect the current or future levels of airport operations.
- c. The Agency assures that it will disapprove or oppose any attempted change in local land use development regulations that would adversely affect the current or future levels of airport operations by creation or expansion of airport incompatible land use areas.

6. Consistency with Local Government Plans.

- a. The Agency assures the Project is consistent with the currently existing and planned future land use development plans approved by the local government having jurisdictional responsibility for the area surrounding the airport.
- b. The Agency assures that it has given fair consideration to the interest of local communities and has had reasonable consultation with those parties affected by the Project.
- c. The Agency shall consider and take appropriate actions, if deemed warranted by the Agency, to adopt the current, approved Airport Master Plan into the local government comprehensive plan.

7. Consistency with Airport Master Plan and Airport Layout Plan.

- a. The Agency assures that the project, covered by the terms and assurances of this Agreement, is consistent with the most current Airport Master Plan.
- b. The Agency assures that the Project, covered by the terms and assurances of this Agreement, is consistent with the most current, approved Airport Layout Plan (ALP), which shows:
 - 1) The boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Agency for airport purposes and proposed additions thereto;
 - 2) The location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and
 - 3) The location of all existing and proposed non-aviation areas on airport property and of all existing improvements thereon.

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- c. The Agency assures that it will not make or permit any changes or alterations on the airport or any of its facilities that are not consistent with the Airport Master Plan and the Airport Layout Plan, as approved by the Department.
- d. Original Airport Master Plans and Airport Layout Plans and each amendment, revision, or modification thereof, will be subject to the approval of the Department.

8. Airport Financial Plan.

- a. The Agency assures that it will develop and maintain a cost-feasible Airport financial plan to accomplish the projects necessary to achieve the proposed airport improvements identified in the Airport Master Plan and depicted in the Airport Layout Plan, and any updates thereto. The Agency's Airport financial plan must comply with the following conditions:
 - 1) The Airport financial plan will be a part of the Airport Master Plan.
 - 2) The Airport financial plan will realistically assess project phasing considering availability of state and local funding and likelihood of federal funding under the FAA's priority system.
 - 3) The Airport financial plan will not include Department funding for projects that are inconsistent with the local government comprehensive plan.
- b. All Project cost estimates contained in the Airport financial plan shall be entered into and kept current in the Florida Aviation Database (FAD) Joint Automated Capital Improvement Program (JACIP) website.

- 9. Airport Revenue.** The Agency assures that all revenue generated by the airport will be expended for capital improvement or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the air transportation of passengers or property, or for environmental or noise mitigation purposes on or off the airport.

10. Fee and Rental Structure.

- a. The Agency assures that it will maintain a fee and rental structure for facilities and services at the airport that it will make the airport as self-sustaining as possible under the circumstances existing at the particular airport.
- b. If this Agreement results in a facility that will be leased or otherwise produce revenue, the Agency assures that the price charged for that facility will be based on the market value.

11. Public-Private Partnership for Aeronautical Uses.

- a. If the airport owner or operator and a person or entity that owns an aircraft or an airport tenant or potential tenant agree that an aircraft hangar or tenant-specific facility, respectively, is to be constructed on airport property for aircraft storage or tenant use at the expense of the aircraft owner or tenant, the airport owner or operator may grant to the aircraft owner or tenant of the facility a lease that is subject to such terms and conditions on the facility as the airport owner or operator may impose, subject to approval by the Department.
- b. The price charged for said lease will be based on market value, unless otherwise approved by the Department.

12. Economic Nondiscrimination.

- a. The Agency assures that it will make the airport available as an airport for public use on reasonable terms without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public.
 - 1) The Agency may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

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- 2) The Agency may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

- b. The Agency assures that each airport Fixed-Based Operator (FBO) shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other FBOs making the same or similar uses of such airport and utilizing the same or similar facilities.

13. Air and Water Quality Standards. The Agency assures that all projects involving airport location, major runway extension, or runway location will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards.

14. Operations and Maintenance.

- a. The Agency assures that the airport and all facilities, which are necessary to serve the aeronautical users of the airport, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal and state agencies for maintenance and operation, as well as minimum standards established by the Department for State of Florida licensing as a public-use airport.
 - 1) The Agency assures that it will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.
 - 2) Except in emergency situations, any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Department.
 - 3) The Agency assures that it will have arrangements for promptly notifying airmen of any condition affecting aeronautical use of the airport.
- b. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when adverse weather conditions interfere with safe airport operations.

15. Federal Funding Eligibility.

- a. The Agency assures it will take appropriate actions to maintain federal funding eligibility for the airport and it will avoid any action that renders the airport ineligible for federal funding.
- b. If the Agency becomes ineligible for federal funding of airport projects, such determination will render the Agency ineligible for state funding of airport projects.

16. Project Implementation.

- a. The Agency assures that it will begin making expenditures or incurring obligations pertaining to this Project within one year after the effective date of this Agreement.
- b. The Agency may request a one-year extension of this one-year time period, subject to approval by the Department District Secretary or designee.
- c. Failure of the Agency to make expenditures, incur obligations or receive an approved extension may allow the Department to terminate this Agreement.

17. Exclusive Rights. The Agency assures that it will not permit any exclusive right for use of the airport by any person providing, or intending to provide, aeronautical services to the public.

18. Airfield Access.

- a. The Agency assures that it will not grant or allow general easement or public access that opens onto or crosses the airport runways, taxiways, flight line, passenger facilities, or any area used for emergency

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equipment, fuel, supplies, passengers, mail and freight, radar, communications, utilities, and landing systems, including but not limited to flight operations, ground services, emergency services, terminal facilities, maintenance, repair, or storage, except for those normal airport providers responsible for standard airport daily services or during special events at the airport open to the public with limited and controlled access.

- b. The Agency assures that it will not grant or allow general easement or public access to any portion of the airfield from adjacent real property which is not owned, operated, or otherwise controlled by the Agency without prior Department approval.

19. Retention of Rights and Interests. The Agency will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the real property shown as airport owned or controlled on the current airport layout plan without prior written approval by the Department. It will not sell, lease, encumber, terminate, waive, or otherwise transfer or dispose of any part of its title, rights, or other interest in existing noise easements or aviation easements on any property, airport or non-airport, without prior written approval by the Department. These assurances shall not limit the Agency's right to lease airport property for airport-compatible purposes.

20. Consultant, Contractor, Scope, and Costs.

- a. The Department has the right to disapprove the Agency's employment of consultants, contractors, and subcontractors for all or any part of this Project if the specific consultants, contractors, or subcontractors have a record of poor project performance with the Department.
- b. Further, the Department maintains the right to disapprove the proposed Project scope and cost of professional services.

21. Planning Projects. For all planning projects or other aviation studies, the Agency assures that it will:

- a. Execute the project per the approved project narrative or with approved modifications.
- b. Furnish the Department with such periodic project and work activity reports as indicated in the approved scope of services.
- c. Make such project materials available for public review, unless exempt from public disclosure.
 - 1) Information related to airport security is considered restricted information and is exempt from public dissemination per Sections 119.071(3) and 331.22 F.S.
 - 2) No materials prepared under this Agreement shall be subject to copyright in the United States or any other country.
- d. Grant the Department unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this Agreement.
- e. If the Project involves developing an Airport Master Plan or an Airport Layout Plan, and any updates thereto, it will be consistent with provisions of the Florida Aviation System Plan, will identify reasonable future growth of the airport and the Agency will comply with the Department airport master planning guidebook, including:
 - 1) Provide copies, in electronic and editable format, of final Project materials to the Department, including computer-aided drafting (CAD) files of the Airport Layout Plan.
 - 2) Develop a cost-feasible financial plan, approved by the Department, to accomplish the projects described in the Airport Master Plan or depicted in the Airport Layout Plan, and any updates thereto. The cost-feasible financial plan shall realistically assess Project phasing considering availability of state and local funding and federal funding under the FAA's priority system.
 - 3) Enter all projects contained in the cost-feasible plan in the Joint Automated Capital Improvement Program (JACIP).

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- f. The Agency understands and agrees that Department approval of this Agreement or any planning material developed as part of this Agreement does not constitute or imply any assurance or commitment on the part of the Department to approve any pending or future application for state aviation funding.
- g. The Agency will submit master planning draft and final deliverables for Department and, if required, FAA approval prior to submitting any invoices to the Department for payment.

22. Land Acquisition Projects. For the purchase of real property, the Agency assures that it will:

- a. **Laws.** Acquire the land in accordance with federal and/or state laws governing such action.
- b. **Administration.** Maintain direct control of Project administration, including:
 - 1) Maintain responsibility for all related contract letting and administrative procedures related to the purchase of real property.
 - 2) Secure written Department approval to execute each agreement for the purchase of real property with any third party.
 - 3) Ensure a qualified, State-certified general appraiser provides all necessary services and documentation.
 - 4) Furnish the Department with a projected schedule of events and a cash flow projection within 20 calendar days after completion of the review appraisal.
 - 5) Establish a Project account for the purchase of the land.
 - 6) Collect and disburse federal, state, and local project funds.
- c. **Reimbursable Funds.** If funding conveyed by this Agreement is reimbursable for land purchase in accordance with Chapter 332, F.S., the Agency shall comply with the following requirements:
 - 1) The Agency shall apply for a FAA Airport Improvement Program grant for the land purchase within 60 days of executing this Agreement.
 - 2) If federal funds are received for the land purchase, the Agency shall notify the Department, in writing, within 14 calendar days of receiving the federal funds and is responsible for reimbursing the Department within 30 calendar days to achieve normal project federal, state, and local funding shares per Chapter 332, F.S.
 - 3) If federal funds are not received for the land purchase, the Agency shall reimburse the Department within 30 calendar days after the reimbursable funds are due in order to achieve normal project state and local funding shares as described in Chapter 332, F.S.
 - 4) If federal funds are not received for the land purchase and the state share of the purchase is less than or equal to normal state and local funding shares per Chapter 332, F.S., when reimbursable funds are due, no reimbursement to the Department shall be required.
- d. **New Airport.** If this Project involves the purchase of real property for the development of a new airport, the Agency assures that it will:
 - 1) Apply for federal and state funding to construct a paved runway, associated aircraft parking apron, and connecting taxiway within one year of the date of land purchase.
 - 2) Complete an Airport Master Plan within two years of land purchase.
 - 3) Complete airport construction for basic operation within 10 years of land purchase.
- e. **Use of Land.** The Agency assures that it shall use the land for aviation purposes in accordance with the terms and assurances of this Agreement within 10 years of acquisition.
- f. **Disposal of Land.** For the disposal of real property the Agency assures that it will comply with the following:
 - 1) For land purchased for airport development or noise compatibility purposes, the Agency shall, when the land is no longer needed for such purposes, dispose of such land at fair market value and/or make available to the Department an amount equal to the state's proportionate share of its market value.

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- 2) Land will be considered to be needed for airport purposes under this assurance if:
 - a) It serves aeronautical purposes such as a runway protection zone or as a noise buffer.
 - b) Revenue from uses of such land contributes to airport financial self-sufficiency.
- 3) Disposition of land under Sections D.22.f.1. or D.22.f.2. of this Exhibit, above, shall be subject to retention or reservation of any interest or right therein needed to ensure such land will only be used for purposes compatible with noise levels related to airport operations.
- 4) Revenues from the sale of such land must be accounted for as outlined in Section D.1. of this Exhibit, and expended as outlined in Section D.9. of this Exhibit.

23. Construction Projects. The Agency assures that it will:

a. Project Certifications. Certify Project compliances, including:

- 1) Consultant and contractor selection comply with all applicable federal, state and local laws, rules, regulations, and policies.
- 2) All design plans and specifications comply with federal, state, and professional standards and applicable FAA advisory circulars, as well as the minimum standards established by the Department for State of Florida licensing as a public-use airport.
- 3) Completed construction complies with all applicable local building codes.
- 4) Completed construction complies with the Project plans and specifications with certification of that fact by the Project Engineer.

b. Design Development. For the plans, specifications, construction contract documents, and any and all other engineering, construction, and contractual documents produced by the Engineer, which are hereinafter collectively referred to as "plans", the Engineer will certify that:

- 1) The plans shall be developed in accordance with sound engineering and design principles, and with generally accepted professional standards.
- 2) The plans shall be consistent with the intent of the Project as defined in Exhibit A and Exhibit B of this Agreement.
- 3) The Project Engineer shall perform a review of the certification requirements listed in Section B.2. of this Exhibit, Construction Certification, and make a determination as to their applicability to this Project.
- 4) Development of the plans shall comply with all applicable laws, ordinances, zoning and permitting requirements, public notice requirements, and other similar regulations.

c. Inspection and Approval. The Agency assures that:

- 1) The Agency will provide and maintain competent technical supervision at the construction site throughout the Project to assure that the work conforms to the plans, specifications, and schedules approved by the Department, as applicable, for the Project.
- 2) The Agency assures that it will allow the Department to inspect the work and that it will provide any cost and progress reporting, as may be required by the Department.
- 3) The Agency assures that it will take the appropriate corrective action necessary, as required by the Department, for work which does not conform to the Department standards.

d. Pavement Preventive Maintenance. The Agency assures that for a project involving replacement or reconstruction of runway or taxiway pavement it has implemented an airport pavement maintenance management program and that it will use such program for the useful life of any pavement constructed, reconstructed, or repaired with state financial assistance at the airport.

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24. Noise Mitigation Projects. The Agency assures that it will:

- a. Government Agreements.** For all noise compatibility projects that are carried out by another unit of local government or are on property owned by a unit of local government other than the Agency, the Agency shall enter into an agreement with that government body.
 - 1)** The local agreement, satisfactory to the Department, shall obligate the unit of local government to the same terms and assurances that apply to the Agency.
 - 2)** The Agency assures that it will take steps to enforce the local agreement if there is substantial non-compliance with the terms of the local agreement.
- b. Private Agreements.** For noise compatibility projects on privately owned property:
 - 1)** The Agency shall enter into an agreement with the owner of that property to exclude future actions against the airport.
 - 2)** The Agency assures that it will take steps to enforce such agreement if there is substantial non-compliance with the terms of the agreement.

- End of Exhibit E -

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EXHIBIT F

**Contract Payment Requirements
Florida Department of Financial Services, Reference Guide for State Expenditures
Cost Reimbursement Contracts**

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

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

(1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

(2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

(3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.

(4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.

(5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.

(6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

Contracts between state agencies, and/or contracts between universities may submit alternative documentation to substantiate the reimbursement request that may be in the form of FLAIR reports or other detailed reports.

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

RESOLUTION
NO. 2024-41

A RESOLUTION
TO BE ENTITLED:

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF PENSACOLA TO EXECUTE THE PUBLIC TRANSPORTATION GRANT AGREEMENT NO. 446645-1-94-01 WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR TAXIWAY A7 & A/B INTERSECTION RECONFIGURATION – CONSTRUCTION/ CONSTRUCTION ADMINISTRATION AT THE PENSACOLA INTERNATIONAL AIRPORT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Pensacola uses Airport Management as a tool for scheduling and planning projects at the Pensacola International Airport; and

WHEREAS, The City of Pensacola and Airport Management are planning the reconfiguration of the Airport's Taxiway A7 & Taxiway A/B intersection at Pensacola International Airport; and

WHEREAS, the Florida Department of Transportation has approved the project and offered the Public Transportation Grant Agreement in the amount of \$450,000 to support the construction efforts;

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

SECTION 1. That the City of Pensacola shall accept the Public Transportation Grant Agreement for the purpose of obtaining State aid for the Airport's facilities.

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

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

Adopted: _____

Approved: _____
President of City Council

Attest: _____
City Clerk



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 24-456

City Council

6/13/2024

LEGISLATIVE ACTION ITEM

SPONSOR: Mayor D.C. Reeves

SUBJECT:

RESOLUTION NO. 2024-41 - STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION AGREEMENT NO. 446645-1-94-01 - TAXIWAY A7 & TAXIWAY
A/B INTERSECTION RECONFIGURATION

RECOMMENDATION:

That City Council adopt Resolution No. 2024-41.

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF PENSACOLA TO
EXECUTE THE PUBLIC TRANSPORTATION GRANT AGREEMENT NO. 446645-1-94-01
WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR TAXIWAY A7 & A/B
INTERSECTION RECONFIGURATION – CONSTRUCTION/ CONSTRUCTION
ADMINISTRATION AT THE PENSACOLA INTERNATIONAL AIRPORT; PROVIDING AN
EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

On March 23, 2023, City Council approved Resolution 2023-019 authorizing the Mayor to coordinate with Florida Department of Transportation (FDOT) to allocate funding for FDOT grant 446645-1 to assist with the reconfiguration of the Airport's Taxiway A7 & Taxiway A/B intersection.

Taxiway A7 & Taxiway A/B intersection is a complex intersection due to its expansive pavement and multiple direct access to runways. This combination increases the likelihood of a runway incursion by pilots entering the runway environment. This project will reconfigure the Taxiway A7 & Taxiway A/B intersection to meet current FAA taxiway design geometry by eliminating the 3-way intersection and eliminating any excess pavement to reduce the possibility of runway incursions.

The grant would provide partial funding for the proposed reconfiguration of Taxiway A7 & Taxiway A/B intersection. Such work would include the rehabilitation of all taxiway connectors to near edge of runway safety area, new taxiway edge lights and associated cans and cables

to accommodate LED fixtures, new taxiway signage and associated cables to accommodate LED fixtures, pavement markings, and miscellaneous grading. The grant would cover construction as well as construction administration services. The remaining funding will come from the Federal Aviation Administration (FAA) and the Airport's capital improvement account.

Approval of Resolution No. 2024-41 will satisfy FDOT's requirement of an authorizing resolution accepting the grant award and authorizing the Mayor to execute the grant.

PRIOR ACTION:

March 23, 2023 – City Council approved Resolution 2023-019 authorizing the Mayor to coordinate with FDOT to change the project title, funding, scope and deliverables for FDOT grant 446645-1.

FUNDING:

Budget:	\$8,961,840	FAA
	450,000	FDOT Grant 446645-1-94-01
	<u>545,160</u>	Airport Capital Funds
	<u>\$9,957,000</u>	
Actual:	<u>\$9,957,600</u>	Taxiway A7 & Taxiway A/B Intersection Reconfiguration
	<u>\$9,957,600</u>	

FINANCIAL IMPACT:

Pensacola International Airport routinely request grant funding from the FDOT as part of a five-year work program. In anticipation of this grant, funds were allocated in the fiscal year 2024 budget. In fiscal year 2024, funding in the amount of \$450,000 has been appropriated in the Airport's State grant account and funding in the amount \$545,160 has been appropriated in the Airport's capital improvement account.

The Airport has submitted a request for funding to the FAA and upon grant award, a supplemental budget resolution will be brought before City Council to appropriate funding in the Airport's Federal grant account.

Funds will be provided from the FDOT on a reimbursable basis.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

5/22/2024

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Miller, Deputy City Administrator - Administration and Finance

Matthew F. Coughlin, Airport Director

ATTACHMENTS:

1. Resolution No. 2024-41
2. State of Florida Department of Transportation Public Transportation Grant Agreement
No. 446645-1-94-01

PRESENTATION: No

RESOLUTION
NO. 2024-41

A RESOLUTION
TO BE ENTITLED:

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF PENSACOLA TO EXECUTE THE PUBLIC TRANSPORTATION GRANT AGREEMENT NO. 446645-1-94-01 WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR TAXIWAY A7 & A/B INTERSECTION RECONFIGURATION – CONSTRUCTION/ CONSTRUCTION ADMINISTRATION AT THE PENSACOLA INTERNATIONAL AIRPORT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Pensacola uses Airport Management as a tool for scheduling and planning projects at the Pensacola International Airport; and

WHEREAS, The City of Pensacola and Airport Management are planning the reconfiguration of the Airport's Taxiway A7 & Taxiway A/B intersection at Pensacola International Airport; and

WHEREAS, the Florida Department of Transportation has approved the project and offered the Public Transportation Grant Agreement in the amount of \$450,000 to support the construction efforts;

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

SECTION 1. That the City of Pensacola shall accept the Public Transportation Grant Agreement for the purpose of obtaining State aid for the Airport's facilities.

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

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

Adopted: _____

Approved: _____
President of City Council

Attest: _____
City Clerk

**PUBLIC TRANSPORTATION
GRANT AGREEMENT**

- ___ *Exhibit H: Audit Requirements for Awards of Federal Financial Assistance
___ *Exhibit I: Certification of Disbursement of Payment to Vehicle and/or Equipment Vendor
___ *Additional Exhibit(s):

*Indicates that the Exhibit is only attached and incorporated if applicable box is selected.

5. Time. Unless specified otherwise, all references to “days” within this Agreement refer to calendar days.

6. Term of Agreement. This Agreement shall commence upon full execution by both Parties (“Effective Date”) and continue through June 30, 2028. If the Agency does not complete the Project within this time period, this Agreement will expire unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed prior to the Effective Date or after the expiration date of this Agreement will not be reimbursed by the Department.

a. ___ If this box is checked the following provision applies:

Unless terminated earlier, work on the Project shall commence no later than the ___ day of ___, or within ___ days of the issuance of the Notice to Proceed for the construction phase of the Project (if the Project involves construction), whichever date is earlier. The Department shall have the option to immediately terminate this Agreement should the Agency fail to meet the above-required dates.

7. Amendments, Extensions, and Assignment. This Agreement may be amended or extended upon mutual written agreement of the Parties. This Agreement shall not be renewed. This Agreement shall not be assigned, transferred, or otherwise encumbered by the Agency under any circumstances without the prior written consent of the Department.

8. Termination or Suspension of Project. The Department may, by written notice to the Agency, suspend any or all of the Department’s obligations under this Agreement for the Agency’s failure to comply with applicable law or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected.

- a.** Notwithstanding any other provision of this Agreement, if the Department intends to terminate the Agreement, the Department shall notify the Agency of such termination in writing at least thirty (30) days prior to the termination of the Agreement, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- b.** The Parties to this Agreement may terminate this Agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions.
- c.** If the Agreement is terminated before performance is completed, the Agency shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed the equivalent percentage of the Department’s maximum financial assistance. If any portion of the Project is located on the Department’s right-of-way, then all work in progress on the Department right-of-way will become the property of the Department and will be turned over promptly by the Agency.
- d.** In the event the Agency fails to perform or honor the requirements and provisions of this Agreement, the Agency shall promptly refund in full to the Department within thirty (30) days of the termination of the Agreement any funds that were determined by the Department to have been expended in violation of the Agreement.
- e.** The Department reserves the right to unilaterally cancel this Agreement for failure by the Agency to comply with the Public Records provisions of Chapter 119, Florida Statutes.

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9. Project Cost:

- a. The estimated total cost of the Project is \$9,957,600. This amount is based upon **Exhibit "B", Schedule of Financial Assistance**. The timeline for deliverables and distribution of estimated amounts between deliverables within a grant phase, as outlined in **Exhibit "B", Schedule of Financial Assistance**, may be modified by mutual written agreement of the Parties and does not require execution of an **Amendment to the Public Transportation Grant Agreement**. The timeline for deliverables and distribution of estimated amounts between grant phases requires an amendment executed by both Parties in the same form as this Agreement.
- b. The Department agrees to participate in the Project cost up to the maximum amount of \$450,000 and, the Department's participation in the Project shall not exceed 4.52% of the total eligible cost of the Project, and as more fully described in **Exhibit "B", Schedule of Financial Assistance**. The Agency agrees to bear all expenses in excess of the amount of the Department's participation and any cost overruns or deficits involved.

10. Compensation and Payment:

- a. **Eligible Cost.** The Department shall reimburse the Agency for allowable costs incurred as described in **Exhibit "A", Project Description and Responsibilities**, and as set forth in **Exhibit "B", Schedule of Financial Assistance**.
- b. **Deliverables.** The Agency shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in **Exhibit "A", Project Description and Responsibilities**. Modifications to the deliverables in **Exhibit "A", Project Description and Responsibilities** requires a formal written amendment.
- c. **Invoicing.** Invoices shall be submitted no more often than monthly by the Agency in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable, and verifiable deliverables as established in **Exhibit "A", Project Description and Responsibilities**. Deliverables and costs incurred must be received and approved by the Department prior to reimbursement. Requests for reimbursement by the Agency shall include an invoice, progress report, and supporting documentation for the deliverables being billed that are acceptable to the Department. The Agency shall use the format for the invoice and progress report that is approved by the Department.
- d. **Supporting Documentation.** Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and must also establish that the required minimum standards or level of service to be performed based on the criteria for evaluating successful completion as specified in **Exhibit "A", Project Description and Responsibilities** has been met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of charges as described in **Exhibit "F", Contract Payment Requirements**.
- e. **Travel Expenses.** The selected provision below is controlling regarding travel expenses:

☒ Travel expenses are NOT eligible for reimbursement under this Agreement.

☐ Travel expenses ARE eligible for reimbursement under this Agreement. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061,

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Florida Statutes, and the most current version of the Department's Disbursement Handbook for Employees and Managers.

- f. Financial Consequences.** Payment shall be made only after receipt and approval of deliverables and costs incurred unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes, or the Department's Comptroller under Section 334.044(29), Florida Statutes. If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Agency shall, within thirty (30) days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency will not be reimbursed. If the deficiency is subsequently resolved, the Agency may bill the Department for the amount that was previously not reimbursed during the next billing period. If the Agency is unable to resolve the deficiency, the funds shall be forfeited at the end of the Agreement's term.

- g. Invoice Processing.** An Agency receiving financial assistance from the Department should be aware of the following time frames. Inspection or verification and approval of deliverables shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the deliverables are received, inspected or verified, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agency who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

- h. Records Retention.** The Agency shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the Project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the Project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- i. Progress Reports.** Upon request, the Agency agrees to provide progress reports to the Department in the standard format used by the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of the Project and of details thereof.
- j. Submission of Other Documents.** The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department

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may require as listed in **Exhibit "E", Program Specific Terms and Conditions** attached to and incorporated into this Agreement.

- k. **Offsets for Claims.** If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement that it has with the Agency owing such amount if, upon written demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- l. **Final Invoice.** The Agency must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- m. **Department's Performance and Payment Contingent Upon Annual Appropriation by the Legislature.** The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, a notice of availability of funds from the Department's project manager must be received prior to costs being incurred by the Agency. See **Exhibit "B", Schedule of Financial Assistance** for funding levels by fiscal year. Project costs utilizing any fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.
- n. **Limits on Contracts Exceeding \$25,000 and Term more than 1 Year.** In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."
- o. **Agency Obligation to Refund Department.** Any Project funds made available by the Department pursuant to this Agreement that are determined by the Department to have been expended by the Agency in violation of this Agreement or any other applicable law or regulation shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the Agency files shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.
- p. **Non-Eligible Costs.** In determining the amount of the payment, the Department will exclude all Project costs incurred by the Agency prior to the execution of this Agreement, costs incurred after the expiration of the Agreement, costs that are not provided for in **Exhibit "A", Project Description and Responsibilities**, and as set forth in **Exhibit "B", Schedule of Financial Assistance**, costs agreed to be borne by the Agency or its contractors and subcontractors for

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not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangement that has not been approved in writing by the Department. Specific unallowable costs may be listed in **Exhibit "A", Project Description and Responsibilities**.

11. General Requirements. The Agency shall complete the Project with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement and all applicable laws.

- a. Necessary Permits Certification.** The Agency shall certify to the Department that the Agency's design consultant and/or construction contractor has secured the necessary permits.
- b. Right-of-Way Certification.** If the Project involves construction, then the Agency shall provide to the Department certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has been obtained. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, even if no right-of-way is required.
- c. Notification Requirements When Performing Construction on Department's Right-of-Way.** In the event the cost of the Project is greater than \$250,000.00, and the Project involves construction on the Department's right-of-way, the Agency shall provide the Department with written notification of either its intent to:
 - i.** Require the construction work of the Project that is on the Department's right-of-way to be performed by a Department prequalified contractor, or
 - ii.** Construct the Project utilizing existing Agency employees, if the Agency can complete said Project within the time frame set forth in this Agreement.
- d.** ☐ If this box is checked, then the Agency is permitted to utilize its own forces and the following provision applies: **Use of Agency Workforce.** In the event the Agency proceeds with any phase of the Project utilizing its own forces, the Agency will only be reimbursed for direct costs (this excludes general overhead).
- e.** ☐ If this box is checked, then the Agency is permitted to utilize **Indirect Costs: Reimbursement for Indirect Program Expenses** (select one):
 - i.** ☐ Agency has selected to seek reimbursement from the Department for actual indirect expenses (no rate).
 - ii.** ☐ Agency has selected to apply a de minimus rate of 10% to modified total direct costs. Note: The de minimus rate is available only to entities that have never had a negotiated indirect cost rate. When selected, the de minimus rate must be used consistently for all federal awards until such time the agency chooses to negotiate a rate. A cost policy statement and de minimis certification form must be submitted to the Department for review and approval.
 - iii.** ☐ Agency has selected to apply a state or federally approved indirect cost rate. A federally approved rate agreement or indirect cost allocation plan (ICAP) must be submitted annually.
- f. Agency Compliance with Laws, Rules, and Regulations, Guidelines, and Standards.** The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project.

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- g. Claims and Requests for Additional Work.** The Agency shall have the sole responsibility for resolving claims and requests for additional work for the Project. The Agency will make best efforts to obtain the Department's input in its decisions. The Department is not obligated to reimburse for claims or requests for additional work.

12. Contracts of the Agency:

- a. Approval of Third Party Contracts.** The Department specifically reserves the right to review and approve any and all third party contracts with respect to the Project before the Agency executes or obligates itself in any manner requiring the disbursement of Department funds, including consultant and purchase of commodities contracts, or amendments thereto. If the Department chooses to review and approve third party contracts for this Project and the Agency fails to obtain such approval, that shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same. If Federal Transit Administration (FTA) funds are used in the Project, the Department must exercise the right to third party contract review.
- b. Procurement of Commodities or Contractual Services.** It is understood and agreed by the Parties hereto that participation by the Department in a project with the Agency, where said project involves the purchase of commodities or contractual services where purchases or costs exceed the Threshold Amount for CATEGORY TWO per Section 287.017, Florida Statutes, is contingent on the Agency complying in full with the provisions of Section 287.057, Florida Statutes. The Agency's Authorized Official shall certify to the Department that the Agency's purchase of commodities or contractual services has been accomplished in compliance with Section 287.057, Florida Statutes. It shall be the sole responsibility of the Agency to ensure that any obligations made in accordance with this Section comply with the current threshold limits. Contracts, purchase orders, task orders, construction change orders, or any other agreement that would result in exceeding the current budget contained in **Exhibit "B", Schedule of Financial Assistance**, or that is not consistent with the Project description and scope of services contained in **Exhibit "A", Project Description and Responsibilities** must be approved by the Department prior to Agency execution. Failure to obtain such approval, and subsequent execution of an amendment to the Agreement if required, shall be sufficient cause for nonpayment by the Department, in accordance with this Agreement.
- c. Consultants' Competitive Negotiation Act.** It is understood and agreed by the Parties to this Agreement that participation by the Department in a project with the Agency, where said project involves a consultant contract for professional services, is contingent on the Agency's full compliance with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. In all cases, the Agency's Authorized Official shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.
- d. Disadvantaged Business Enterprise (DBE) Policy and Obligation.** It is the policy of the Department that DBEs, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The Agency and its contractors agree to ensure that DBEs have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBEs have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

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13. Maintenance Obligations. In the event the Project includes construction or the acquisition of commodities then the following provisions are incorporated into this Agreement:

- a. The Agency agrees to accept all future maintenance and other attendant costs occurring after completion of the Project for all improvements constructed or commodities acquired as part of the Project. The terms of this provision shall survive the termination of this Agreement.

14. Sale, Transfer, or Disposal of Department-funded Property:

- a. The Agency will not sell or otherwise transfer or dispose of any part of its title or other interests in real property, facilities, or equipment funded in any part by the Department under this Agreement without prior written approval by the Department.
- b. If a sale, transfer, or disposal by the Agency of all or a portion of Department-funded real property, facilities, or equipment is approved by the Department, the following provisions will apply:
 - i. The Agency shall reimburse the Department a proportional amount of the proceeds of the sale of any Department-funded property.
 - ii. The proportional amount shall be determined on the basis of the ratio of the Department funding of the development or acquisition of the property multiplied against the sale amount, and shall be remitted to the Department within ninety (90) days of closing of sale.
 - iii. Sale of property developed or acquired with Department funds shall be at market value as determined by appraisal or public bidding process, and the contract and process for sale must be approved in advance by the Department.
 - iv. If any portion of the proceeds from the sale to the Agency are non-cash considerations, reimbursement to the Department shall include a proportional amount based on the value of the non-cash considerations.
- c. The terms of provisions "a" and "b" above shall survive the termination of this Agreement.
 - i. The terms shall remain in full force and effect throughout the useful life of facilities developed, equipment acquired, or Project items installed within a facility, but shall not exceed twenty (20) years from the effective date of this Agreement.
 - ii. There shall be no limit on the duration of the terms with respect to real property acquired with Department funds.

15. Single Audit. The administration of Federal or State resources awarded through the Department to the Agency by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of Federal awards or State financial assistance or limit the authority of any state agency inspector general, the State of Florida Auditor General, or any other state official. The Agency shall comply with all audit and audit reporting requirements as specified below.

Federal Funded:

- a. In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to Federal awards provided

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through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO), or State of Florida Auditor General.

- b. The Agency, a non-Federal entity as defined by 2 CFR Part 200, Subpart F – Audit Requirements, as a subrecipient of a Federal award awarded by the Department through this Agreement, is subject to the following requirements:
- i. In the event the Agency expends a total amount of Federal awards equal to or in excess of the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, the Agency must have a Federal single or program-specific audit conducted for such fiscal year in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements. **Exhibit “H”, Audit Requirements for Awards of Federal Financial Assistance**, to this Agreement provides the required Federal award identification information needed by the Agency to further comply with the requirements of 2 CFR Part 200, Subpart F – Audit Requirements. In determining Federal awards expended in a fiscal year, the Agency must consider all sources of Federal awards based on when the activity related to the Federal award occurs, including the Federal award provided through the Department by this Agreement. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F – Audit Requirements. An audit conducted by the State of Florida Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, will meet the requirements of this part.
 - ii. In connection with the audit requirements, the Agency shall fulfill the requirements relative to the auditee responsibilities as provided in 2 CFR Part 200, Subpart F – Audit Requirements.
 - iii. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards, the Agency is exempt from Federal audit requirements for that fiscal year. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency’s audit period for each applicable audit year. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 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 the Agency’s resources obtained from other than Federal entities).
 - iv. The Agency must electronically submit to the Federal Audit Clearinghouse (FAC) at <https://harvester.census.gov/facweb/> the audit reporting package as required by 2 CFR Part 200, Subpart F – Audit Requirements, within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by 2 CFR Part 200, Subpart F – Audit Requirements. However, the Department requires a copy of the audit reporting package also be submitted to FDOTSingleAudit@dot.state.fl.us within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period as required by 2 CFR Part 200, Subpart F – Audit Requirements.
 - v. Within six months of acceptance of the audit report by the FAC, the Department will review the Agency’s audit reporting package, including corrective action plans and

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management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the Federal award provided through the Department by this Agreement. If the Agency fails to have an audit conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:

1. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department;
 2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
 3. Wholly or partly suspend or terminate the Federal award;
 4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and Federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the Federal awarding agency);
 5. Withhold further Federal awards for the Project or program;
 6. Take other remedies that may be legally available.
- vi. As a condition of receiving this Federal award, the Agency shall permit the Department or its designee, the CFO, or State of Florida Auditor General access to the Agency's records, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.
- vii. The Department's contact information for requirements under this part is as follows:

Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0450
FDOTSingleAudit@dot.state.fl.us

State Funded:

- a. In addition to reviews of audits conducted in accordance with Section 215.97, Florida Statutes, monitoring procedures to monitor the Agency's use of state financial assistance may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to state financial assistance awarded through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, the Department of Financial Services (DFS), or State of Florida Auditor General.
- b. The Agency, a "nonstate entity" as defined by Section 215.97, Florida Statutes, as a recipient of state financial assistance awarded by the Department through this Agreement, is subject to the following requirements:
 - i. In the event the Agency meets the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency must have a State single or project-specific audit conducted for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and

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Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. **Exhibit "G", Audit Requirements for Awards of State Financial Assistance**, to this Agreement indicates state financial assistance awarded through the Department by this Agreement needed by the Agency to further comply with the requirements of Section 215.97, Florida Statutes. In determining the state financial assistance expended in a fiscal year, the Agency shall consider all sources of state financial assistance, including state financial assistance received from the Department by this Agreement, 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.

- ii. In connection with the audit requirements, the Agency shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
- iii. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency is exempt for such fiscal year from the state single audit requirements of Section 215.97, Florida Statutes. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency's audit period for each applicable audit year. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, in a fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the Agency's resources (*i.e.*, the cost of such an audit must be paid from the Agency's resources obtained from other than State entities).
- iv. In accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0405
FDOTSingleAudit@dot.state.fl.us

And

State of Florida Auditor General
Local Government Audits/342
111 West Madison Street, Room 401
Tallahassee, FL 32399-1450
Email: flaudgen_localgovt@aud.state.fl.us

- v. Any copies of financial reporting packages, reports, or other information required to be submitted to the Department shall be submitted timely in accordance with Section 215.97, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- vi. The Agency, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or

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10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date the reporting package was delivered to the Agency in correspondence accompanying the reporting package.

vii. Upon receipt, and within six months, the Department will review the Agency's financial reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the state financial assistance provided through the Department by this Agreement. If the Agency fails to have an audit conducted consistent with Section 215.97, Florida Statutes, the Department may take appropriate corrective action to enforce compliance.

viii. As a condition of receiving state financial assistance, the Agency shall permit the Department or its designee, DFS, or the Auditor General access to the Agency's records, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.

c. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department or its designee, DFS, or State of Florida Auditor General access to such records upon request. The Agency shall ensure that the audit working papers are made available to the Department or its designee, DFS, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

16. Notices and Approvals. Notices and approvals referenced in this Agreement must be obtained in writing from the Parties' respective Administrators or their designees.

17. Restrictions, Prohibitions, Controls and Labor Provisions:

a. Convicted Vendor List. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

b. Discriminatory Vendor List. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

c. Non-Responsible Contractors. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied, or have further been determined by the Department to be a non-responsible contractor, may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.

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- d. **Prohibition on Using Funds for Lobbying.** No funds received pursuant to this Agreement may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.
- e. **Unauthorized Aliens.** The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
- f. **Procurement of Construction Services.** If the Project is procured pursuant to Chapter 255, Florida Statutes, for construction services and at the time of the competitive solicitation for the Project, 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Agency must comply with the requirements of Section 255.0991, Florida Statutes.
- g. **E-Verify.** The Agency shall:
 - i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the contract; and
 - ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- h. **Executive Order 20-44.** Pursuant to Governor's Executive Order 20-44, if the Agency is required by the Internal Revenue Code to file IRS Form 990 and is named in statute with which the Department must form a sole-source, public-private agreement; or through contract or other agreement with the State, annually receives 50% or more of its budget from the State or from a combination of State and Federal funds, Recipient shall submit an Annual Report to the Department, including the most recent IRS Form 990, detailing the total compensation for each member of the Agency executive leadership team. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Agency shall inform the Department of any changes in total executive compensation during the period between the filing of Annual Reports within 60 days of any change taking effect. All compensation reports shall detail the percentage of executive leadership compensation received directly from all State and/or Federal allocations to the Agency. Annual Reports shall be in the form approved by the Department and shall be submitted to the Department at fdotsingleaudit@dot.state.fl.us within 180 days following the end of each tax year of the Agency receiving Department funding.
- i. **Design Services and Construction Engineering and Inspection Services.** If the Project is wholly or partially funded by the Department and administered by a local governmental entity, except for a seaport listed in Section 311.09, Florida Statutes, or an airport as defined in Section 332.004, Florida Statutes, the entity performing design and construction engineering and inspection services may not be the same entity.

18. Indemnification and Insurance:

- a. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The Agency guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Agency or any

**PUBLIC TRANSPORTATION
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subcontractor, in connection with this Agreement. Additionally, to the extent permitted by law and as limited by and pursuant to the provisions of Section 768.28, Florida Statutes, the Agency shall indemnify, defend, and hold harmless the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Agency and persons employed or utilized by the Agency in the performance of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the Department's or the Agency's sovereign immunity. This indemnification shall survive the termination of this Agreement. Additionally, the Agency agrees to include the following indemnification in all contracts with contractors/subcontractors and consultants/subconsultants who perform work in connection with this Agreement:

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

This indemnification shall survive the termination of this Agreement."

- b. The Agency shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultant(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation Insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships, or partners are covered by insurance required under Florida's Workers' Compensation law.
- c. If the Agency elects to self-perform the Project, then the Agency may self-insure. If the Agency elects to hire a contractor or consultant to perform the Project, then the Agency shall carry, or cause its contractor or consultant to carry, Commercial General Liability insurance providing continuous coverage for all work or operations performed under this Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. The Agency shall cause, or cause its contractor or consultant to cause, the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Agency is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the

**PUBLIC TRANSPORTATION
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coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.

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

19. Miscellaneous:

- a. **Environmental Regulations.** The Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith.
- b. **Non-Admission of Liability.** In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- c. **Severability.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- d. **Agency not an agent of Department.** The Agency and the Department agree that the Agency, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- e. **Bonus or Commission.** By execution of the Agreement, the Agency represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

**PUBLIC TRANSPORTATION
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- f. **Non-Contravention of State Law.** Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing so that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.
- g. **Execution of Agreement.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- h. **Federal Award Identification Number (FAIN).** If the FAIN is not available prior to execution of the Agreement, the Department may unilaterally add the FAIN to the Agreement without approval of the Agency and without an amendment to the Agreement. If this occurs, an updated Agreement that includes the FAIN will be provided to the Agency and uploaded to the Department of Financial Services' Florida Accountability Contract Tracking System (FACTS).
- i. **Inspector General Cooperation.** The Agency agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.
- j. **Law, Forum, and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The Agency agrees to waive forum and venue and that the Department shall determine the forum and venue in which any dispute under this Agreement is decided.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written above.

AGENCY City of Pensacola

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Name: _____

Name: Tim Smith, P. E.

Title: _____

Title: Director of Transportation Development

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
Legal Review:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 4/25/2023

EXHIBIT A

Project Description and Responsibilities

A. Project Description (description of Agency's project to provide context, description of project components funded via this Agreement (if not the entire project)): Taxiway A7 & Taxiway A/B Intersection Reconfiguration - Construction/Construction Administration - See Attachment 1

B. Project Location (limits, city, county, map): Pensacola International Airport/Pensacola, FL/Escambia

C. Project Scope (allowable costs: describe project components, improvement type/service type, approximate timeline, project schedule, project size): See Attachment 1

D. Deliverable(s): See Attachment 1

The project scope identifies the ultimate project deliverables. Deliverables for requisition, payment and invoice purposes will be the incremental progress made toward completion of project scope elements. Supporting documentation will be quantifiable, measurable, and verifiable, to allow for a determination of the amount of incremental progress that has been made, and provide evidence that the payment requested is commensurate with the accomplished incremental progress and costs incurred by the Agency.

E. Unallowable Costs (including but not limited to): Travel

F. Transit Operating Grant Requirements (Transit Only):

Transit Operating Grants billed as an operational subsidy will require an expenditure detail report from the Agency that matches the invoice period. The expenditure detail, along with the progress report, will be the required deliverables for Transit Operating Grants. Operating grants may be issued for a term not to exceed three years from execution. The original grant agreement will include funding for year one. Funding for years two and three will be added by amendment as long as the grantee has submitted all invoices on schedule and the project deliverables for the year have been met.

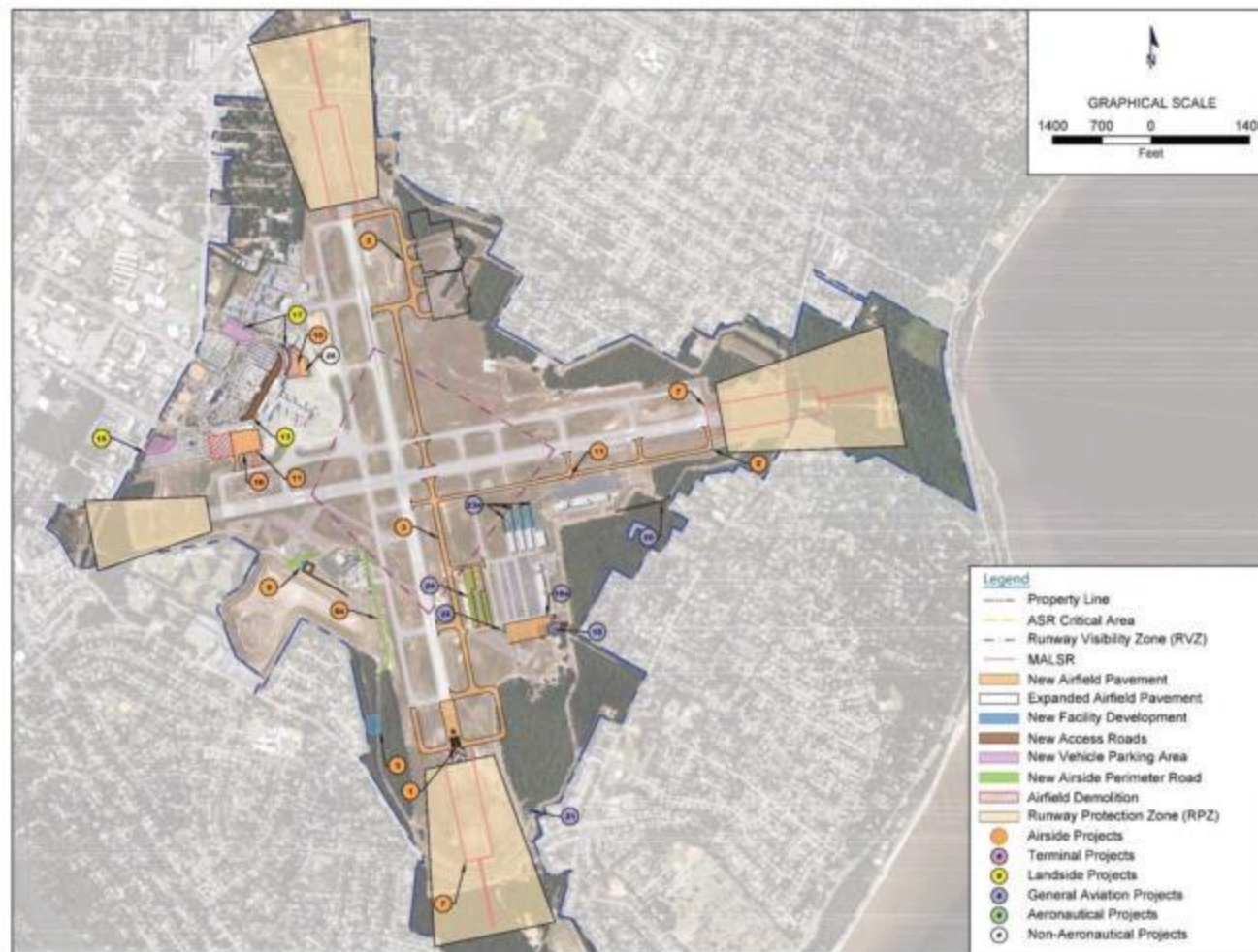


FIGURE 5-26
RECOMMENDED DEVELOPMENT PHASING
0-5 YEARS FUTURE

Project

- 1 Runway 17-35 Extension
- 2 Taxiway D Upgrade to ADG-III
- 3 New Parallel Taxiway
- 4 Relocated RTR
- 5 New MALSR
- 6 New Airside Perimeter Road
- 7 New Jet A Fuel Farm
- 8 New Remain-Over-Night (RON) Apron
- 9 Airfield Demolition
- 10 Curbside Reconfiguration
- 11 Expansion of Economy 1 and Cell Lot
- 12 Relocation of Employee Lot
- 13 GA CBP FIS Facility
- 14 New Apron
- 15 Realignment of Maygarden Road
- 16 New GA Fuel Farm
- 17 Self-Serve AvGas Fueling Station
- 18 T-Hangar Expansion
- 19 Relocation of Helicopter Hardstand
- 20 Demolish Abandoned TRACON Building

Source: Pensacola International Airport, 2007; RS&H, 2017

RS&H

Project Description and Budget
4466451 Taxiway A7 & Taxiway A/B Intersection Reconfiguration – Construction &
Construction Administration
Pensacola International Airport, Florida

SECTION A: PROJECT DESCRIPTION

The proposed project consists of reconfiguration of Taxiway A7 & Taxiway A/B intersection to comply with current FAA design standards; rehabilitation of all taxiway connectors to near edge of runway safety area; new taxiway edge lights and associated cans and cables to accommodate LED fixtures; new taxiway signage and associated cables to accommodate LED fixtures; pavement markings; and miscellaneous grading.

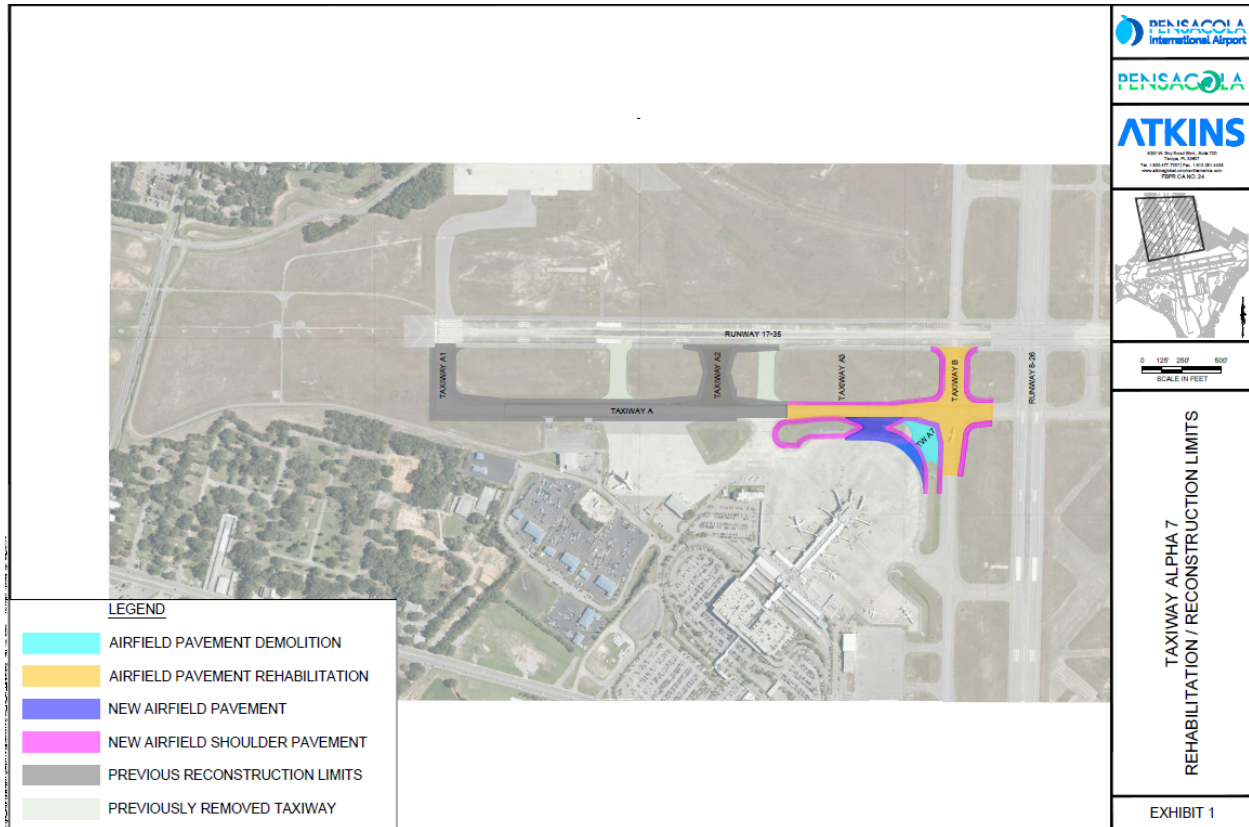
As required by 215.971, F.S., this scope of work includes but is not limited to consultant and construction administration fees, the survey and geotechnical costs, construction inspection and material testing costs, mobilization and demobilization, permitting, pavement demolition, surface course improvements (such as concrete, asphalt, rejuvenators, or sealants), joint construction, runway grooving, pavement markings and striping, airfield lighting and signage improvements, recalculation of the pavement PCN, updating the new PCN numbers on the FAA Form 5010 and the FAD, sodding, and safety barricades, including all materials, equipment, labor, and incidentals required to rehabilitate the runway pavement. The Sponsor will comply with Aviation Program Assurances.

SECTION B: PROJECT JUSTIFICATION

To reduce the possibility of runway incursions at Hot Spot 1 by reconfiguring the Taxiway A7 & Taxiway A/B intersection to comply with current FAA design standards. This complex intersection currently adds to the confusion of the Runway 8/26 & 17/35 intersection by producing expansive pavements and direct access taxiways as pilots are entering the runway environment. This combination increases the likelihood of a runway incursion. FAA identified 25 runway incursions in this area from 2007 through 2018, with a peak of six occurring in one year. This project will enhance safety in the Taxiway A/B and Runways 8-26 & 17-35 intersection by eliminating direct access from the Air Carrier Ramp, and by eliminating expansive pavement at the Taxiway A/B intersection. The project will allow the taxiway system to meet current FAA taxiway design geometry and help prevent additional runway incursions from occurring at this intersection. Infrastructure Investment - FDOT assigned a PCI value of 57 indicating it as being in "Poor to "Fair" condition.

The most recent FDOT Pavement Evaluation Report for PNS is shown in Attachment 1. The proposed project is shown on the following page.

Project Description and Budget
4466451 Taxiway A7 & Taxiway A/B Intersection Reconfiguration – Construction &
Construction Administration
Pensacola International Airport, Florida



SECTION C: DESCRIPTION OF PROFESSIONAL SERVICES

The following elements describe the specific tasks to be provided as part of this scope:

TASK C-I: CONSTRUCTION PHASE SERVICES

Consultant shall prepare “Release for Construction” conformed documents, attend Pre-Construction Conference, evaluate/review contractor submittals, participate in periodic site visits, review contractor pay requests, prepare substantial completion punch-list, perform final inspection, and prepare Record Drawings and Close-Out Documents. Payments for the above-listed task will be made after the following deliverables are received or milestones occur:

- Conformed Documents
- Pre-Construction Conference
- Verification of Site Visits
- Substantial Completion Punch-list
- Final Completion Inspection
- Record Drawings and Close-Out Documents
- “Pen-and-ink” change to the Airport Layout Drawing

TASK C-II: CONSTRUCTION

The construction contractor for this project will be determined via a public competitive bidding process. The contractor’s scope will include performing the installation of the project improvements as specified

Project Description and Budget
4466451 Taxiway A7 & Taxiway A/B Intersection Reconfiguration – Construction &
Construction Administration
Pensacola International Airport, Florida

in the contract documents. The contractor shall furnish all materials, labor, incidentals, and supplies required to construct the project and deliver an operable facility ready for use. Payment will be made to the Contractor based on actual constructed quantities at the contract unit prices. Upon completion of the work and prior to final payment, a final change order will be prepared and executed to reflect the final contract amount.

SECTION D: ANTICIPATED PROJECT SCHEDULE

The project schedule is anticipated to require approximately 13 months and is anticipated to progress from the project Notice-To-Proceed (NTP) as follows:

Task Order Preparation and Approvals	60 days
Task C-I – Construction Phase Services (and contracts)	90 days
Task C-II – Construction	180 days
Project Close-Out	<u>60 days</u>
Total Project Duration	390 days

SECTION E: PROJECT BUDGET ESTIMATES:

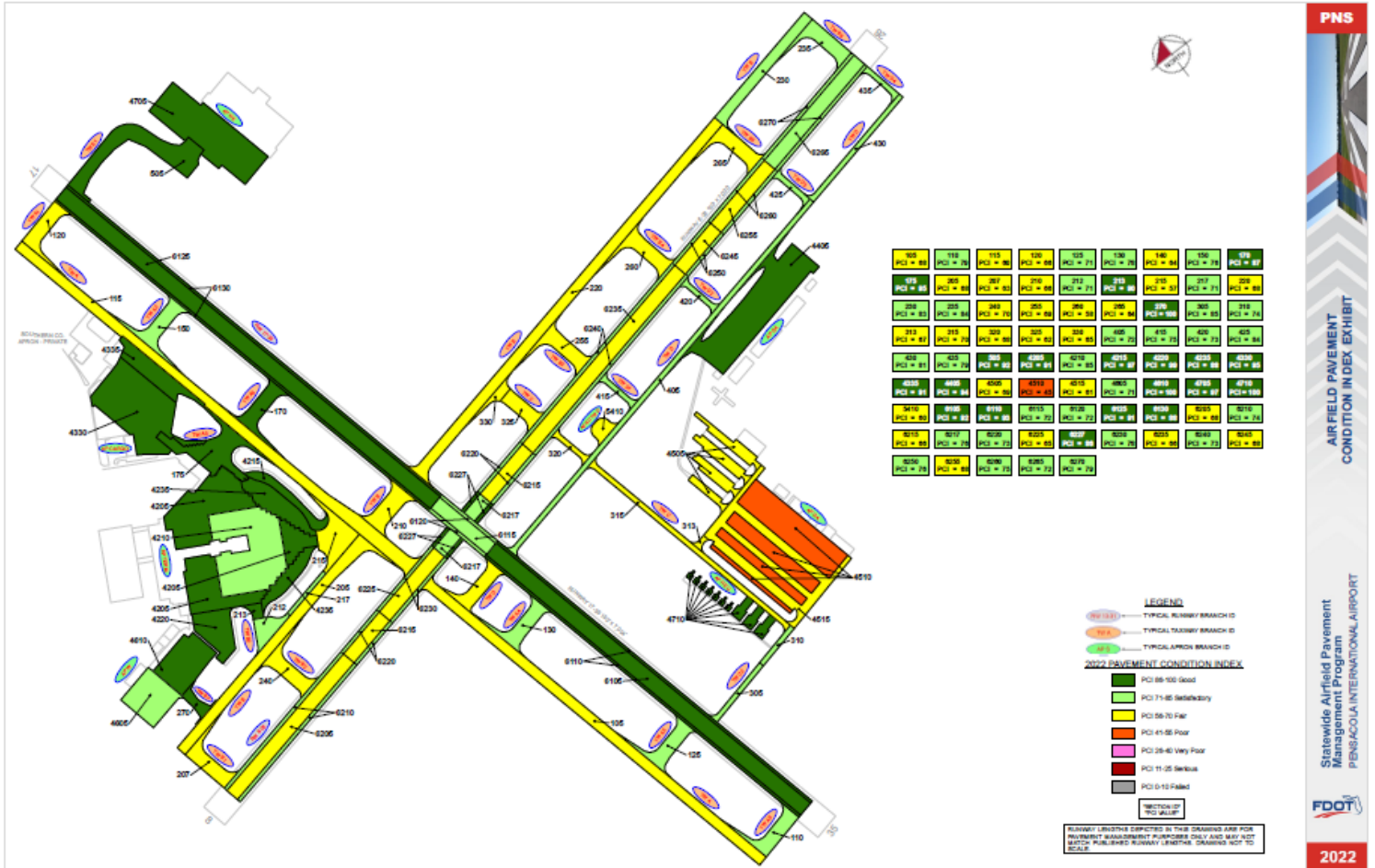
Construction Phase Services	\$995,000.00
Construction	<u>8,962,600.00</u>
Project Total	<u>\$9,957,600.00</u>
Funding Sources:	
FAA	\$8,961,840.00
FDOT	450,000.00
Local	<u>545,760.00</u>
Total	<u>\$9,957,600.00</u>

SECTION F: ATTACHMENTS

- Attachment 1— 2022 FDOT Pavement Evaluation Report

Project Description and Budget
4466451 Taxiway A7 & Taxiway A/B Intersection Reconfiguration – Construction &
Construction Administration
Pensacola International Airport, Florida

Attachment 1
2022 FDOT Pavement Evaluation Report



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 4/25/2023

EXHIBIT B

Schedule of Financial Assistance

FUNDS AWARDED TO THE AGENCY AND REQUIRED MATCHING FUNDS PURSUANT TO THIS AGREEMENT
CONSIST OF THE FOLLOWING:

A. Fund Type and Fiscal Year:

Financial Management Number	Fund Type	FLAIR Category	State Fiscal Year	Object Code	CSFA/CFDA Number	CSFA/CFDA Title or Funding Source Description	Funding Amount
446645-1-94-01	DDR	088719	2025	740100	N/A	N/A	\$450,000.00
446645-1-94-01	FAA	088719	2025	740100	N/A	N/A	\$8,961,840.00
446645-1-94-01	LF	088719	2025	740100	N/A	N/A	\$545,760.00
Total Financial Assistance							\$9,957,600.00

B. Estimate of Project Costs by Grant Phase:

Phases*	State	Local	Federal	Totals	State %	Local %	Federal %
Land Acquisition	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00	0.00
Planning	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00	0.00
Environmental/Design/Construction	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00	0.00
Capital Equipment/ Preventative Maintenance	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00	0.00
Match to Direct Federal Funding	\$450,000.00	\$545,760.00	\$8,961,840.00	\$9,957,600.00	4.52	5.48	90.00
Mobility Management (Transit Only)	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00	0.00
Totals	\$450,000.00	\$545,760.00	\$8,961,840.00	\$9,957,600.00			

*Shifting items between these grant phases requires execution of an Amendment to the Public Transportation Grant Agreement. **Funds will be reimbursed at 5%.

Scope Code and/or Activity Line Item (ALI) (Transit Only)	
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BUDGET/COST ANALYSIS CERTIFICATION AS REQUIRED BY SECTION 216.3475, FLORIDA STATUTES:

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

Quinton Williams

Department Grant Manager Name

Signature

Date

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS****EXHIBIT C****TERMS AND CONDITIONS OF CONSTRUCTION****1. Design and Construction Standards and Required Approvals.**

- a. The Agency understands that it is responsible for the preparation and certification of all design plans for the Project. The Agency shall hire a qualified consultant for the design phase of the Project or, if applicable, the Agency shall require their design-build contractor or construction management contractor to hire a qualified consultant for the design phase of the Project.
- b. Execution of this Agreement by both Parties shall be deemed a Notice to Proceed to the Agency for the design phase or other non-construction phases of the Project. If the Project involves a construction phase, the Agency shall not begin the construction phase of the Project until the Department issues a Notice to Proceed for the construction phase. Prior to commencing the construction work described in this Agreement, the Agency shall request a Notice to Proceed from the Department's Project Manager, Quinton Williams (email: quinton.williams@dot.state.fl.us) or from an appointed designee. Any construction phase work performed prior to the execution of this required Notice to Proceed is not subject to reimbursement.
- c. The Agency will provide one (1) copy of the final design plans and specifications and final bid documents to the Department's Project Manager prior to bidding or commencing construction of the Project.
- d. The Agency shall require the Agency's contractor to post a payment and performance bond in accordance with applicable law(s).
- e. The Agency shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that the construction work will meet all applicable Agency and Department standards.
- f. Upon completion of the work authorized by this Agreement, the Agency shall notify the Department in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineer's Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached to this Exhibit. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans or specifications, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

2. Construction on the Department's Right of Way. If the Project involves construction on the Department's right-of-way, then the following provisions apply to any and all portions of the Project that are constructed on the Department's right-of-way:

- a. The Agency shall hire a qualified contractor using the Agency's normal bid procedures to perform the construction work for the Project. The Agency must certify that the installation of the Project is completed by a Contractor prequalified by the Department as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2016), as amended, unless otherwise approved by the Department in writing or the Contractor exhibits past project experience in the last five years that are comparable in scale, composition, and overall quality to the site characterized within the scope of services of this Project.

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

- b. Construction Engineering Inspection (CEI) services will be provided by the Agency by hiring a Department prequalified consultant firm including one individual that has completed the Advanced Maintenance of Traffic Level Training, unless otherwise approved by the Department in writing. The CEI staff shall be present on the Project at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by Department. The Department shall approve all CEI personnel. The CEI firm shall not be the same firm as that of the Engineer of Record for the Project. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. Notwithstanding the foregoing, the Department may issue a written waiver of the CEI requirement for portions of Projects involving the construction of bus shelters, stops, or pads.
- c. The Project shall be designed and constructed in accordance with the latest edition of the Department's Standard Specifications for Road and Bridge Construction, the Department Design Standards, and the Manual of Uniform Traffic Control Devices (MUTCD). The following guidelines shall apply as deemed appropriate by the Department: the Department Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, Florida Design Manual, Manual for Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the "Florida Green Book"), and the Department Traffic Engineering Manual. The Agency will be required to submit any construction plans required by the Department for review and approval prior to any work being commenced. Should any changes to the plans be required during construction of the Project, the Agency shall be required to notify the Department of the changes and receive approval from the Department prior to the changes being constructed. The Agency shall maintain the area of the Project at all times and coordinate any work needs of the Department during construction of the Project.
- d. The Agency shall notify the Department a minimum of 48 hours before beginning construction within Department right-of-way. The Agency shall notify the Department should construction be suspended for more than 5 working days. The Department contact person for construction is Quinton Williams.
- e. The Agency shall be responsible for monitoring construction operations and the maintenance of traffic (MOT) throughout the course of the Project in accordance with the latest edition of the Department Standard Specifications, section 102. The Agency is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the Department Design Standards, Index 600 series. Any MOT plan developed by the Agency that deviates from the Department Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.
- f. The Agency shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.
- g. The Agency will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.
- h. It is hereby agreed by the Parties that this Agreement creates a permissive use only and all improvements located on the Department's right-of-way resulting from this Agreement shall become the property of the Department. Neither the granting of the permission to use the Department right of way nor the placing of facilities upon the Department property shall operate to create or vest any property right to or in the Agency, except as may otherwise be provided in separate agreements. The Agency shall not acquire any right, title, interest or

**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

estate in Department right of way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Agency's use, occupancy or possession of Department right of way. The Parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to Chapter 163, F.S.

- i. The Agency shall not cause any liens or encumbrances to attach to any portion of the Department's property, including but not limited to, the Department's right-of-way.
- j. The Agency shall perform all required testing associated with the design and construction of the Project. Testing results shall be made available to the Department upon request. The Department shall have the right to perform its own independent testing during the course of the Project.
- k. The Agency shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the Department, applicable Water Management District, Florida Department of Environmental Protection, the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Coast Guard and local governmental entities.
- l. If the Department determines a condition exists which threatens the public's safety, the Department may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from its right-of-way at the sole cost, expense, and effort of the Agency. The Agency shall bear all construction delay costs incurred by the Department.
- m. The Agency shall be responsible to maintain and restore all features that might require relocation within the Department right-of-way.
- n. The Agency will be solely responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.
- o. The acceptance procedure will include a final "walk-through" by Agency and Department personnel. Upon completion of construction, the Agency will be required to submit to the Department final as-built plans and an engineering certification that construction was completed in accordance to the plans. Submittal of the final as-built plans shall include one complete set of the signed and sealed plans on 11" X 17" plan sheets and an electronic copy prepared in Portable Document Format (PDF). Prior to the termination of this Agreement, the Agency shall remove its presence, including, but not limited to, all of the Agency's property, machinery, and equipment from Department right-of-way and shall restore those portions of Department right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.
- p. If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have thirty (30) days from the date of receipt of the Department's written notice, or such other time as the Agency and the Department mutually agree to in writing, to complete the Project and provide the Department with written notice of the same (the "Notice of Completion"). If the Agency fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department, within its discretion may: 1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Agency's sole cost and expense,

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without Department liability to the Agency for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice within thirty (30) days of the date of the invoice.

- q. The Agency shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. The Agency shall be responsible for the correction of any erosion, shoaling, or water quality problems that result from the construction of the Project.
- r. Portable Traffic Monitoring Site (PTMS) or a Telemetry Traffic Monitoring Site (TTMS) may exist within the vicinity of your proposed work. It is the responsibility of the Agency to locate and avoid damage to these sites. If a PTMS or TTMS is encountered during construction, the Department must be contacted immediately.
- s. During construction, highest priority must be given to pedestrian safety. If permission is granted to temporarily close a sidewalk, it should be done with the express condition that an alternate route will be provided, and shall continuously maintain pedestrian features to meet Americans Disability Act (ADA) standards.
- t. Restricted hours of operation will be as follows, unless otherwise approved by the Department's District Construction Engineer or designee (insert hours and days of the week for restricted operation):
- u. Lane closures on the state road system must be coordinated with the Public Information Office at least two weeks prior to the closure. The contact information for the Department's Public Information Office is:

Insert District PIO contact info:

850-330-1205

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

3. **Engineer's Certification of Compliance.** The Agency shall complete and submit and if applicable Engineer's Certification of Compliance to the Department upon completion of the construction phase of the Project.

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PUBLIC TRANSPORTATION GRANT AGREEMENT
BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and _____

PROJECT DESCRIPTION: _____

DEPARTMENT CONTRACT NO.: _____

FINANCIAL MANAGEMENT NO.: _____

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

By: _____, P.E.

SEAL:

Name: _____

Date: _____

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EXHIBIT D

AGENCY RESOLUTION

PLEASE SEE ATTACHED

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EXHIBIT E

**PROGRAM SPECIFIC TERMS AND CONDITIONS - AVIATION
AVIATION PROGRAM ASSURANCES**

A. General.

1. The assurances herein shall form an integral part of the Agreement between the Department and the Agency.
2. These assurances delineate the obligations of the Parties to this Agreement to ensure their commitment and compliance with specific provisions of **Exhibit “A”, Project Description and Responsibilities**, and **Exhibit “B”, Schedule of Financial Assistance**, as well as serving to protect public investment in public-use airports and the continued viability of the Florida Aviation System.
3. The Agency shall comply with the assurances as specified in this Agreement.
4. The terms and assurances of this Agreement shall remain in full force and effect throughout the useful life of a facility developed; equipment acquired; or Project items installed within a facility for an airport development or noise compatibility program project, but shall not exceed 20 years from the effective date of this Agreement.
5. There shall be no limit on the duration of the terms and assurances of this Agreement regarding Exclusive Rights and Airport Revenue so long as the property is used as a public airport.
6. There shall be no limit on the duration of the terms and assurances of this Agreement with respect to real property acquired with funds provided by this Agreement.
7. Subject to appropriations, the Department shall continue to comply with its financial commitment to this Project under the terms of this Agreement, until such time as the Department may determine that the Agency has failed to comply with the terms and assurances of this Agreement.
8. An Agency that has been determined by the Department to have failed to comply with either the terms of these Assurances, or the terms of the Agreement, or both, shall be notified, in writing, by the Department, identifying the specifics of the non-compliance and any corrective action by the Agency to remedy the failure.
9. Failure by the Agency to satisfactorily remedy the non-compliance shall absolve the Department's continued financial commitment to this Project and immediately require the Agency to repay the Department the full amount of funds expended by the Department on this Project.
10. Any history of failure to comply with the terms and assurances of an Agreement will jeopardize the Agency's eligibility for further state funding of airport projects by the Department.

B. Agency Compliance Certification.

1. **General Certification.** The Agency hereby certifies, with respect to this Project, it will comply, within its authority, with all applicable, current laws and rules of the State of Florida and applicable local governments, as well as Department policies, guidelines, and requirements, including but not limited to, the following (latest version of each document):
 - a. **Florida Statutes (F.S.)**
 - Chapter 163, F.S., Intergovernmental Programs
 - Chapter 329, F.S., Aircraft: Title; Liens; Registration; Liens
 - Chapter 330, F.S., Regulation of Aircraft, Pilots, and Airports
 - Chapter 331, F.S., Aviation and Aerospace Facilities and Commerce
 - Chapter 332, F.S., Airports and Other Air Navigation Facilities
 - Chapter 333, F.S., Airport Zoning

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b. Florida Administrative Code (FAC)

- Chapter 73C-41, FAC, Community Planning; Governing the Procedure for the Submittal and Review of Local Government Comprehensive Plans and Amendments
- Chapter 14-60, FAC, Airport Licensing, Registration, and Airspace Protection
- Section 62-256.300, FAC, Open Burning, Prohibitions
- Section 62-701.320(13), FAC, Solid Waste Management Facility Permit Requirements, General, Airport Safety

c. Local Government Requirements

- Airport Zoning Ordinance
- Local Comprehensive Plan

d. Department Requirements

- Eight Steps of Building a New Airport
- Florida Airport Revenue Use Guide
- Florida Aviation Project Handbook
- Guidebook for Airport Master Planning
- Airport Compatible Land Use Guidebook

- 2. Construction Certification.** The Agency hereby certifies, with respect to a construction-related project, that all design plans and specifications will comply with applicable federal, state, local, and professional standards, as well as Federal Aviation Administration (FAA) Advisory Circulars (AC's) and FAA issued waivers thereto, including but not limited to, the following:

a. Federal Requirements

- FAA AC 70/7460-1, Obstruction Marking and Lighting
- FAA AC 150/5300-13, Airport Design
- FAA AC 150/5370-2, Operational Safety on Airports During Construction
- FAA AC 150/5370-10, Standards for Specifying Construction of Airports

b. Local Government Requirements

- Local Building Codes
- Local Zoning Codes

c. Department Requirements

- Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (Commonly Referred to as the "Florida Green Book")
- Manual on Uniform Traffic Control Devices
- Section 14-60.007, FAC, Airfield Standards for Licensed Airports
- Standard Specifications for Construction of General Aviation Airports
- Design Guidelines & Minimum Standard Requirements for T-Hangar Projects

- 3. Land Acquisition Certification.** The Agency hereby certifies, regarding land acquisition, that it will comply with applicable federal and/or state policies, regulations, and laws, including but not limited to the following:

a. Federal Requirements

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- National Environmental Policy of 1969
- FAA Order 5050.4, National Environmental Policy Act Implementing Instructions for Airport Projects
- FAA Order 5100.37B, Land Acquisition and Relocation Assistance for Airport Projects

b. Florida Requirements

- Chapter 73, F.S., Eminent Domain (re: Property Acquired Through Condemnation)
- Chapter 74, F.S., Proceedings Supplemental to Eminent Domain (re: Condemnation)
- Section 286.23, F.S., Public Business: Miscellaneous Provisions

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C. Agency Authority.

1. **Legal Authority.** The Agency hereby certifies, with respect to this Agreement, that it has the legal authority to enter into this Agreement and commit to this Project; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the airport sponsor's governing body authorizing this Agreement, including assurances contained therein, and directing and authorizing the person identified as the official representative of the governing body to act on its behalf with respect to this Agreement and to provide any additional information as may be required.
2. **Financial Authority.** The Agency hereby certifies, with respect to this Agreement, that it has sufficient funds available for that portion of the Project costs which are not paid by the U.S. Government or the State of Florida; that it has sufficient funds available to assure future operation and maintenance of items funded by this Project, which it will control; and that authority has been granted by the airport sponsor governing body to commit those funds to this Project.

D. Agency Responsibilities. The Agency hereby certifies it currently complies with or will comply with the following responsibilities:

1. Accounting System.

- a. The Agency shall create and maintain a separate account to document all of the financial transactions related to the airport as a distinct entity.
- b. The accounting records shall be kept by the Agency or its authorized representative in accordance with Generally Accepted Accounting Principles and in an accounting system that will facilitate an effective audit in accordance with the 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and Section 215.97, F.S., Florida Single Audit Act.
- c. The Department has the right to audit and inspect all financial records of the Agency upon reasonable notice.

2. Good Title.

- a. The Agency holds good title, satisfactory to the Department, to the airport or site thereof, or gives assurance, satisfactory to the Department, that good title will be obtained.
- b. For noise compatibility program projects undertaken on the airport sponsor's property, the Agency holds good title, satisfactory to the Department, to that portion of the property upon which state funds will be expended, or gives assurance, satisfactory to the Department, that good title will be obtained.

3. Preserving Rights and Powers.

- a. The Agency shall not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms and assurances of this Agreement without the written approval of the Department. Further, the Agency shall act promptly to acquire, extinguish, or modify, in a manner acceptable to the Department, any outstanding rights or claims of right of others which would interfere with such performance by the Agency.
- b. If an arrangement is made for management and operation of the airport by any entity or person other than the Agency or an employee of the Agency, the Agency shall reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with the terms and assurances of this Agreement.

4. Hazard Removal and Mitigation.

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- a. For airport hazards located on airport controlled property, the Agency shall clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.
- b. For airport hazards not located on airport controlled property, the Agency shall work in conjunction with the governing public authority or private land owner of the property to clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards. The Agency may enter into an agreement with surrounding property owners or pursue available legal remedies to remove potential hazards to air navigation.

5. Airport Compatible Land Use.

- a. The Agency assures that appropriate airport zoning ordinances are in place consistent with Section 333.03, F.S., or if not in place, that it will take appropriate action necessary to ensure local government adoption of an airport zoning ordinance or execution of an interlocal agreement with another local government body having an airport zoning ordinance, consistent with the provisions of Section 333.03, F.S.
- b. The Agency assures that it will disapprove or oppose any attempted alteration or creation of objects, natural or man-made, dangerous to navigable airspace or that would adversely affect the current or future levels of airport operations.
- c. The Agency assures that it will disapprove or oppose any attempted change in local land use development regulations that would adversely affect the current or future levels of airport operations by creation or expansion of airport incompatible land use areas.

6. Consistency with Local Government Plans.

- a. The Agency assures the Project is consistent with the currently existing and planned future land use development plans approved by the local government having jurisdictional responsibility for the area surrounding the airport.
- b. The Agency assures that it has given fair consideration to the interest of local communities and has had reasonable consultation with those parties affected by the Project.
- c. The Agency shall consider and take appropriate actions, if deemed warranted by the Agency, to adopt the current, approved Airport Master Plan into the local government comprehensive plan.

7. Consistency with Airport Master Plan and Airport Layout Plan.

- a. The Agency assures that the project, covered by the terms and assurances of this Agreement, is consistent with the most current Airport Master Plan.
- b. The Agency assures that the Project, covered by the terms and assurances of this Agreement, is consistent with the most current, approved Airport Layout Plan (ALP), which shows:
 - 1) The boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Agency for airport purposes and proposed additions thereto;
 - 2) The location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and
 - 3) The location of all existing and proposed non-aviation areas on airport property and of all existing improvements thereon.

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- c. The Agency assures that it will not make or permit any changes or alterations on the airport or any of its facilities that are not consistent with the Airport Master Plan and the Airport Layout Plan, as approved by the Department.
- d. Original Airport Master Plans and Airport Layout Plans and each amendment, revision, or modification thereof, will be subject to the approval of the Department.

8. Airport Financial Plan.

- a. The Agency assures that it will develop and maintain a cost-feasible Airport financial plan to accomplish the projects necessary to achieve the proposed airport improvements identified in the Airport Master Plan and depicted in the Airport Layout Plan, and any updates thereto. The Agency's Airport financial plan must comply with the following conditions:
 - 1) The Airport financial plan will be a part of the Airport Master Plan.
 - 2) The Airport financial plan will realistically assess project phasing considering availability of state and local funding and likelihood of federal funding under the FAA's priority system.
 - 3) The Airport financial plan will not include Department funding for projects that are inconsistent with the local government comprehensive plan.
- b. All Project cost estimates contained in the Airport financial plan shall be entered into and kept current in the Florida Aviation Database (FAD) Joint Automated Capital Improvement Program (JACIP) website.

9. Airport Revenue. The Agency assures that all revenue generated by the airport will be expended for capital improvement or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the air transportation of passengers or property, or for environmental or noise mitigation purposes on or off the airport.

10. Fee and Rental Structure.

- a. The Agency assures that it will maintain a fee and rental structure for facilities and services at the airport that it will make the airport as self-sustaining as possible under the circumstances existing at the particular airport.
- b. If this Agreement results in a facility that will be leased or otherwise produce revenue, the Agency assures that the price charged for that facility will be based on the market value.

11. Public-Private Partnership for Aeronautical Uses.

- a. If the airport owner or operator and a person or entity that owns an aircraft or an airport tenant or potential tenant agree that an aircraft hangar or tenant-specific facility, respectively, is to be constructed on airport property for aircraft storage or tenant use at the expense of the aircraft owner or tenant, the airport owner or operator may grant to the aircraft owner or tenant of the facility a lease that is subject to such terms and conditions on the facility as the airport owner or operator may impose, subject to approval by the Department.
- b. The price charged for said lease will be based on market value, unless otherwise approved by the Department.

12. Economic Nondiscrimination.

- a. The Agency assures that it will make the airport available as an airport for public use on reasonable terms without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public.
 - 1) The Agency may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

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- 2) The Agency may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

- b. The Agency assures that each airport Fixed-Based Operator (FBO) shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other FBOs making the same or similar uses of such airport and utilizing the same or similar facilities.

13. Air and Water Quality Standards. The Agency assures that all projects involving airport location, major runway extension, or runway location will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards.

14. Operations and Maintenance.

- a. The Agency assures that the airport and all facilities, which are necessary to serve the aeronautical users of the airport, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal and state agencies for maintenance and operation, as well as minimum standards established by the Department for State of Florida licensing as a public-use airport.
 - 1) The Agency assures that it will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.
 - 2) Except in emergency situations, any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Department.
 - 3) The Agency assures that it will have arrangements for promptly notifying airmen of any condition affecting aeronautical use of the airport.
- b. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when adverse weather conditions interfere with safe airport operations.

15. Federal Funding Eligibility.

- a. The Agency assures it will take appropriate actions to maintain federal funding eligibility for the airport and it will avoid any action that renders the airport ineligible for federal funding.
- b. If the Agency becomes ineligible for federal funding of airport projects, such determination will render the Agency ineligible for state funding of airport projects.

16. Project Implementation.

- a. The Agency assures that it will begin making expenditures or incurring obligations pertaining to this Project within one year after the effective date of this Agreement.
- b. The Agency may request a one-year extension of this one-year time period, subject to approval by the Department District Secretary or designee.
- c. Failure of the Agency to make expenditures, incur obligations or receive an approved extension may allow the Department to terminate this Agreement.

17. Exclusive Rights. The Agency assures that it will not permit any exclusive right for use of the airport by any person providing, or intending to provide, aeronautical services to the public.

18. Airfield Access.

- a. The Agency assures that it will not grant or allow general easement or public access that opens onto or crosses the airport runways, taxiways, flight line, passenger facilities, or any area used for emergency

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equipment, fuel, supplies, passengers, mail and freight, radar, communications, utilities, and landing systems, including but not limited to flight operations, ground services, emergency services, terminal facilities, maintenance, repair, or storage, except for those normal airport providers responsible for standard airport daily services or during special events at the airport open to the public with limited and controlled access.

- b. The Agency assures that it will not grant or allow general easement or public access to any portion of the airfield from adjacent real property which is not owned, operated, or otherwise controlled by the Agency without prior Department approval.

19. Retention of Rights and Interests. The Agency will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the real property shown as airport owned or controlled on the current airport layout plan without prior written approval by the Department. It will not sell, lease, encumber, terminate, waive, or otherwise transfer or dispose of any part of its title, rights, or other interest in existing noise easements or aviation easements on any property, airport or non-airport, without prior written approval by the Department. These assurances shall not limit the Agency's right to lease airport property for airport-compatible purposes.

20. Consultant, Contractor, Scope, and Costs.

- a. The Department has the right to disapprove the Agency's employment of consultants, contractors, and subcontractors for all or any part of this Project if the specific consultants, contractors, or subcontractors have a record of poor project performance with the Department.
- b. Further, the Department maintains the right to disapprove the proposed Project scope and cost of professional services.

21. Planning Projects. For all planning projects or other aviation studies, the Agency assures that it will:

- a. Execute the project per the approved project narrative or with approved modifications.
- b. Furnish the Department with such periodic project and work activity reports as indicated in the approved scope of services.
- c. Make such project materials available for public review, unless exempt from public disclosure.
 - 1) Information related to airport security is considered restricted information and is exempt from public dissemination per Sections 119.071(3) and 331.22 F.S.
 - 2) No materials prepared under this Agreement shall be subject to copyright in the United States or any other country.
- d. Grant the Department unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this Agreement.
- e. If the Project involves developing an Airport Master Plan or an Airport Layout Plan, and any updates thereto, it will be consistent with provisions of the Florida Aviation System Plan, will identify reasonable future growth of the airport and the Agency will comply with the Department airport master planning guidebook, including:
 - 1) Provide copies, in electronic and editable format, of final Project materials to the Department, including computer-aided drafting (CAD) files of the Airport Layout Plan.
 - 2) Develop a cost-feasible financial plan, approved by the Department, to accomplish the projects described in the Airport Master Plan or depicted in the Airport Layout Plan, and any updates thereto. The cost-feasible financial plan shall realistically assess Project phasing considering availability of state and local funding and federal funding under the FAA's priority system.
 - 3) Enter all projects contained in the cost-feasible plan in the Joint Automated Capital Improvement Program (JACIP).

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- f. The Agency understands and agrees that Department approval of this Agreement or any planning material developed as part of this Agreement does not constitute or imply any assurance or commitment on the part of the Department to approve any pending or future application for state aviation funding.
- g. The Agency will submit master planning draft and final deliverables for Department and, if required, FAA approval prior to submitting any invoices to the Department for payment.

22. Land Acquisition Projects. For the purchase of real property, the Agency assures that it will:

- a. **Laws.** Acquire the land in accordance with federal and/or state laws governing such action.
- b. **Administration.** Maintain direct control of Project administration, including:
 - 1) Maintain responsibility for all related contract letting and administrative procedures related to the purchase of real property.
 - 2) Secure written Department approval to execute each agreement for the purchase of real property with any third party.
 - 3) Ensure a qualified, State-certified general appraiser provides all necessary services and documentation.
 - 4) Furnish the Department with a projected schedule of events and a cash flow projection within 20 calendar days after completion of the review appraisal.
 - 5) Establish a Project account for the purchase of the land.
 - 6) Collect and disburse federal, state, and local project funds.
- c. **Reimbursable Funds.** If funding conveyed by this Agreement is reimbursable for land purchase in accordance with Chapter 332, F.S., the Agency shall comply with the following requirements:
 - 1) The Agency shall apply for a FAA Airport Improvement Program grant for the land purchase within 60 days of executing this Agreement.
 - 2) If federal funds are received for the land purchase, the Agency shall notify the Department, in writing, within 14 calendar days of receiving the federal funds and is responsible for reimbursing the Department within 30 calendar days to achieve normal project federal, state, and local funding shares per Chapter 332, F.S.
 - 3) If federal funds are not received for the land purchase, the Agency shall reimburse the Department within 30 calendar days after the reimbursable funds are due in order to achieve normal project state and local funding shares as described in Chapter 332, F.S.
 - 4) If federal funds are not received for the land purchase and the state share of the purchase is less than or equal to normal state and local funding shares per Chapter 332, F.S., when reimbursable funds are due, no reimbursement to the Department shall be required.
- d. **New Airport.** If this Project involves the purchase of real property for the development of a new airport, the Agency assures that it will:
 - 1) Apply for federal and state funding to construct a paved runway, associated aircraft parking apron, and connecting taxiway within one year of the date of land purchase.
 - 2) Complete an Airport Master Plan within two years of land purchase.
 - 3) Complete airport construction for basic operation within 10 years of land purchase.
- e. **Use of Land.** The Agency assures that it shall use the land for aviation purposes in accordance with the terms and assurances of this Agreement within 10 years of acquisition.
- f. **Disposal of Land.** For the disposal of real property the Agency assures that it will comply with the following:
 - 1) For land purchased for airport development or noise compatibility purposes, the Agency shall, when the land is no longer needed for such purposes, dispose of such land at fair market value and/or make available to the Department an amount equal to the state's proportionate share of its market value.

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- 2) Land will be considered to be needed for airport purposes under this assurance if:
 - a) It serves aeronautical purposes such as a runway protection zone or as a noise buffer.
 - b) Revenue from uses of such land contributes to airport financial self-sufficiency.
- 3) Disposition of land under Sections D.22.f.1. or D.22.f.2. of this Exhibit, above, shall be subject to retention or reservation of any interest or right therein needed to ensure such land will only be used for purposes compatible with noise levels related to airport operations.
- 4) Revenues from the sale of such land must be accounted for as outlined in Section D.1. of this Exhibit, and expended as outlined in Section D.9. of this Exhibit.

23. Construction Projects. The Agency assures that it will:

a. Project Certifications. Certify Project compliances, including:

- 1) Consultant and contractor selection comply with all applicable federal, state and local laws, rules, regulations, and policies.
- 2) All design plans and specifications comply with federal, state, and professional standards and applicable FAA advisory circulars, as well as the minimum standards established by the Department for State of Florida licensing as a public-use airport.
- 3) Completed construction complies with all applicable local building codes.
- 4) Completed construction complies with the Project plans and specifications with certification of that fact by the Project Engineer.

b. Design Development. For the plans, specifications, construction contract documents, and any and all other engineering, construction, and contractual documents produced by the Engineer, which are hereinafter collectively referred to as "plans", the Engineer will certify that:

- 1) The plans shall be developed in accordance with sound engineering and design principles, and with generally accepted professional standards.
- 2) The plans shall be consistent with the intent of the Project as defined in Exhibit A and Exhibit B of this Agreement.
- 3) The Project Engineer shall perform a review of the certification requirements listed in Section B.2. of this Exhibit, Construction Certification, and make a determination as to their applicability to this Project.
- 4) Development of the plans shall comply with all applicable laws, ordinances, zoning and permitting requirements, public notice requirements, and other similar regulations.

c. Inspection and Approval. The Agency assures that:

- 1) The Agency will provide and maintain competent technical supervision at the construction site throughout the Project to assure that the work conforms to the plans, specifications, and schedules approved by the Department, as applicable, for the Project.
- 2) The Agency assures that it will allow the Department to inspect the work and that it will provide any cost and progress reporting, as may be required by the Department.
- 3) The Agency assures that it will take the appropriate corrective action necessary, as required by the Department, for work which does not conform to the Department standards.

d. Pavement Preventive Maintenance. The Agency assures that for a project involving replacement or reconstruction of runway or taxiway pavement it has implemented an airport pavement maintenance management program and that it will use such program for the useful life of any pavement constructed, reconstructed, or repaired with state financial assistance at the airport.

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PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 4/25/2023

24. Noise Mitigation Projects. The Agency assures that it will:

- a. Government Agreements.** For all noise compatibility projects that are carried out by another unit of local government or are on property owned by a unit of local government other than the Agency, the Agency shall enter into an agreement with that government body.
 - 1)** The local agreement, satisfactory to the Department, shall obligate the unit of local government to the same terms and assurances that apply to the Agency.
 - 2)** The Agency assures that it will take steps to enforce the local agreement if there is substantial non-compliance with the terms of the local agreement.
- b. Private Agreements.** For noise compatibility projects on privately owned property:
 - 1)** The Agency shall enter into an agreement with the owner of that property to exclude future actions against the airport.
 - 2)** The Agency assures that it will take steps to enforce such agreement if there is substantial non-compliance with the terms of the agreement.

- End of Exhibit E -

EXHIBIT F

**Contract Payment Requirements
Florida Department of Financial Services, Reference Guide for State Expenditures
Cost Reimbursement Contracts**

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

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

(1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

(2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

(3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.

(4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.

(5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.

(6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

Contracts between state agencies, and/or contracts between universities may submit alternative documentation to substantiate the reimbursement request that may be in the form of FLAIR reports or other detailed reports.

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