

RESOLUTION 21-128

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN OFF-SYSTEM PROJECT MAINTENANCE AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR SIDEWALKS TO BE CONSTRUCTED BY FDOT ON CLARA AVENUE AND BETH STREET.

BE IT RESOLVED that the appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Off-System Project Maintenance Agreement between the City and the Florida Department of Transportation, relating to the City's acceptance and maintenance of sidewalks to be constructed by FDOT on Clara Avenue and Beth Street, in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 25th day of March, 2021.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
OFF-SYSTEM PROJECT MAINTENANCE AGREEMENT**

This Off-System Project Maintenance Agreement (“Agreement”) is between the State of Florida Department of Transportation (“DEPARTMENT”), and the City of Panama City Beach, a political subdivision of the State of Florida (“LOCAL AGENCY”). The DEPARTMENT and the LOCAL AGENCY are sometimes referred to in this Agreement as a “Party” and collectively as the “Parties.”

RECITALS

1. Federal funding is available for the costs of sidewalk construction and other minor related improvements on Clara Avenue and Beth Street pursuant to Title 23, United States Code; and

2. The DEPARTMENT is preparing to undertake a project within the LOCAL AGENCY identified and known to the Parties by Financial Project I.D. 444220-2-52-01, which will be of benefit to the LOCAL AGENCY (“PROJECT”); and

3. The PROJECT, or a portion of the PROJECT, is being performed on Clara Avenue and Beth Street in Bay County, Florida, roads not on the State Highway System; and

4. Approval of federal aid necessary to the PROJECT requires agreement by the LOCAL AGENCY to maintain the PROJECT or the portion of the PROJECT that is located on the LOCAL AGENCY’S right-of-way; and

5. The LOCAL AGENCY, by resolution No. 21-128, dated March 25, 2021, a copy of which is attached hereto and made a part hereof, has authorized the City Manager, Sukrim to execute this Agreement.

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

6. The recitals in paragraphs 1-4 above are true and correct and are made a part of this Agreement.

7. The DEPARTMENT will undertake the PROJECT and obtain approval of the Federal Highway Administration for federal participation.

8. The LOCAL AGENCY hereby appoints the DEPARTMENT as its agent for purposes of the notification, construction, reconstruction and relocation of utilities under Sections 337.401, 337.402, 337.403, and 337.404, Florida Statutes. The LOCAL AGENCY agrees to fully cooperate with the DEPARTMENT in the construction, reconstruction and relocation of utilities that may be located within the existing or acquired right-of-way. The Parties agree to meet on a periodic basis, as determined to be necessary by the DEPARTMENT, during the planning, design, construction and post-construction phase to identify, plan and to relocate utilities. The responsibility for the costs associated with the relocation of utilities shall

be based on Florida law as it relates to said matters. The Parties agree that if existing utilities owned by the LOCAL AGENCY are required to be reconstructed or relocated as a result of the PROJECT that the costs associated therewith shall be deemed to be a cost of the PROJECT to be paid for the by the LOCAL AGENCY.

9. The LOCAL AGENCY acknowledges that the DEPARTMENT will be utilizing federal funds on the PROJECT and as a result thereof the LOCAL AGENCY agrees to maintain the PROJECT in perpetuity according to DEPARTMENT standards. The LOCAL AGENCY further recognizes and acknowledges that if the DEPARTMENT will be utilizing federal funds on the PROJECT, the National Environmental Policy Act ("NEPA") process will need to be completed and the DEPARTMENT reserves the right to adjust the plans and or design of the PROJECT to meet the needs of the permits. The LOCAL AGENCY agrees to fully cooperate in the provision of any and all studies and or data that may be necessary for the NEPA process and for all other permit matters.

10. The LOCAL AGENCY acknowledges and agrees that LOCAL AGENCY'S right-of-way, and the improvements located within the LOCAL AGENCY right-of-way, are and will remain under the ownership of the LOCAL AGENCY and that the DEPARTMENT will not have any ownership interest in the right-of-way, improvements located thereon. Additionally, the DEPARTMENT'S right-of-way, and the improvements located within the DEPARTMENT'S right-of-way, are and will remain under the ownership of the DEPARTMENT and the LOCAL AGENCY will not have any maintenance responsibilities nor ownership interest in the right-of-way, improvements located thereon. Notwithstanding the requirements hereof, maintenance during construction shall be the responsibility of the DEPARTMENT and its contractor.

11. Upon completion of the PROJECT, the DEPARTMENT shall issue a Notice of Final Acceptance to the contractor with a copy of said notice being provided to the LOCAL AGENCY. Upon issuance of the Notice of Final Acceptance, the LOCAL AGENCY shall be immediately responsible for the perpetual maintenance of the PROJECT or the portion of the PROJECT that is located on the LOCAL AGENCY'S right-of-way. The DEPARTMENT shall also have the right to assign interim maintenance responsibility to the LOCAL AGENCY for specified portions of the PROJECT before the issuance of the Notice of Final Acceptance. Said assignment of maintenance responsibility shall be sent by the DEPARTMENT to the LOCAL AGENCY in writing with sufficient description to place the LOCAL AGENCY on notice of the interim maintenance responsibility. Notwithstanding the issuance of the Notice of Final Acceptance, the DEPARTMENT shall have the right to assure completion of any punch list by the contractor. Additionally, the LOCAL AGENCY understands and agrees that the DEPARTMENT shall transfer all permits to the LOCAL AGENCY as the operational maintenance entity and the LOCAL AGENCY agrees to accept said transfer and to become fully responsible to comply with all operational and maintenance conditions of the permits.

12. This Agreement shall become effective as of the date both Parties hereto have executed the Agreement and shall continue in full force and effect until the PROJECT is completed by the DEPARTMENT and the improvements have been turned over to the LOCAL AGENCY by the DEPARTMENT by formal notice from the DEPARTMENT. The

DEPARTMENT reserves the right to unilaterally cancel its performance hereunder if it determines that it is in the best interest of the public to do so. This discretion shall include, but shall not be limited to budgetary and bid cost considerations.

13. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL AGENCY to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes and made or received by the LOCAL AGENCY in conjunction with this Agreement.

14. It is understood that the DEPARTMENT's participation in said PROJECT is subject to Legislative approval of the DEPARTMENT's appropriation request in the work program year that the PROJECT is scheduled.

15. The DEPARTMENT's performance and obligations 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 years, funds approved from the DEPARTMENT'S Comptroller must be received every year prior to costs being incurred.

16. In the event this Agreement is in excess of \$25,000.00 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 in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year."

17. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

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

negligent act by the DEPARTMENT or any of its officers, agents, or employees during the performance of the Agreement. Nothing herein shall be deemed a waiver of the rights of sovereign immunity of either Party.

19. In the event there are cost overruns, supplemental agreements (specifically incurred in the areas located off the State Highway System), and or liquidated damages not eligible to be paid for by federal funds due to the Federal Highway Administration determining that said costs are non-participating costs, the LOCAL AGENCY shall be responsible for one-hundred percent (100%) of the funds required to make up the shortfall not paid by federal funds. The PROJECT is off of the "State Highway System," therefore, in accordance with Section 339.08(1), F.S., State funding cannot be used for payments of non-participating costs on this PROJECT. (Examples of non-participating items could be fishing piers; premium costs due to design or CEI errors or omissions; material or equipment called for in the plans but not used in the construction, as referenced in the Federal Aid Policy Guide 23, CFR Section 635.120).

- a. Should such shortfalls occur due to a determination that said costs are non-participating, the LOCAL AGENCY agrees to provide, without delay, a deposit within fourteen (14) calendar days of notification from the DEPARTMENT, to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the shortfall. The DEPARTMENT shall notify the LOCAL AGENCY as soon as it becomes apparent there is a shortfall; however, failure of the DEPARTMENT to so notify the LOCAL AGENCY shall not relieve the LOCAL AGENCY of its obligation to pay for its full participation of non-participating costs during the PROJECT and on final accounting, as provided herein below. If the LOCAL AGENCY cannot provide the deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT'S contract manager indicating when the deposit will be made. The LOCAL AGENCY understands the request and approval of the additional time could delay the PROJECT, and additional non-participating costs may be incurred due to the delay of the PROJECT.

The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty days (360) of final payment to the Contractor. The DEPARTMENT considers the PROJECT complete when the final payment has been made to the Contractor, not when the construction work is complete. All non-participating Project cost records and accounts shall be subject to audit by a representative of the LOCAL AGENCY for a period of three (3) years after final close out of the PROJECT. The LOCAL AGENCY will be notified of the final non-participating cost of the PROJECT. Both Parties agree that in the event the final accounting of total non-participating costs pursuant to the terms of this Agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the LOCAL AGENCY. If the final accounting is not performed within three hundred and sixty (360) days, the LOCAL AGENCY is not relieved from its obligation to pay.

In the event the final accounting of total non-participating costs are greater than the total deposits to date, the LOCAL AGENCY will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The LOCAL AGENCY agrees to pay interest at a rate as established pursuant to Section 55.03, F.S., on any invoice not paid within forty (40) calendar days until the invoice is paid.

Any payment of funds under this Agreement provision will be made directly to the DEPARTMENT for deposit.

20. LOCAL AGENCY:

a) Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the LOCAL AGENCY during the term of the contract; and

b) Shall 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.

21. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery or express mail and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. Each Party hereto shall have the continuing obligation to notify each other of the appropriate persons for notices to be sent to pursuant to the terms of this agreement. Unless otherwise notified in writing, notices shall be sent to the following:

LOCAL AGENCY: Panama City Beach City Hall
17007 Panama City Beach Parkway
Panama City Beach, FL 32413

DEPARTMENT: Florida Department of Transportation
Chipley District Office
1074 Highway 90
Chipley, FL 32428-2162

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates exhibited by the signatures below.

DEPARTMENT:

LOCAL AGENCY:

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

**City of Panama City Beach, a political
subdivision of the State of Florida**

Albert Shortt

By:

By: Albert Shortt

Title:

Title: Interim City Manager

Date: _____

Date: 03/29/2021

Attest: _____

Attest: Lynne Favone

Legal Review:

Legal Review:

[Signature]

Office of the General Counsel

ATTEST:

Lynne Favone
City Clerk, City of Panama City Beach