

September 15, 2009

**FINANCE COMMITTEE MEETING**  
**MONDAY, SEPTEMBER 21, 2009**  
**IMMEDIATELY FOLLOWING**  
**COMMUNITY REDEVELOPMENT AGENCY MEETING**  
**HAGLER/MASON CONFERENCE ROOM**  
**SECOND FLOOR, CITY HALL**

Jewel Cannada-Wynn, Chair  
Mike Wiggins, Vice-Chair  
Maren DeWeese  
Sam Hall  
John Jerralds  
Larry B. Johnson  
Diane Mack  
Megan B. Pratt  
Ronald Townsend  
P.C. Wu

**ACTION ITEMS**

1. Excess Workers' Compensation Insurance Coverage
2. FY 2010 Community Policing Interlocal Agreement between the City and the Community Redevelopment Agency
3. FY 2010 Landscape Maintenance and Additional Services Interlocal Agreement between the City and the Community Redevelopment Agency
4. FY 2009 Supplemental Budget Resolution

**DISCUSSION ITEMS**

None

**INFORMATION ITEMS**

None

**NEW BUSINESS**

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. Requests must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services.

# COMMITTEE MEMORANDUM

ITEM #1

**COMMITTEE:** Finance  
**FROM:** Alvin G. Coby, City Manager  
**DATE:** September 21, 2009  
**SUBJECT:** Excess Workers' Compensation Insurance Coverage

## RECOMMENDATION:

That City Council accept the proposal from New York Marine Insurance Company for Excess Workers' Compensation Insurance effective October 1, 2009 and authorize payment of \$105,856 in annual premium.

## SUMMARY:

Excess workers' compensation insurance is designed to protect against substantial monetary losses and cash flow problems which could develop if one-to-several City employees were to be involved in a catastrophic type claim, resulting in serious injury or deaths. Excess workers' compensation insurance is written by an extremely limited number of insurance companies. Of those who do write this type of coverage, even fewer will write any level of coverage for municipalities. Insurers providing either quotes or premium indications are requiring significant minimum self insured retentions as a way of reducing their own exposure to claims.

The insurance agency that places this unique type of insurance coverage for the City is Arthur J. Gallagher & Company of Boca Raton. Arthur J. Gallagher & Company specializes in the placement of excess workers' compensation insurance for municipalities. For this renewal, staff asked Arthur J. Gallagher to search the market to find the best combination of pricing, terms and conditions. A total of four insurance companies responded with one declining to even offer a quote. The New York Marine policy contains a provision that requires acceptance of reasonable settlement offers within the self-insured retention. Regardless, the reduced premium cost of the New York Marine policy outweighs the inclusion of this provision in the proposed policy.



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# COMMITTEE MEMORANDUM

ITEM #2

**COMMITTEE:** Finance

**FROM:** Alvin G. Coby, City Manager

**DATE:** September 21, 2009

**SUBJECT:** FY 2010 Community Policing Interlocal Agreement between the City and the Community Redevelopment Agency

## RECOMMENDATION:

That City Council approve an Interlocal agreement with the Community Redevelopment Agency (CRA) for the continuance of community policing within the CRA boundaries in a amount not to exceed \$150,000

## SUMMARY:

One of the primary obstacles to urban revitalization is the perception of a lack of safety in areas that have seen decline over time and have become stigmatized in the public mind. This perception which is typically related to criminal activity, may be real or perceived, and gives rise to questions of both personal safety as well as the safety of property. In some cases, unless the question of safety is addressed first, other elements of the CRA plan are difficult to accomplish. Some of the methods used to address safety in the past have included improved street lighting and code enforcement actions in the case of derelict buildings.

Areas of the CRA are still experiencing concerns of safety to varying degrees. Revitalization has drawn significant numbers of people and activities to areas long underutilized. In some areas, the characteristics and history of criminal activities are an obstacle to revitalization. Examples of undesirable activities that have occurred and are obstacles to continued redevelopment, rehabilitation and improvement of the CRA include unexpected crowds, unusual traffic congestion, speeding, and crimes with other unique conditions or circumstances. Other sporadic criminal activities include burglaries, vandalism, assault, graffiti, drug trade and nuisance violations in outdoor functions, street racing and skateboarding-related vandalism.



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In July 2002, the CRA approved amending the Community Redevelopment Plan to provide for community policing of neighborhoods in the urban core. The community policing innovations are one approach that can be initiated to target criminal activity within a community redevelopment area. The Community Redevelopment Act describes “community policing innovations” as a policing technique or strategy designed to reduce crime by reducing the perceived risks of engaging in criminal activity through the visible presence of police in the community.

The Interlocal funding has been decreased for FY 2010 from \$175,000 to \$150,000. FY 2009 funding included an additional \$25,000 for purchase of equipment to assist officers in the downtown environment.

**PRIOR ACTION:** Annual approval of Fiscal Year Interlocal Agreements - July 25, 2002, the City Council adopted Resolution No. 21-02, CRA Plan Additional Priority Element: Urban Core Area Community Policing Innovations

**FUNDING** Budget: \$150,000  
Actual: \$150,000

**FINANCIAL IMPACT:** The CRA FY 2010 budget includes \$150,000 for the interlocal agreement.

**ATTACHMENTS:** (1) FY 2010 Interlocal Agreement

**STAFF CONTACT:** Richard Barker, Jr., Director of Finance; John Mathis, Police Chief; Thaddeus L. Cohen, AIA , Community Development Director and Becky Bray, AICP, CRA Administrator

**PRESENTATION:** None.

INTERLOCAL AGREEMENT  
(Community Policing Innovations)

between

THE COMMUNITY REDEVELOPMENT AGENCY OF  
THE CITY OF PENSACOLA, FLORIDA

and

THE CITY OF PENSACOLA, FLORIDA

This **INTERLOCAL AGREEMENT** (the " Agreement"), is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2009 and between the **COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PENSACOLA, FLORIDA**, a public body corporate and politic of the State of Florida (the "Agency"), and the **CITY OF PENSACOLA, FLORIDA**, a Florida municipal corporation created under the laws of the State of Florida (the "City").

**W I T N E S S E T H:**

**WHEREAS**, the City Council of the City of Pensacola, Florida, adopted Resolution No. 54-80 on September 25, 1980, finding and determining the area described therein known as the "Urban Core Community Redevelopment Area," to be a "blighted area" (as defined in Section 163.340, Florida Statutes) and to be in need of redevelopment, rehabilitation and improvement, which finding and determination was reaffirmed in Resolution No. 65-81, adopted by the City Council on October 22, 1981; and

**WHEREAS**, on September 25, 1980, the City Council adopted Resolution No. 55-80, which, created the Community Redevelopment Agency, and declared the City Council to be the Agency as provided in Section 163.356, Florida Statutes; and

**WHEREAS**, on March 8, 1984, the City Council adopted Ordinance No. 13-84, which created and established the Community Redevelopment Trust Fund for the Urban Core Community Redevelopment Area; and

**WHEREAS**, on March 27, 1984, the City Council of the City of Pensacola, Florida, adopted Resolution No. 15-84 which approved a community redevelopment plan for the Urban Core Community Redevelopment Area; and

**WHEREAS**, on April 6, 1989, the City Council adopted Resolution No. 18-89, which approved a revised redevelopment plan for the Urban Core Community Redevelopment Area which plan has been subsequently amended; and

**WHEREAS**, the Agency is responsible for the implementation of the redevelopment plan for the redevelopment, rehabilitation and improvement of the urban core community redevelopment area in the City; and

**WHEREAS**, one of the primary obstacles to the redevelopment, rehabilitation and improvement of the urban core community redevelopment area is the perception of a lack of safety in areas that have seen decline over time and that are now stigmatized in the public mind; and

**WHEREAS**, the Redevelopment Act (hereinafter defined) authorizes municipalities and community redevelopment agencies to develop and implement Community Policing Innovations which in the singular is statutorily defined as “a policing technique or strategy designed to reduce crime by reducing opportunities for, and increasing the perceived risks of engaging in, criminal activity through visible presence of police in the community, including, but not limited to, community mobilization, neighborhood block watch, citizen patrol, citizen contact patrol, foot patrol, neighborhood storefront police stations, field interrogation, or intensified motorized patrol”; and

**WHEREAS**, the Agency does not have nor exercise police powers nor employ police officers as needed to undertake Community Policing Innovations; and

**WHEREAS**, the City employs sworn law enforcement officers who have the police power and the ability to assist the Agency by focusing resources upon Community Policing Innovations in an effort to reduce crime within the Urban Core Community Redevelopment Area; and

**WHEREAS**, but for the cooperation of the parties and the assistance to be provided by the Agency to the City pursuant to this Agreement, the Agency would be without resources to undertake the Community Policing Innovations authorized by the Agency’s and the City’s community redevelopment plan; and

**WHEREAS**, the City and the Agency are willing to cooperate and provide assistance to each other and, to the extent permitted by law, all in such means and manner as will promote the rehabilitation and redevelopment of the urban core community redevelopment area, benefit the local economy, and be of substantial benefit to the Agency and the City by jointly undertaking community policing innovations within the urban core community redevelopment area;

**WHEREAS**, the Agency proposes to exercise its powers available under Part III, Chapter 163, Florida Statutes, as amended (the "Redevelopment Act") to aid, assist, and cause the rehabilitation and the redevelopment of the Urban Core Community Redevelopment Area to be accomplished by, among other things, using some of its "increment revenues" deposited in the Redevelopment Trust Fund (as hereinafter defined) together with funds provided by the City of Pensacola General Fund to pay for certain Community Policing Innovations (hereinafter defined and referred to hereinafter as the “Project”) to be provided hereinafter by the City; and

**WHEREAS**, the City and the Agency desire to enter into an interlocal agreement setting forth the terms, conditions and responsibilities of a coordinated and collective effort to redevelop the Urban Core Community Redevelopment Area and continue to maintain the Project undertaken by the Agency; and

**WHEREAS**, the City Council of the City and the governing body of the Agency have determined that such an agreement to accomplish the purposes as set forth herein involves appropriate public expenditures to accomplish important public purposes.

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

## ARTICLE 1: AUTHORITY

### 1.1. Authority.

This Agreement is entered into pursuant to and under the authority of Section 163.01, Florida Statutes; Part III, Chapter 163, Florida Statutes; Chapter 166, Florida Statutes; Resolution No. 54-80, adopted by the City Council of the City on September 25, 1980, Resolution No. 65-81, adopted by the City Council of the City on October 22, 1981, Ordinance No. 13-84, enacted by the City Council of the City on March 8, 1984, and other applicable law, all as amended and supplemented.

## ARTICLE 2: DEFINITIONS

### 2.1. Definitions.

As used in this Agreement, the following capitalized terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) “Act” means all or each of the following: Section 163.01, Florida Statutes; Part III, Chapter 163, Florida Statutes; Chapter 166, Florida Statutes, Resolution No. 54-80, adopted by the City Council of the City on September 25, 1980, Resolution No. 65-81, adopted by the City Council of the City on October 22, 1981; Ordinance No. 13-84, enacted by the City Council of the City on March 8, 1984, and other applicable law, all as amended and supplemented.

(2) “Agency” means the Community Redevelopment Agency of the City of Pensacola, Florida, and any successors or assigns.

(3) “Agency Payments” means, the periodic payments made by the Agency to the City from the Community Policing Innovations Account pursuant to Section 4.3 hereof.

(4) “Agency's Other Obligations” means the payment to be made by the Agency from Increment Revenues deposited in its Redevelopment Trust Fund in the manner, to the extent and so long as such payments are required, respectively, pursuant to resolutions or agreements adopted or entered into prior to or after the Effective Date and which are provided to be superior to the obligation of the Agency under this Agreement.

(5) “Agreement” means this Interlocal Agreement, including any amendments, revisions and exhibits thereto.

(6) “Available Increment Revenues” means Increment Revenues remaining from time to time in the Agency's Redevelopment Trust Fund after all payments and deposits required to be made therefrom for the Agency's Other Obligations have been made and paid by the Agency during that Fiscal Year.

(7) “Bonds” means the City of Pensacola, Florida, Redevelopment Refunding Revenue, Bonds, Series 1994.

(8) “City” means the City of Pensacola, Florida, a Florida municipal corporation, and any successors or assigns.

(9) “City Council” means the City Council of the City, or such other body constituting the elected governing or legislative body of the City.

(10) “Community Policing Innovations” means law enforcement services provided by the City within the Community Redevelopment Area, in cooperation and consultation with the Agency, to reduce crime by reducing opportunities for, and increasing the perceived risks of engaging in, criminal activity through visible presence of police in the community, including, but not limited to, community mobilization, neighborhood block watch, citizen patrol, citizen contact patrol, foot patrol, neighborhood storefront police stations, field interrogation, or intensified motorized patrol.

(10) “Community Policing Innovations Account” means the account created and established by Section 5.2 hereof and in which are deposited the Available Increment Revenues and from which the Agency Payments are made to fund the Community Policing Innovations described herein.

(11) “Community Redevelopment Area” or “Urban Core Community Redevelopment Area” means the area found to be a slum or blighted and described in Resolution No. 54-80, adopted by the City Council on September 25, 1980, as affirmed by Resolution No. 65-81, adopted by the City Council on October 22, 1981.

(12) “Effective Date” means the date on which this Agreement becomes effective as provided in Section 8.12 hereof.

(13) “Expiration Date” means the date on which this Agreement expires by its own terms and is no longer of any force and effect as provided in Section 8.7 hereof.

(14) “Fiscal Year” means the respective fiscal years of the City and the Agency commencing on October 1 of each year and ending on the succeeding September 30, or such other consecutive twelve (12) month period as may be hereafter designated pursuant to general law as the fiscal year of the Agency or the City, respectively.

(15) “Increment Revenues” means the funds received by the Agency and deposited in the Redevelopment Trust Fund in an amount equal to the incremental increase in ad valorem tax revenues calculated pursuant to Section 163.387, Florida Statutes, within the Community Redevelopment Area.

(16) “Plan” means the revised redevelopment plan for the Urban Core Community Redevelopment Area, adopted by the City Council on April 16, 1989, by the adoption of Resolution No. 19-89 as subsequently amended.

(17) “Redevelopment Trust Fund” means the trust fund of the Agency created and established by Ordinance No. 13-84, enacted by the City Council of the City on March 8, 1984,

into which Increment Revenues are deposited as provided by that ordinance (and any amendments or successors thereto) and the Redevelopment Act.

(18) “Termination Date” means the date on which this Agreement is terminated and is no longer of any force and effect as provided in Section 7.5 hereof, or September 30, 2009, whichever, occurs earlier.

2.2. Use of Words and Phrases.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number, and the word “person” shall include corporations and associations, including public bodies, as well as natural persons. “Herein”, “hereby”, “hereunder”, “hereof”, “hereinbefore”, “hereinafter”, and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used.

2.3. Florida Statutes.

Any and all references herein to the “Florida Statutes” are to Florida Statutes (2009), as later amended by any session law enacted during any regular or special session of the Legislature of the State of Florida subsequent to the adoption of Florida Statutes (2009).

## ARTICLE 3: PURPOSE

3.1. Purpose.

The purpose of this Agreement is to induce, encourage and assist the redevelopment of the Community Redevelopment Area through assistance and cooperation in undertaking community policing innovations within the area. It is also the purpose of this agreement to avoid expending the Agency’s Increment Revenues (as defined in the Act) on general government operating expenses unrelated to the planning and carrying out of the Plan. It is also the purpose of this Agreement to define and delineate the responsibilities and obligations of the parties to this Agreement, and to express the desire of the parties to cooperate together to accomplish the purposes and expectations of this Agreement.

## ARTICLE 4: THE PROJECT

### 4.1. Description.

The Project consists of the City providing Community Policing Innovation services within the Community Redevelopment Area, and, in consideration of such services, the Agency Payments to the City.

### 4.2. Project Administration.

The City, in consultation and cooperation with the Agency, shall be responsible for and shall oversee the administration of the Project, and shall account to the Agency for all costs of the Project.

### 4.3. Agency Payments.

Within 45 days of receipt of periodic invoices from the City, accompanied by an accounting for the costs of the Project, the Agency shall pay from the Community Policing Innovations Account reimbursing Agency Payments to the City equal to the Actual costs of the Project. Provided, however, the sum of the Agency Payments shall not exceed \$150,000. Upon receipt of the Agency's written approval of any such invoice and accounting, the City's Director of Finance may withdraw the Agency Payment directly from the Community Policing Innovations Account. Although this Sec. 4-3 contemplates and references the production of invoices, accountings and written approvals of invoices and accountings, these documents are accumulated and retained for subsequent auditing purposes and the periodic initiation and transfer of agency payments shall be accomplished through appropriate automated data processing means.

## ARTICLE 5: FINANCING

### 5.1. General.

The parties mutually acknowledge and agree that the aggregate cost of undertaking Community Policing Innovations within the Community Redevelopment Area is not anticipated to exceed \$150,000. That total cost will be paid as follows: Not exceeding \$150,000 will be paid from Available Increment Revenues deposited in the Community Policing Innovations Account on October 1, 2009, and all other costs will be paid from other funds available to the City and set aside and committed for the purpose of paying such costs.

### 5.2. Community Policing Innovations Account.

(1) The Agency covenants and agrees to establish an account separate and distinct from the Redevelopment Trust Fund to be known as the Community Policing Innovations Account in which the Available Increment Revenues shall be deposited and disbursements made as provided herein. This account is intended to be and shall constitute an escrow account for the purpose of funding a the Project.

(2) The Agency's Available Increment Revenues deposited in the Community Policing Innovations Account shall constitute trust funds to secure the payments required to be made by the Agency and until such transfer and deposit, the Agency shall act as trustee of its moneys for the purposes thereof and such moneys shall be accounted for separate and distinct from all other funds of the Agency and shall be used only as provided herein.

(3) The Community Policing Innovations Account shall be deposited and maintained in one or more banks, trust companies, national banking associations, savings and loan associations, savings banks or other banking associations which are under Florida law qualified to be a depository of public funds, as may be determined by the entity maintaining possession and control of such funds and accounts.

5.3 Available Increment Revenues.

(1) *Intentionally omitted.*

(2) During the Fiscal Year commencing on October 1, 2009, the Agency covenants and agrees with the City to transfer Available Increment Revenues from the Redevelopment Trust Fund to the Community Policing Innovations Account at the times and in the amounts necessary to pay invoices submitted to the Agency by the City pursuant to Section 4.3 hereof.

(3) The Agency hereby encumbers, commits and pledges the Available Increment Revenues for the purposes of the transfers required by this Section 5.3.

(4) The Agency covenants and agrees with the City and does hereby grant a lien in favor of the City on the funds on deposit in the Community Policing Innovations Account for the purposes set forth in this Agreement. Funds on deposit in this Community Policing Innovations Account may only be used to pay the Costs of the Project. Any funds remaining after all costs of the Project have been paid shall be used only in the manner authorized by Section 163.387(7), Florida Statutes.

5.4. *Intentionally omitted.*

5.5. *Intentionally omitted.*

5.6. Enforcement of Increment Revenues Collections.

The Agency is currently receiving Increment Revenues, having taken all action required by law to entitle it to receive the same, and the Agency will diligently enforce its rights to receive the Increment Revenues and will not take any action which will impair or adversely affect its right to receive such funds or impair or adversely affect in any manner the Agency's covenant to budget and appropriate Available Increment Revenues for deposit to the Community Policing Innovations Account. The Agency and the City covenant and agree, so long as the Agency is required to make the Agency Payments, to take all lawful action necessary or required to continue the entitlement of the Agency to receive the Increment Revenues as now provided by law or may later be authorized, and to make the transfers required by this Agreement. The City does hereby covenant and agree that, so long as the Agency is required to make the Agency Payments, to timely budget, appropriate and pay into the Redevelopment Trust Fund in each fiscal Year the amount required of it to be so paid by the Redevelopment Act. Notwithstanding

any other provision herein to the contrary, the failure of the enforcement of collection of Increment Revenues by the Agency will not relieve the City of its obligations hereunder to pay the City Payment.

5.7. No General Obligation.

Nothing contained in this Agreement shall be deemed to create a debt, liability, or other obligation of the Agency or the City or any other political subdivision of the State of Florida within the meaning of any constitutional, statutory, charter or other provision or limitation, and nothing contained herein shall be deemed to authorize or compel, directly or indirectly, the exercise of the ad valorem taxing power of the City or any other political subdivision of the State of Florida or taxation in any form on any real or personal property for the payment of any amounts contemplated by or as provided in this Agreement, including the payment of any principal of, premium, if any, and interest on any indebtedness relating to the Project.

ARTICLE 6: REPRESENTATIONS AND WARRANTIES

6.1. Representations and Warranties of the Agency.

The Agency represents and warrants to the City that each of the following statements is presently true and accurate and can be relied upon by the City:

(1) The Agency is the duly designated community redevelopment agency of the City, a validly existing body politic and corporate of the State of Florida, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations under this Agreement and each document contemplated hereunder to which it is or will be a party.

(2) This Agreement and each document contemplated hereby to which the Agency is or will be a party has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, the Agency and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof: (a) requires the approval and consent of any other party, except such as have been or will be duly obtained, (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the Agency or (c) contravenes or results in any breach of, default under or result in the creation of any lien or encumbrance upon any party or the Agency, under any indenture, mortgage, deed of trust, bank loan or credit agreement, the Agency's special acts, applicable ordinances, resolutions or any other agreement or instrument to which the Agency is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the Agency outstanding on the Effective Date.

(3) This Agreement and each document contemplated hereby to which the Agency is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of the Agency enforceable against it in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

(4) There are no pending or, to the knowledge of the Agency, threatened actions or proceedings before any court or administrative agency against the Agency, which question the existence of the Agency, the determination of slum and blight in the Community Redevelopment Area, the adoption or implementation of the Plan, the validity of this Agreement or any instrument or document contemplated hereunder, or which are likely in any case or in the aggregate to materially adversely affect the successful redevelopment of the Community Redevelopment Area, the consummation of the transactions contemplated hereunder or the financial condition of the Agency.

(5) This Agreement does not violate any laws, ordinances, rules, regulations, orders, contracts, or agreements that are or will be applicable to the Agency.

#### 6.2. Representations and Warranties of the City.

The City represents and warrants to the Agency that each of the following statements is presently true and accurate and can be relied upon by the Agency:

(1) The City is a municipal corporation created under the laws of the State of Florida, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations under this Agreement and each document contemplated hereunder to which it is or will be a party.

(2) This Agreement and each document to which it is or will be a party has been duly authorized by all necessary action on the part thereof, and has been or will be duly executed and delivered by, it and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof: (a) requires the approval and consent of any other party, except such as been duly obtained, (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on it, or (c) contravenes or results in any breach of, default under or result in the creation of any lien or encumbrance upon it, under any indenture, mortgage, deed or trust, bank loan or credit agreement, charter, applicable ordinances, resolutions or any other agreement or instrument, specifically including any covenants of any bonds, notes, or other forms of indebtedness outstanding on the Effective Date.

(3) This Agreement and each document contemplated hereby constitutes, or when entered in will constitute, a legal, valid and binding obligation enforceable against the City in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

(4) There are no pending or, to the knowledge of the City, threatened actions or proceedings before any court or administrative agency against it, which question its existence, the validity of this Agreement or any instrument or document contemplated hereunder, or which are likely in any case or in the aggregate to materially adversely affect the consummation of the transactions contemplated hereunder.

(5) This Agreement does not violate any laws, ordinance, rules, regulations, orders, contract, or agreements that are or will be applicable to the City.

## ARTICLE 7: DEFAULT; TERMINATION

### 7.1. Default by the Agency.

(1) Provided the City is not in default under this Agreement as set forth in Section 7.2 hereof, there shall be an “event of default” by the Agency under this Agreement upon the occurrence of any one or more of the following:

(a) The Agency fails to perform or comply with any material provision of this Agreement and such nonperformance shall have continued, after written notice thereof by the City to the Agency; or

(b) The Agency shall have failed or refused to make any of the Agency Payments when due and payable; or

(c) The Agency shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent, or shall file a petition seeking any reorganization, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation or shall file an answer admitting, or shall fail reasonably to contest, the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Agency of any material part of its properties; or

(d) Within sixty (60) days after the commencement of any proceeding by or against the Agency seeking any reorganization, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment without the consent or acquiescence of the Agency or any trustee, receiver or liquidator of the Agency or of any material part of its properties, such appointment shall not have been vacated.

(2) If any “event of default” described in Subsection 7.1(1) hereof shall have occurred, the City may, after giving thirty (30) days written notice of such event of default to the Agency, and upon expiration of such thirty (30) day notice period, if such event of default has not been cured, terminate this Agreement or institute an action seeking such remedies as are available to the City, or both.

### 7.2. Default by the City.

(1) Provided the Agency is not then in default under this Agreement, there shall be an “event of default” by the City to this Agreement under this Agreement upon the occurrence of any the following:

(a) The City does not perform as required hereunder and such nonperformance shall have continued, after written notice thereof by the Agency to the City; or

(b) The City shall have failed or refused to proceed with or cause the timely completion of the Project.

(2) If an "event of default" described in Subsection 7.2(1) hereof shall have occurred, the Agency, after giving thirty (30) days written notice of such event of default to the City and upon the expiration of such thirty (30) day period if such event of default has not been cured, may terminate this Agreement or institute an action seeking such remedies as are available to the Agency hereunder.

7.3. Obligations, Rights and Remedies Not Exclusive.

The rights and remedies specified herein to which either the Agency or the City are entitled are not exclusive and are not intended to be to the exclusion of any other remedies or means or redress to which any party hereto may otherwise lawfully be entitled.

7.4. Non-Action or Failure to Observe Provisions of this Agreement.

The failure of any party hereto to promptly insist upon strict performance of any term, covenant, condition or provision of this Agreement, or any exhibit hereto or any other agreement contemplated hereby shall not be deemed a waiver of any available right or remedy, and shall not be deemed a waiver of a subsequent default or nonperformance of such term, covenant, condition or provision.

7.5. Effect of Termination.

(1) Upon the occurrence of an event described in Section 7.1 or 7.2 hereof and receipt by any party of an election to terminate this Agreement pursuant to Sections 7.1 or 7.2 hereof, then this Agreement shall terminate and all obligations of any parties hereto shall then cease and be released and no longer be of any force and effect.

(2) In the event of a termination of this Agreement pursuant to this Section 7.5, no party hereto shall be obligated or liable to any other in any way, financial or otherwise, for any claim or matter arising from or as a result of this Agreement or any actions taken by any party hereto, hereunder or contemplated hereby.

## ARTICLE 8: MISCELLANEOUS

8.1. Amendments.

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

8.2. This Agreement Constitutes a Contract.

All parties hereto acknowledge that they will rely on the pledges, covenants and obligations created herein for the benefit of the parties hereto, and this Agreement shall be

deemed to be and constitute a contract amongst said parties as of it becoming effective as provided in Section 8.12.

8.3. Assignment.

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

8.4. Severability.

The provisions of this Agreement are severable, and it is the intention of the parties hereto to confer the whole or any part of the powers herein provided for and if any of the provisions of this Agreement or any other powers granted by this Agreement shall be held unconstitutional, invalid or void by any court of competent jurisdiction, the decision of said court shall not affect or impair any of the remaining provisions of this Agreement. It is hereby declared to be the intent of the parties hereto that this Agreement would have been adopted, agreed to, and executed had such unconstitutional, invalid or void provision or power not been included therein.

8.5. Controlling Law; Venue.

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

8.6. Members Not Liable.

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

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

8.7. Expiration of Agreement.

(1) Unless sooner terminated as provided in Article 7, this Agreement shall expire and terminate on September 30, 2010.

(2) The parties hereto covenant and agree that upon this Agreement expiring and terminating all rights, privileges, obligations and responsibilities of any party hereunder shall

expire and be of no force and effect, except to the extent any provision hereof expressly survives expiration as provided herein and survives termination as provided in Section 7.5.

(3) Any funds remaining in the Community Policing Innovations Account upon the expiration of this Agreement, which are not encumbered or obligated for any payment shall be used only in the manner authorized by Section 163.387, Florida Statutes.

8.8. Third Party Beneficiaries.

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

8.9. Notices.

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

To the Agency:                      Community Redevelopment Agency of  
The City of Pensacola, Florida  
Post Office Box 12910  
Pensacola, Florida 32521-0001  
Attention: Administrator

To the City:                              City of Pensacola  
Post Office Box 12910  
Pensacola, Florida 32521-0001  
Attention: City Manager

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

Until notice of a change of address is received, a party may rely upon the last address received. Notice shall be deemed given, if notice is by mail on the date mailed to the address set forth above or as changed pursuant to this Section 8.9.

8.10. Execution of Agreement.

This Agreement shall be executed in the manner normally used by the parties hereto. If any officer whose signature appears on this Agreement ceases to hold office before all officers shall have executed this Agreement or prior to the filing and recording of this Agreement or prior to the filing and recording of this document as provided in Section 8.11 hereof, his or her signature shall nevertheless be valid and sufficient for all purposes. This Agreement shall bear the signature of, or may be signed by, such individuals as at the actual time of execution of this

Agreement thereby shall be the proper and duly empowered officer to sign this Agreement and this Agreement shall be deemed to have been duly and properly executed even though on the Effective Date any such individual may not hold such office.

8.11. Filing with County Clerk of the Court.

The City Clerk is hereby authorized and directed after approval of this Agreement by the Agency and the City Council and the execution hereof by the duly qualified and authorized officers of each of the parties hereto as provided in Section 8.10 hereof, to submit this Agreement to the Clerk of the Court of Escambia County, Florida, for filing in the public records of Escambia County Florida, as provided by Section 163.01(11), Florida Statutes.

8.12. Effective Date.

This Agreement shall become effective immediately upon filing with the Clerk of the Court of Escambia County, Florida, as provided in Section 163.01(11), Florida Statutes.

8.13. City and Agency Not Liable.

Nothing contained in this Agreement shall be construed or deemed, nor is intended, or impose any obligation upon the City or the Agency except to the extent expressly assumed by the City or the Agency, respectively.

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

COMMUNITY REDEVELOPMENT AGENCY  
OF THE CITY OF PENSACOLA, FLORIDA

CITY OF PENSACOLA, FLORIDA

\_\_\_\_\_  
Alvin G. Coby, City Manager

\_\_\_\_\_  
Alvin G. Coby, City Manager

Attest:

Attest:

\_\_\_\_\_  
Ericka L. Burnett, City Clerk

\_\_\_\_\_  
Ericka L. Burnett, City Clerk

Approved as to Content:

Approved as to Form and Execution:

\_\_\_\_\_  
Thaddeus L. Cohen,  
Community Development Director

\_\_\_\_\_  
City Attorney

# COMMITTEE MEMORANDUM

ITEM #3

**COMMITTEE:** Finance

**FROM:** Alvin G. Coby, City Manager

**DATE:** September 21, 2009

**SUBJECT:** FY 2010 Landscape Maintenance and Additional Services Interlocal Agreement between the City and the Community Redevelopment Agency

## RECOMMENDATION:

That City Council approve an Interlocal Agreement for FY 2009 in the amount of \$300,000, plus a 10% contingency and an additional \$29,500 for scheduled equipment replacement for CRA Landscape Maintenance Services and Park/Public Space Enhancements and Accessibility Improvements.

## SUMMARY:

The CRA has constructed a series of streetscape, park, and parking lot improvements that have caused increases in maintenance above the level of maintenance required prior to the improvements. The CRA may allocate a portion of the Redevelopment Trust Fund to support increases in maintenance costs. As the CRA does not have its own maintenance staff, the Agency contracts with the Parks and Recreation Department to provide this service. Parks and Recreation has trained crews with the expertise to maintain the identified areas and provide the additional maintenance activities authorized under the agreement. An Interlocal Agreement between the City and the CRA must be executed to allocate such funds during the upcoming fiscal year.

## Maintenance Areas:

- Zaragoza Street Improvements
- Bayfront Parkway Improvement
- Gregory/Chase Corridor Improvements
- Wayside Park
- Garden Street Island
- Jefferson Street Improvements
- Seville Square/Aragon Improvements (9th Avenue, Romana Street)
- Belmont/DeVilliers Streetscape Improvements, Henry Wyer Park and Coyle St. Parking Lot
- Palafox Street (Place) between Wright St. and Plaza de Luna
- Plaza de Luna
- Alcaniz/Romana Streetscape Improvements
- North Spring Intersection Improvements

City of  
Pensacola



Alcaniz/Romana Streetscape Improvements and North Spring Intersection Improvements are areas that were added for FY 2009. The North Palafox Parkway Improvements and Jefferson Street Parking Garage Landscape responsibilities were transferred to the DIB in FY 2009 and are no longer part of this agreement.

In addition to the Maintenance Areas listed, City Council approved Resolution No. 24-06 (Additional Priority Element: Park and Public Space Enhancements and Accessibility Improvements) for additional improvements to be undertaken for parks and public spaces including sidewalks, accessibility, public art, neighborhood gateways, irrigation, lighting, benches, drinking fountains, trash receptacles, play equipment and other physical enhancements to such facilities that may be undertaken through the proposed Interlocal Agreement.

**PRIOR ACTION:** Annual approval of Fiscal Year Interlocal Agreements -  
September 14, 2006 - City Council adopted Resolution No. 24-06,  
CRA Plan Additional Priority Element: Park and Public Space  
Enhancements and Accessibility Improvements.  
January 28, 1999 - City Council adopted Resolution No. 03-99, CRA  
Plan Additional Priority Element: Landscape Maintenance.

**FUNDING** Budget: \$329,500  
Actual: \$329,500

**FINANCIAL IMPACT:** The CRA FY 2010 budget includes \$329,500 for the interlocal agreement.

**ATTACHMENTS:** (1) FY 2010 Interlocal Agreement

**STAFF CONTACT:** Richard Barker, Jr., Director of Finance; David Flaherty, Director of Parks and Recreation; Thaddeus L. Cohen, AIA, Community Development Director and Becky Bray, AICP, CRA Administrator.

**PRESENTATION:** None.

INTERLOCAL AGREEMENT  
(Landscape Maintenance Services and Park and Public  
Space Enhancements and Accessibility Improvements)

between

THE COMMUNITY REDEVELOPMENT AGENCY OF  
THE CITY OF PENSACOLA, FLORIDA

and

THE CITY OF PENSACOLA, FLORIDA

This **INTERLOCAL AGREEMENT** (the " Agreement"), is made and entered into as of this \_\_\_\_day of \_\_\_\_\_ 2009, between **THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PENSACOLA, FLORIDA**, a public body corporate and politic of the State of Florida (the "Agency"), and the **CITY OF PENSACOLA, FLORIDA**, a Florida municipal corporation created under the laws of the State of Florida (the "City").

**W I T N E S S E T H:**

**WHEREAS**, the City Council of the City of Pensacola, Florida, adopted Resolution No. 54-80 on September 25, 1980, finding and determining the area described therein known as the "Urban Core Community Redevelopment Area," to be a "blighted area" (as defined in Section 163.340, Florida Statutes) and to be in need of redevelopment, rehabilitation and improvement, which finding and determination was reaffirmed in Resolution No. 65-81, adopted by the City Council on October 22, 1981; and

**WHEREAS**, on September 25, 1980, the City Council adopted Resolution No. 55-80, which, created the Community Redevelopment Agency, and declared the City Council to be the Agency as provided in Section 163.356, Florida Statutes; and

**WHEREAS**, on March 8, 1984, the City Council adopted Ordinance No. 13-84, which created and established the Community Redevelopment Trust Fund for the Urban Core Community Redevelopment Area; and

**WHEREAS**, on March 27, 1984, the City Council of the City of Pensacola, Florida, adopted Resolution No. 15-84 which approved a community redevelopment plan for the Urban Core Community Redevelopment Area; and

**WHEREAS**, on April 6, 1989, the City Council adopted Resolution No. 19-89, which approved a revised redevelopment plan for the Urban Core Community Redevelopment Area which plan has been subsequently amended; and

**WHEREAS**, on September 14, 2006, the City Council adopted Resolution No. 24-06 which amended Resolution 19-89 by adding additional priority elements, including certain park and public space enhancements and accessibility improvements to the Revised Community Redevelopment Plan for the Urban Core Community Redevelopment Area; and

**WHEREAS**, pursuant to this plan, the Agency has made certain improvements to various public facilities within the Urban Core Community Redevelopment Area which are more particularly described herein and are hereinafter referred to as the "Project" (as hereinafter defined); and

**WHEREAS**, in carrying out the Project, the City has undertaken the responsibility for maintenance, irrigation, trimming and mowing of certain "Landscape Improvement Maintenance Areas" (as hereinafter defined) and has incurred costs for water and electrical utilities services in connection therewith in increased amounts directly attributable to the improvements made by the Agency; and

**WHEREAS**, the City also has undertaken the responsibility at the Agency's direction for the construction and maintenance of additional park and public space enhancement and accessibility improvements, including sidewalks, accessibility, public art, neighborhood gateways, irrigation, lighting, benches, drinking fountains, trash receptacles, play equipment, and other physical enhancements to these facilities of the City of Pensacola; and

**WHEREAS**, the Agency proposes to exercise its powers available under Part III, Chapter 163, Florida Statutes, as amended (the "Redevelopment Act") to aid, assist, and cause these landscape maintenance services and park and public space enhancements and accessibility improvements to be accomplished by, among other things, using some of its "increment revenues" deposited in the "Redevelopment Trust Fund" (as hereinafter defined) together with funds provided by the City of Pensacola General Fund to pay such "Costs of the Project" (as hereinafter defined); and

**WHEREAS**, the Agency proposes to make available to the City a portion of the funds in its Redevelopment Trust Fund to reimburse a portion of the Costs of the Project directly attributable to the improvements made by the Agency; and

**WHEREAS**, these ongoing Project landscape maintenance services and park and public space enhancements and accessibility improvements comply with and will further the purposes of the Plan in accordance with the Redevelopment Act, will promote the City and thereby benefit the local economy, and will be of substantial benefit to the Agency and the City; and

**WHEREAS**, but for the mutual undertakings hereunder by the parties to this Agreement, it would be necessary for either the City or the Agency, acting individually, to provide all financing and take all actions required for such maintenance and improvements; however, as provided by Section 163.01, Florida Statutes, the Florida Interlocal Cooperation Act of 1969, (the "Cooperation Act") each has elected to pursue jointly and collectively these separate actions, all in accordance with the intent and purpose of the Cooperation Act permitting units of local governments, among other things, to provide from their revenues and other resources the financial and other support for the purposes set forth in interlocal agreements; and

**WHEREAS**, the Agency and the City intend by this Agreement to more fully establish the joint and several obligations, duties and responsibilities of the Agency and the City to provide for ongoing Project landscape maintenance services and for park and public space enhancements and accessibility improvements, to provide a means and method for this cooperative venture by the parties, and to provide a means and method to pay the Costs of the Project, in order to further the purposes stated herein; and

**WHEREAS**, the City recognizes the special and unique role of the Agency in making the initial improvements possible and supporting the ongoing maintenance, construction, and enhancements of the Project; and

**WHEREAS**, the City and the Agency desire to enter into an interlocal agreement setting forth the terms, conditions and responsibilities of a coordinated and collective effort to redevelop the Urban Core Community Redevelopment Area and to continue the Project undertaken by the Agency; and

**WHEREAS**, the City Council of the City and the governing body of the Agency have determined that such an agreement to accomplish the purposes as set forth herein involves appropriate public expenditures to accomplish important public purposes.

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

## ARTICLE 1: AUTHORITY

### 1.1. Authority.

This Agreement is entered into pursuant to and under the authority of Section 163.01, Florida Statutes; Part III, Chapter 163, Florida Statutes; Chapter 166, Florida Statutes; Resolution No. 54-80, adopted by the City Council of the City on September 25, 1980, Resolution No. 65-81, adopted by the City Council of the City on October 22, 1981, Ordinance No. 13-84, enacted by the City Council of the City on March 8, 1984, and other applicable law, all as amended and supplemented.

## ARTICLE 2: DEFINITIONS

### 2.1. Definitions.

As used in this Agreement, the following capitalized terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Act" means all or each of the following: Section 163.01, Florida Statutes; Part III, Chapter 163, Florida Statutes; Chapter 166, Florida Statutes, Resolution No. 54-80, adopted by the City Council of the City on September 25, 1980, Resolution No. 65-81, adopted by the City Council of the City on October 22, 1981; Ordinance No. 13-84, enacted by the City Council of the City on March 8, 1984, and other applicable law, all as amended and supplemented.

(2) “Agency” means the Community Redevelopment Agency of the City of Pensacola, Florida, and any successors or assigns.

(3) “Agency Payments” means the periodic payments made by the Agency to the City (or to other persons as directed by the City) from the Park and Public Space Maintenance and Improvement Account pursuant to Section 4.3 hereof.

(4) “Agency's Other Obligations” means the payment to be made by the Agency from Increment Revenues deposited in its Redevelopment Trust Fund in the manner, to the extent and so long as such payments are required, respectively, pursuant to resolutions or agreements adopted or entered into prior to or after the Effective Date and which are provided to be superior to the obligation of the Agency under this Agreement.

(5) “Agreement” means this Interlocal Agreement, including any amendments, revisions and exhibits thereto.

(6) “Available Increment Revenues” means Increment Revenues remaining from time to time in the Agency's Redevelopment Trust Fund after all payments and deposits required to be made therefrom for the Agency's Other Obligations have been made and paid by the Agency during that Fiscal Year.

(7) “Bonds” means the City of Pensacola, Florida, Redevelopment Refunding Revenue, Bonds, Series 1994.

(8) “City” means the City of Pensacola, Florida, a Florida municipal corporation, and any successors or assigns.

(9) “City Council” means the City Council of the City, or such other body constituting the elected governing or legislative body of the City.

(10) “Community Redevelopment Area” or “Urban Core Community Redevelopment Area” means the area found to be a slum or blighted and described in Resolution No. 54-80, adopted by the City Council on September 25, 1980, as affirmed by Resolution No. 65-81, adopted by the City Council on October 22, 1981.

(11) “Costs of the Project” means, collectively, all costs of electrical and water supply for irrigation of the Landscape Improvement Maintenance Areas, all costs for trimming and mowing the Landscape Improvement Maintenance Areas, electrical costs to light the Landscape Improvement Maintenance Areas, and all costs for the construction and maintenance of park and public space enhancements and accessibility improvements, including sidewalks, accessibility, public art, neighborhood gateways, irrigation, lighting, benches, drinking fountains, trash receptacles, play equipment, and other physical enhancements to these facilities of the City of Pensacola.

(12) “Effective Date” means the date on which this Agreement becomes effective as provided in Section 8.12 hereof.

(13) “Expiration Date” means the date on which this Agreement expires by its own terms and is no longer of any force and effect as provided in Section 8.7 hereof.

(14) “Fiscal Year” means the respective fiscal years of the City and the Agency commencing on October 1 of each year and ending on the succeeding September 30, or such other consecutive twelve (12) month period as may be hereafter designated pursuant to general law as the fiscal year of the Agency or the City, respectively.

(15) “Increment Revenues” means the funds received by the Agency and deposited in the Redevelopment Trust Fund in an amount equal to the incremental increase in ad valorem tax revenues calculated pursuant to Section 163.387, Florida Statutes, within the Community Redevelopment Area.

(16) “Landscape Improvement Maintenance Areas” means the construction, maintenance, irrigation, trimming, mowing, and electrical service for lighting of the: Zaragoza Street Improvements, Phases I and II; Bayfront Parkway Improvement; Wayside Park Improvements; Phases I and II; South Palafox Streetscape Improvements; Garden Street Island Improvements, Phases I and II; Jefferson Streetscape Improvements; North Palafox Parkway Improvements; Belmont/DeVilliers Henry Wyer Park; Gregory/Chase Corridor Improvements; Seville Square/ Aragon Court Streetscape Improvements (9<sup>th</sup> Avenue and Romana Street.); Belmont/DeVilliers Parking Lot; Palafox Place Streetscape Improvements; Belmont/DeVilliers Streetscape Improvements; Palafox Pier and Palafox Street Extension Improvements; Plaza de Luna; Alcaniz/Romana Streetscape Improvements; North Spring Intersection Improvements and tree trimming for all completed streetscape projects and periodic mowing of vacant properties acquired by the CRA for redevelopment.

(17) “Park and Public Space Maintenance and Improvement Account” means the account created and established by Section 5.2 hereof and in which are deposited the Available Increment Revenues and from which the Agency Payments are made to fund the electrical and water costs to irrigate the Landscape Improvement Maintenance Areas, costs for trimming and mowing the Landscape Improvement Maintenance Areas, and electrical costs to light the Landscape Improvement Maintenance Areas and to fund the costs of the construction and maintenance for park and public space enhancements and accessibility improvements, including the Plaza de Luna facility, sidewalks, accessibility, public art, neighborhood gateways, irrigation lighting, drinking fountains, trash receptacles, play equipment, and other physical enhancements to these facilities of the City of Pensacola.

(18) “Plan” means the revised redevelopment plan for the Urban Core Community Redevelopment Area, adopted by the City Council on April 16, 1989, by the adoption of Resolution No. 19-89 as subsequently amended.

(19) “Project” means those landscape maintenance services provided to Landscape Improvement Maintenance Areas and those park and public space enhancements and accessibility improvements, including sidewalks, accessibility, public art, neighborhood gateways, irrigation, lighting, benches, drinking fountains, trash receptacles, play equipment, and other physical enhancements to these facilities of the City of Pensacola.

(20) “Redevelopment Trust Fund” means the trust fund of the Agency created and established by Ordinance No. 13-84, enacted by the City Council of the City on March 8, 1984, into which Increment Revenues are deposited as provided by that ordinance (and any amendments or successors thereto) and the Redevelopment Act.

(21) “Termination Date” means the date on which this Agreement is terminated and is no longer of any force and effect as provided in Section 7.5 hereof, or September 30, 2010, whichever occurs earlier.

2.2. Use of Words and Phrases.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number, and the word “person” shall include corporations and associations, including public bodies, as well as natural persons. “Herein”, “hereby”, “hereunder”, “hereof”, “hereinbefore”, “hereinafter”, and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used.

2.3. Florida Statutes.

Any and all references herein to the “Florida Statutes” are to Florida Statutes (2009), as later amended by any session law enacted during any regular or special session of the Legislature of the State of Florida subsequent to the adoption of Florida Statutes (2009).

ARTICLE 3: PURPOSE; FINDINGS; INTENT

3.1. Purpose.

The purpose of this Agreement is to induce, encourage, assist and carry out a portion of the ongoing maintenance activities for certain Landscape Improvement Maintenance Areas and to provide for park and public space enhancements and accessibility improvements constructed and installed through the Community Redevelopment Agency by providing for the joint and cooperative effort and actions of the City and the Agency to induce, encourage, and carry out such activities by the City; and to establish the duties, responsibilities, and obligations of the Agency and the City in doing so, including the payment of the Costs of the Project from funds available to the City and the Agency. It is also the purpose of this Agreement to define and delineate the responsibilities and obligations of the parties to this Agreement, and to express the desire of the parties to cooperate together to accomplish the purposes and expectations of this Agreement.

3.2. Findings.

The City and the Agency do hereby find that the Costs of the Project protect, preserve, and enhance certain streetscape and park improvements that have been or will be installed and are in the interest of the public health, safety and welfare, furthers a public purpose, and is a proper, legitimate, and needed action to be undertaken by the agencies. The parties further find that the Plan contemplates certain redevelopment actions, including this Project will be carried out within the Community Redevelopment Area.

3.3. Intent.

(1) It is the intent of the parties hereto to efficiently, effectively, and economically cause the successful delivery of landscape maintenance services to Landscape Improvement Maintenance Areas, to provide for park and public space enhancements and accessibility improvements for these facilities of the City of Pensacola, and to implement and further the objectives of the Plan.

(2) The parties further intend that the Agency and the City continue to maintain the Project and that the Agency shall use Available Increment Revenues in Fiscal Year 2010 to pay attributable costs of the improvements to the Project made by the Agency.

ARTICLE 4: THE PROJECT

4.1. Description.

The Project consists of the City providing a dedicated crew of City employees to maintain the completed streetscape and park improvements for the Landscape Improvement Maintenance Areas identified in Section 2.1(16) along with such other City employees or other contractors as are necessary to construct and maintain those park and public space enhancements and accessibility improvements provided herein, and, in consideration of such services, the Agency shall make Agency Payments to the City.

4.2. Project Administration.

The City shall be responsible for and shall oversee the construction, administration, maintenance, and irrigation of the Project, including the payments to third parties for water and electrical utilities and other Project services thereto, and shall account to the Agency for such payments.

4.3. Agency Payments.

Within 45 days of receipt of periodic invoices from the City, accompanied by an accounting for the Costs of the Project, the Agency shall pay from the Park and Public Space Maintenance and Improvement Account reimbursing Agency Payments to the City equal to that portion of the costs actually charged to and paid by the City which are directly attributable to the improvements made by the Agency to the Project. Provided, however, the sum of the Agency Payments shall not exceed \$300,000, plus ten percent (10%) contingency . Upon receipt of the Agency's written approval of any such invoice and accounting, the City's Director of Finance may withdraw the Agency Payment directly from the Park and Public Space Maintenance and Improvement Account. Although this Sec. 4-3 contemplates and references the production of invoices, accountings and written approvals of invoices and accountings, these documents are accumulated and retained for subsequent auditing purposes and the periodic initiation and transfer of agency payments shall be accomplished through appropriate automated data processing means.

## ARTICLE 5: FINANCING

### 5.1. General.

The parties mutually acknowledge and agree that the aggregate Costs of the Project are anticipated to exceed \$300,000. This total cost will be paid as follows: Not exceeding \$300,000 plus 10% contingency will be paid from Available Increment Revenues deposited in the Park and Public Space Maintenance and Improvement Account on October 1, 2009, and all other costs will be paid from other funds available to the City and set aside and committed for the purpose of paying such costs.

### 5.2. Park and Public Space Maintenance and Improvement Account.

(1) The Agency covenants and agrees to establish an account separate and distinct from the Redevelopment Trust Fund to be known as the Park and Public Space Maintenance and Improvement Account in which the Available Increment Revenues shall be deposited and disbursements made as provided herein. This account is intended to be and shall constitute an escrow account for the purpose of funding a portion of the Costs of the Project, which have increased as a result of improvements caused to be constructed or installed by the Community Redevelopment Agency.

(2) The Agency's Available Increment Revenues deposited in the Park and Public Space Maintenance and Improvement Account shall constitute trust funds to secure the payments required to be made by the Agency and until such transfer and deposit, the Agency shall act as trustee of its moneys for the purposes thereof and such moneys shall be accounted for separate and distinct from all other funds of the Agency and shall be used only as provided herein.

(3) The Park and Public Space Maintenance and Improvement Account shall be deposited and maintained in one or more banks, trust companies, national banking associations, savings and loan associations, savings banks or other banking associations which are under Florida law qualified to be a depository of public funds, as may be determined by the entity maintaining possession and control of such funds and accounts.

### 5.3 Available Increment Revenues.

(1) Intentionally omitted.

(2) During the Fiscal Year commencing on October 1, 2009, the Agency covenants and agrees with the City to transfer Available Increment Revenues from the Redevelopment Trust Fund to the Park and Public Space Maintenance Improvement Account at the times and in the amounts necessary to pay invoices submitted to the Agency by the City pursuant to Section 4.3 hereof.

(3) The Agency hereby encumbers, commits and pledges the Available Increment Revenues for the purposes of the transfers required by this Section 5.3.

(4) The Agency covenants and agrees with the City and does hereby grant a lien in favor of the City on the funds on deposit in the Park and Public Space Maintenance and Improvement Account for the purposes set forth in this Agreement. Funds on deposit in this Park and Public

Space Maintenance and Improvement Account may only be used to pay the Costs of the Project. Any funds remaining after all such costs have been paid shall be used only in the manner authorized by Section 163.387(7), Florida Statutes.

5.4. Intentionally omitted.

5.5. City Payments.

In consideration of the Agency agreeing to make the Agency Payments provided in Section 4.3, the City covenants and agrees with the Agency to appropriate, authorize, disburse, or otherwise make payments from available City revenues, all other payments necessary for the Costs of the Project.

5.6. Enforcement of Increment Revenues Collections.

The Agency is currently receiving Increment Revenues, having taken all action required by law to entitle it to receive the same, and the Agency will diligently enforce its rights to receive the Increment Revenues and will not take any action which will impair or adversely affect its right to receive such funds or impair or adversely affect in any manner the Agency's covenant to budget and appropriate Available Increment Revenues for deposit to the Park and Public Space Maintenance and Improvement Account. The Agency and the City covenant and agree, so long as the Agency is required to make the Agency Payments, to take all lawful action necessary or required to continue the entitlement of the Agency to receive the Increment Revenues as now provided by law or may later be authorized, and to make the transfers required by this Agreement. The City does hereby covenant and agree that, so long as the Agency is required to make the Agency Payments, to timely budget, appropriate and pay into the Redevelopment Trust Fund in each Fiscal Year the amount required of it to be so paid by the Redevelopment Act. Notwithstanding any other provision herein to the contrary, the failure of the enforcement of collection of Increment Revenues by the Agency will not relieve the City of its obligations hereunder to pay the City Payment.

5.7. No General Obligation.

Nothing contained in this Agreement shall be deemed to create a debt, liability, or other obligation of the Agency or the City or any other political subdivision of the State of Florida within the meaning of any constitutional, statutory, charter or other provision or limitation, and nothing contained herein shall be deemed to authorize or compel, directly or indirectly, the exercise of the ad valorem taxing power of the City or any other political subdivision of the State of Florida or taxation in any form on any real or personal property for the payment of any amounts contemplated by or as provided in this Agreement, including the payment of any principal of, premium, if any, and interest on any indebtedness relating to the Project.

ARTICLE 6: REPRESENTATIONS AND WARRANTIES

6.1. Representations and Warranties of the Agency.

The Agency represents and warrants to the City that each of the following statements is presently true and accurate and can be relied upon by the City:

(1) The Agency is the duly designated Community Redevelopment Agency of the City, a validly existing body politic and corporate of the State of Florida, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations under this Agreement and each document contemplated hereunder to which it is or will be a party.

(2) This Agreement and each document contemplated hereby to which the Agency is or will be a party has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, the Agency and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof: (a) requires the approval and consent of any other party, except such as have been or will be duly obtained, (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the Agency or (c) contravenes or results in any breach of, default under or result in the creation of any lien or encumbrance upon any party or the Agency, under any indenture, mortgage, deed of trust, bank loan or credit agreement, the Agency's special acts, applicable ordinances, resolutions or any other agreement or instrument to which the Agency is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the Agency outstanding on the Effective Date.

(3) This Agreement and each document contemplated hereby to which the Agency is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of the Agency enforceable against it in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

(4) There are no pending or, to the knowledge of the Agency, threatened actions or proceedings before any court or administrative agency against the Agency, which question the existence of the Agency, the determination of slum and blight in the Community Redevelopment Area, the adoption or implementation of the Plan, the validity of this Agreement or any instrument or document contemplated hereunder, or which are likely in any case or in the aggregate to materially adversely affect the successful redevelopment of the Community Redevelopment Area, the consummation of the transactions contemplated hereunder or the financial condition of the Agency.

(5) This Agreement does not violate any laws, ordinances, rules, regulations, orders, contracts, or agreements that are or will be applicable to the Agency.

## 6.2. Representations and Warranties of the City.

The City represents and warrants to the Agency that each of the following statements is presently true and accurate and can be relied upon by the Agency:

(1) The City is a municipal corporation created under the laws of the State of Florida, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations under this Agreement and each document contemplated hereunder to which it is or will be a party.

(2) This Agreement and each document to which it is or will be a party has been duly authorized by all necessary action on the part thereof, and has been or will be duly executed and delivered by it and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof: (a) requires the approval and consent of any other party, except such as been duly obtained, (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on it, or (c) contravenes or results in any breach of, default under or result in the creation of any lien or encumbrance upon it, under any indenture, mortgage, deed or trust, bank loan or credit agreement, charter, applicable ordinances, resolutions or any other agreement or instrument, specifically including any covenants of any bonds, notes, or other forms of indebtedness outstanding on the Effective Date.

(3) This Agreement and each document contemplated hereby constitutes, or when entered in will constitute, a legal, valid and binding obligation enforceable against the City in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

(4) There are no pending or, to the knowledge of the City, threatened actions or proceedings before any court or administrative agency against it, which question its existence, the validity of this Agreement or any instrument or document contemplated hereunder, or which are likely in any case or in the aggregate to materially adversely affect the consummation of the transactions contemplated hereunder.

(5) This Agreement does not violate any laws, ordinance, rules, regulations, orders, contract, or agreements that are or will be applicable to the City.

## ARTICLE 7: DEFAULT; TERMINATION

### 7.1. Default by the Agency.

(1) Provided the City is not in default under this Agreement as set forth in Section 7.2 hereof, there shall be an "event of default" by the Agency under this Agreement upon the occurrence of any one or more of the following:

(a) The Agency fails to perform or comply with any material provision of this Agreement and such nonperformance shall have continued, after written notice thereof by the City to the Agency; or

(b) The Agency shall have failed or refused to make any of the Agency Payments when due and payable; or

(c) The Agency shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent, or shall file a petition seeking any reorganization, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation or shall file an answer admitting, or shall fail reasonably to contest, the material allegations of a petition filed against it in any such proceeding, or shall seek or consent

to or acquiesce in the appointment of any trustee, receiver or liquidator of the Agency of any material part of its properties; or

(d) Within sixty (60) days after the commencement of any proceeding by or against the Agency seeking any reorganization, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment without the consent or acquiescence of the Agency or any trustee, receiver or liquidator of the Agency or of any material part of its properties, such appointment shall not have been vacated.

(2) If any "event of default" described in Subsection 7.1(1) hereof shall have occurred, the City may, after giving thirty (30) days written notice of such event of default to the Agency, and upon expiration of such thirty (30) day notice period. if such event of default has not been cured, terminate this Agreement or institute an action seeking such remedies as are available to the City, or both.

#### 7.2. Default by the City.

(1) Provided the Agency is not then in default under this Agreement, there shall be an "event of default" by the City to this Agreement under this Agreement upon the occurrence of any the following:

(a) The City does not perform as required hereunder and such nonperformance shall have continued, after written notice thereof by the Agency to the City; or

(b) The City shall have failed or refused to proceed with or cause the timely completion of the Project.

(2) If an "event of default" described in Subsection 7.2(1) hereof shall have occurred, the Agency, after giving thirty (30) days written notice of such event of default to the City and upon the expiration of such thirty (30) day period if such event of default has not been cured, may terminate this Agreement or institute an action seeking such remedies as are available to the Agency hereunder.

#### 7.3. Obligations, Rights and Remedies Not Exclusive.

The rights and remedies specified herein to which either the Agency or the City are entitled are not exclusive and are not intended to be to the exclusion of any other remedies or means or redress to which any party hereto may otherwise lawfully be entitled.

#### 7.4. Non-Action or Failure to Observe Provisions of this Agreement.

The failure of any party hereto to promptly insist upon strict performance of any term, covenant, condition or provision of this Agreement, or any exhibit hereto or any other agreement contemplated hereby shall not be deemed a waiver of any available right or remedy, and shall not be deemed a waiver of a subsequent default or nonperformance of such term, covenant, condition or provision.

7.5. Effect of Termination.

(1) Upon the occurrence of an event described in Section 7.1 or 7.2 hereof and receipt by any party of an election to terminate this Agreement pursuant to Sections 7.1 or 7.2 hereof, then this Agreement shall terminate and all obligations of any parties hereto shall then cease and be released and no longer be of any force and effect.

(2) In the event of a termination of this Agreement pursuant to this Section 7.5, no party hereto shall be obligated or liable to any other in any way, financial or otherwise, for any claim or matter arising from or as a result of this Agreement or any actions taken by any party hereto, hereunder or contemplated hereby.

ARTICLE 8: MISCELLANEOUS

8.1. Amendments.

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

8.2. This Agreement Constitutes a Contract.

All parties hereto acknowledge that they will rely on the pledges, covenants and obligations created herein for the benefit of the parties hereto, and this Agreement shall be deemed to be and constitute a contract amongst said parties as of it becoming effective as provided in Section 8.12.

8.3. Assignment.

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

8.4. Severability.

The provisions of this Agreement are severable, and it is the intention of the parties hereto to confer the whole or any part of the powers herein provided for and if any of the provisions of this Agreement or any other powers granted by this Agreement shall be held unconstitutional, invalid or void by any court of competent jurisdiction, the decision of said court shall not affect or impair any of the remaining provisions of this Agreement. It is hereby declared to be the intent of the parties hereto that this Agreement would have been adopted, agreed to, and executed had such unconstitutional, invalid or void provision or power not been included therein.

8.5. Controlling Law; Venue.

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





