

BOARD OF COUNTY COMMISSIONERS

DATE: June 16, 2009

AGENDA ITEM NO. 27a

Consent Agenda ☐

Regular Agenda ☒

Public Hearing ☐

County Administrator's Signature

Subject:

Interlocal Agreement Between Pinellas County (County) and the City of St. Petersburg (City) for Construction of the Fred Marquis Pinellas Trail Overpass of 34th Street (Overpass)

Department:

Public Works

Staff Member Responsible:

Peter J. Yauch, P.E., Director

Recommended Action:

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS (BCC) APPROVE THE INTERLOCAL AGREEMENT BETWEEN THE COUNTY AND THE CITY FOR CONSTRUCTION OF THE OVERPASS FOR FUNDING NOT-TO-EXCEED \$3.5 MILLION AND AUTHORITY BE GRANTED FOR THE CHAIRMAN TO SIGN AND THE CLERK TO ATTEST.

Summary Explanation/Background:

On January 22, 2008, the BCC approved granting the City up to \$3.5 million in transportation impact fee revenues for the design and construction of the Overpass. This agreement provides for the reimbursement of project expenditures and sets forth the responsibilities for design and construction of the Overpass. While the City has accepted responsibility for management of the design and construction phases of the project, including the removal of the existing Gibbs Overpass, the County will accept the Overpass structure for maintenance upon completion of the project. The Florida Department of Transportation (FDOT) has agreed to release the County from the responsibility of paying for the removal of the Gibbs Overpass in exchange for the City assuming this responsibility, as outlined in the attached Airspace Agreement and Addendum.

Additionally, this item includes companion agreements between the FDOT and the City, and between the County and the City. The companion agreements are the Airspace Agreement, allowing the Overpass structure to exist over FDOT's right-of-way for 34th Street; the Airspace Agreement Addendum, which provides for various amendments to the Airspace Agreement; the Assignment of the Airspace Agreement, from the City to the County, required for the County to accept the Overpass for future maintenance; and the Approach Ramp Easement for the ramp to the Overpass structure on the east side of U.S. Highway 19.

Staff is requesting the BCC authorize execution of the Interlocal Agreement, as well as the attached Assignment of Airspace Agreement, which are necessary to complete this transaction.

Fiscal Impact/Cost/Revenue Summary:

The source of County funding for this project is District 11 Transportation Impact Fee Revenues, which is in lieu of, an alternative to and satisfies the funding for this project, and is referenced and included in the St. Petersburg/Pinellas County Interlocal Agreement approved by the BCC on April 22, 2008.

The total not-to-exceed expenditure is \$3.5 Million.

Exhibits/Attachments Attached:

Contract Review Transmittal
Agreement

CONTRACT REVIEW TRANSMITTAL SLIP

CATS # 25474

SUBJECT: Interlocal Agreement Between Pinellas County and the City of St Petersburg for Construction and Maintenance of the Pinellas Trail Overpass of 34th Street and the Fred Marquis Pinellas Trail Extension

AGREEMENT PREPARED BY: Pinellas County Public Works

DATE: February 28, 2008

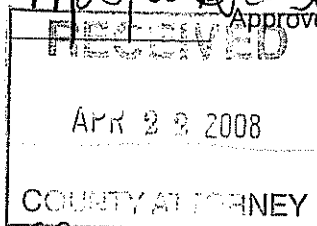
PROJECT / PID NO.: N/A

Please review the attached and forward to the next Review Authority in the sequence indicated below. Indicate any necessary changes by revising, IN RED, the appropriate sections of the document to reflect the wording of the desired change. Time is of the essence. Please make your review as complete and as fast as possible.

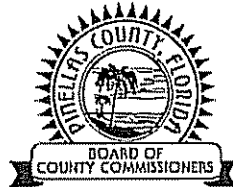
Board Records: Return to Barbara Kuhl, 4th Floor, Public Works.

All inquiries should be made to Barbara Kuhl, Ext. 43144.

Review Sequence	Review Authority	Review Date	Review Signature	Comments (Attach if necessary)	Comments Incorporated
1	Originator PW/Contracts Merry Celeste	<u>2/28/08</u>	<u>[Signature]</u>	<u>JKM 5/13/09</u>	
2	REM/Jim Meloy PW/Financial Services Barbara Kuhl	<u>2/29/08</u>	<u>[Signature]</u>	<u>BW 5/12/09</u>	
3	Director of Public Works Jan R. Herbst	<u>2/29/08</u>	<u>[Signature]</u>	<u>N/A</u>	
4	Director of Culture, Education & Leisure Paul Cozzie	<u>3/3/08</u>	<u>[Signature]</u>	<u>OK JW 5/12/09</u>	
5	Risk Management B. Winger/L. Hunter	<u>3/3/08</u>	<u>[Signature]</u>	<u>5/11/09</u>	
6	Clerk/Finance Division Cassandra Williams	<u>3/4/08</u> <u>5/11/09</u>	<u>CBW</u> <u>CBW</u>		
7	OMB John Woodruff	<u>3/5/08</u>	<u>[Signature]</u>	<u>OK JWH 5/11/09</u>	
8	Assistant County Administrator Peter J. Yauch	<u>3/6/08</u>	<u>[Signature]</u>	<u>minor edit on memo 5-13-09 [Signature]</u>	<u>mc 5/13/09</u>
9	Legal- Barbara Oklesen	<u>3/11/08</u> <u>4/18/08</u> <u>4/11/08</u>	<u>[Signature]</u> <u>[Signature]</u> <u>[Signature]</u>	<u>see comments attached</u> <u>see comments attached</u> <u>see comments attached</u>	
	Legal- Barbara Oklesen	<u>5/13/09</u> <u>6/15/09</u>	<u>[Signature]</u> <u>[Signature]</u>	<u>see map-up suggestions on memo discussed with [Signature]</u>	



PINELLAS COUNTY GOVERNMENT IS COMMITTED TO PROGRESSIVE PUBLIC POLICY,
SUPERIOR PUBLIC SERVICE, COURTEOUS PUBLIC CONTACT, JUDICIOUS EXERCISE
OF AUTHORITY AND SOUND MANAGEMENT OF PUBLIC RESOURCES, TO MEET THE
NEEDS AND CONCERNS OF OUR CITIZENS TODAY AND TOMORROW



INTERLOCAL AGREEMENT

BETWEEN PINELLAS COUNTY AND THE CITY OF ST. PETERSBURG

FOR

CONSTRUCTION

OF THE

FRED MARQUIS PINELLAS TRAIL OVERPASS OF 34TH STREET

PINELLAS COUNTY
DEPARTMENT OF PUBLIC WORKS

THIS AGREEMENT, made and entered into on the _____ day of _____, 200__ by and between Pinellas County, a political subdivision of the State of Florida, hereinafter called the "COUNTY", and the City of St. Petersburg, a municipal corporation of the State of Florida, hereinafter called the "CITY".

RECITATIONS:

WHEREAS, this Agreement is made and entered between the parties pursuant to Section 163.01, Florida Statutes, the "Florida Interlocal Cooperation Act of 1969;" and

WHEREAS, the CITY is continuing the development of the Fred Marquis Pinellas Trail on old CSX right of way, from 34th Street to the junction of the old CSX right of way at 1st Avenue South and 13th Street South, extended; and

WHEREAS, the CITY has requested financial assistance from the COUNTY for the construction of a trail overpass at 34th Street, hereinafter known as the PROJECT and defined as the overpass structure, including approach ramps and other elements determined necessary for the construction of the trail overpass as shown on the approved plans, entitled PEDESTRIAN TRAIL/34TH STREET PEDESTRIAN BRIDGE, Project No. 06103-912; and

WHEREAS, the City will be responsible for the removal of the existing overpass at 34th Street south between Gibbs High School and the Pinellas Technical Education Center referred to as "Existing Gibbs Overpass"; and

WHEREAS, the Pinellas County Board of County Commissioners authorized funding from the Transportation Impact Fees from District 11 for the design and construction of the PROJECT on January 22, 2008.

NOW THEREFORE, the COUNTY and the CITY, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**SECTION 1
INTENT OF AGREEMENT**

The intent of this Agreement is to provide for the funding of the design and construction of the Fred Marquis Pinellas Trail overpass at 34th Street South in St. Petersburg.

**SECTION 2
SERVICES TO BE PROVIDED BY THE COUNTY**

2.1. The COUNTY will fund the design and construction phases of the PROJECT to the not to exceed amount approved by the Board of County Commissioners of \$3.5 Million. The PROJECT is estimated as follows:

<u>Design Phase</u>	
Professional Services Fee -	\$450,000
CITY Administration Costs -	\$50,000
TOTAL	\$500,000

<u>Construction Phase</u>	
Consultant	\$130,000
City	\$120,000
Contractor	\$1,278,000
Demolition of "Existing Gibbs Overpass"	\$700,000
Maximum Contingency	\$772,000
Total Estimated Cost including CE&I -	\$3,000,000
PROJECT Total	
Design	\$500,000
Construction	\$3,000,000
TOTAL	\$3,500,000

Funds for the construction phase of the PROJECT will be provided by the COUNTY in accordance with Section 4 of this Agreement when the CITY has provided documentation acceptable to the COUNTY that all permits, leases, authorizations, etc. to locate, construct and maintain the PROJECT have been obtained from any and all entities, including the Florida Department of Transportation, ("FDOT"), having an interest in the area in which the PROJECT will be located. The COUNTY will not require permits to be obtained from the COUNTY. Funds for the design phase will be provided by the COUNTY in accordance with Section 4 of this Agreement upon execution of this Agreement.

- 2.2. The COUNTY will provide plan review services for the design of the PROJECT.
- 2.3. The COUNTY will conduct inspections of the PROJECT at its discretion during construction.
- 2.4. The COUNTY will perform a final inspection of the PROJECT. The COUNTY will not assume any interest or obligations in the PROJECT, other than those funding obligations contained herein, until it has determined that the PROJECT is complete and in conformance with the approved plans. The COUNTY will provide written notice to the CITY of the PROJECT'S acceptance in accordance with Section 4.2 of this Agreement. Upon written notice of the PROJECT'S acceptance and the City delivering to the County the executed "Approach Ramp Easement" hereto attached as Exhibit A, the COUNTY will assume ownership and be responsible for future maintenance of the PROJECT.
- 2.5. Pursuant to the Airspace Agreement and Addendum thereto, and the Assignment of said agreement, all of which are attached hereto as Exhibit B and made a part hereof, Florida Department of Transportation (FDOT) agrees to release the County as Lessee, under the Airspace Agreement for the air rights where the PROJECT is constructed ("Airspace Agreement"), from responsibility for paying for removal of "facilities, structures, or any part thereof" requested by FDOT, under paragraph 7.e. of the Airspace Agreement in exchange for the City assuming the responsibility for removal of the "Existing Gibbs Overpass". The County shall reimburse the City an amount not to exceed \$700,000 when the "Existing Gibbs Overpass" is removed, whereupon, the City shall be solely responsible for removal of the PROJECT pursuant to paragraph 7.e. of the Airspace Agreement with Addendum. The CITY may utilize these funds to remove the " Existing Gibbs Overpass" or pay the FDOT for the cost of removal of the " Existing Gibbs Overpass" by FDOT.

SECTION 3
SERVICES TO BE PROVIDED BY THE CITY

- 3.1. The CITY will be responsible for all design, permitting, including FDOT permits, and construction activities, including full-time construction contract administration and inspection services, of the PROJECT.
- 3.2. The CITY will invite the COUNTY'S representative to all design and construction meetings for the PROJECT and provide the COUNTY access to the construction site for inspection purposes. All inspection reports/comments provided by the COUNTY regarding the PROJECT will be addressed by the CITY and the CITY'S contractor to the satisfaction of the COUNTY.
- 3.3. The CITY shall incorporate the COUNTY'S review comments in the PROJECT to the maximum extent practicable.
- 3.4. The CITY shall not accept the PROJECT, nor release any retainage prior to the COUNTY notifying the CITY in writing that it has determined that the PROJECT is complete and in conformance with the approved plans.
- 3.5. Should the cost of the PROJECT exceed the COUNTY's approved budget of \$3,500,000, the CITY shall determine the reason(s) for the additional expense and identify additional funding necessary to complete construction of the PROJECT.
- 3.6. The CITY will obtain all authorization necessary to locate, construct and maintain the PROJECT from any and all entities, including FDOT, having an interest in the area in which the PROJECT will be located.
- 3.7. The CITY will require the successful contractor to:
 - (1) Indemnify, hold harmless, pay on behalf of and defend the COUNTY and its agents and employees from and against all damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of the PROJECT; and
 - (2) Provide a dual obligee payment and performance bond in the full amount of the PROJECT, naming the CITY and the COUNTY as obligees; and
 - (3) Provide insurance coverage with the COUNTY and the CITY named as additional insured entities and certificate holders in the sum of \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and
 - (4) Transfer to the COUNTY any warranty, including materials, equipment, workmanship and closeout documents, by the contractor constructing and/or installing facilities in accordance with this Agreement, under the same terms and conditions as that warranty applies to facilities constructed or installed on behalf of the CITY.
- 3.8. By signing this Agreement the CITY certifies that the Project and removal of "Existing Gibbs Overpass" are eligible for funding by COUNTY Transportation Impact Fee Revenues. The CITY commits to expend all funds provided by the COUNTY for this Project no later than September 30, 2012, and that all expenses for the Project and demolition of the "Existing Gibbs Overpass", as defined herein and in the Addendum to the Airspace Agreement between the CITY and FDOT, are eligible under Chapter 150 of the Pinellas County Land Development Code.

SECTION 4 PAYMENT

- 4.1. The CITY shall provide invoices to the COUNTY for reimbursement for design and construction expenditures for the PROJECT as specified in Section 2.1. Invoices for reimbursement of professional services shall be accompanied by supporting documentation and verification that required deliverables have been met.

All invoices for reimbursement shall be submitted to:

Barbara A. Kuhl, C.P.M.
Director of Financial Services and Contracts
Pinellas County Public Works Department
440 Court Street, 4th Floor,
Clearwater, Florida 33756

Invoices for construction services shall be accompanied by appropriately executed pay applications submitted by the contractor and approved by the CITY. The COUNTY reserves the right to verify in the field actual progress prior to approving request for reimbursement.

- 4.2 Final payment will not be released by the COUNTY until all final inspection comments have been fully addressed to the COUNTY'S satisfaction and all applicable permits, leases, authorizations, etc. for the PROJECT have been assigned to the COUNTY in a manner that conforms to the terms of such permits, leases, and authorizations, including any consents required by a third party to such assignments.

The COUNTY will notify the CITY in writing that the PROJECT is complete and all applicable permits, leases and authorizations have been received and accepted by the COUNTY. The CITY will remain responsible for the PROJECT until receipt of said notice.

- 4.3 This agreement utilizes and provides its source of funding from the Transportation Impact Fee Revenues, which is in lieu of, alternative to, and satisfies the funding for this PROJECT, which is referenced and included in the St Petersburg/Pinellas County Interlocal Agreement approved as Agenda item Number 29 of the April 22, 2008 meeting of the Pinellas County Board of County Commissioners.

SECTION 5 EFFECTIVE DATE

This Agreement shall take effect immediately upon filing with the Clerk of the Circuit Court and shall continue in full force and effect until the COUNTY has notified the CITY in writing that it has determined that the PROJECT and "Existing Gibbs Overpass" removal is complete and in conformance with the approved plans, or until earlier termination in writing, by mutual agreement of the COUNTY and the CITY.

SECTION 6 RESPONSIBILITIES OF THE PARTIES

The COUNTY and the CITY shall be fully responsible for their own acts of negligence and their respective agents' acts of negligence, when such agents are acting within the scope of their employment; and shall be liable for any damages resulting from said negligence to the extent

permitted by Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by either the COUNTY or the CITY. Nothing herein shall be construed as consent by the COUNTY or CITY to be sued by third parties in any matter arising out of this Agreement.

SECTION 7 NON-APPROPRIATION

In accordance with the Florida Constitution and other applicable state and local laws, including but not limited to Sections 129.07 and 166.241(2), Florida Statutes, the obligations of the Parties are subject to sufficient budgeted funds being available in each budget year to achieve the purposes of this Agreement. In the event that sufficient budgeted funds are not available in a fiscal year, this Agreement shall terminate on the last day of the fiscal year for which sufficient budgeted funds are available without penalty to either of the Parties.

SECTION 8 ENTIRE AGREEMENT

This document embodies the whole agreement of the parties. There are no promises, terms, conditions, or allegations other than those contained herein and this document shall supersede all previous communications, representations and/or agreements, whether written or verbal, between the parties hereto. This Agreement may be modified only in writing and executed by all parties. This Agreement shall be binding upon the parties, their successors, assigns and legal representatives.

SECTION 9 CLERK OF CIRCUIT COURT FILING

Prior to its effectiveness, this Agreement and any amendments thereto must be filed with the Clerk of the Circuit Court of Pinellas County.

SECTION 10 MISCELLANEOUS

- 10.1 The CITY shall utilize reasonable financial procedures, including adequate supporting documents, to account for the use of money provided by the COUNTY. The CITY shall retain all records relating to this Agreement for three (3) years after final payment is made. All CITY records relating to this Agreement shall be subject to audit by the COUNTY.
- 10.2 The CITY and the COUNTY shall not discriminate against any applicant for employment or employee with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of age, sex, race, color, religion, national origin or disability. The CITY and the COUNTY shall, during the performance of this Agreement, comply with all applicable provisions of federal, state and local laws and regulations pertaining to prohibited discrimination.
- 10.3 The CITY and COUNTY shall operate within strict conformity to all federal, state and local laws and any rules and regulations adopted thereunder.
- 10.4 All notices, requests, demands, invoices or other communications hereunder shall be in writing and shall be deemed to have been served as of the delivery date appearing upon the return receipt if sent by certified mail, postage prepaid with return receipt requested, at the address listed below, or upon the actual date of delivery, if hand delivered to the

address below. Either party may change the below-listed address at which it receives written notices by providing notice of such change to the other party in accordance with this paragraph.

COUNTY: Barbara A. Kuhl, C.P.M., Director of Financial Services and
Contract Management
Pinellas County Department of Public Works Administration
440 Court Street
Clearwater, FL 33756-5139

CITY: Joseph J. Kubicki, Director of Transportation
City of St. Petersburg
P.O. Box 2842
St. Petersburg, Florida 33731-2842

- 10.5 Should any section or part of any section of this Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid, or unenforceable any other section or any part of any section of this Agreement.
- 10.6 No act of omission or commission of either party, including without limitation, any failure to exercise any right, remedy, or recourse, shall be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or modification is to be effected only through a written modification to this Agreement.
- 10.7 This Agreement shall be governed by and be interpreted in accordance with the laws of the State of Florida. Venue for state court actions shall be in Pinellas County. Venue for federal court actions shall be in the Middle District of Florida, Tampa Division, unless a division is created in St. Petersburg, or Pinellas County, in which case the action shall be brought in that division. Each party waives any defense of improper or inconvenient venue as to either court and consents to personal jurisdiction in either court.
- 10.8 The paragraph headings are inserted herein for convenience and reference only, and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.
- 10.9 For the purposes of this Agreement any required written permission, consent, approval or agreement ("Approval") by the CITY means the approval of the Mayor or his designee unless otherwise set forth herein and such approval shall be in addition to any and all permits and other licenses required by law or this Agreement, and any right of the CITY to take any action permitted, allowed or required by this Agreement, may be exercised by the Mayor or his designee, unless otherwise set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused these present to be executed by their duly authorized officers, and their official seals hereto affixed, the day and year first above written.

CITY OF ST. PETERSBURG
A municipal corporation of the State of
Florida

By:



Rick Baker
As its Mayor

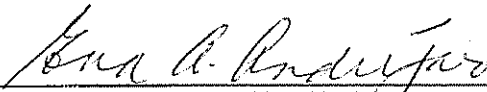
PINELLAS COUNTY
A political subdivision of the State of Florida

By:

Calvin D. Harris, Chairman, Board of
County Commissioners

ATTEST:

By:



Eva A. Andujar, City Clerk

ATTEST:

By:

Ken Burke, Clerk

APPROVED AS TO FORM AND CONTENT: 

City Attorney (Designee)

APPROVED AS TO FORM:

By:

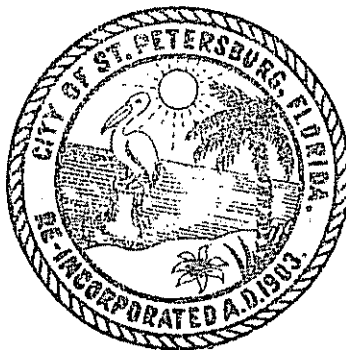


County Attorney

By:

RICHARD B. BADGLEY

Assistant City Attorney



List of Attachments

Attachment A -- Easement Agreement for Approach Ramp

Attachment B -- Airspace Agreement, Addendum to the Airspace Agreement, Assignment Agreement

ATTACHMENT A

This Instrument Prepared By and Return To:

Richard B. Badgley
Senior Assistant City Attorney
City of St. Petersburg
P.O. Box 2842
St. Petersburg, FL 33731-2842

County Parcel Identification Number:
26/31/16/00000/220/0100

APPROACH RAMP EASEMENT

THIS INDENTURE made this ____ day of _____, 20____; between the City of St. Petersburg, Florida, a municipal corporation, whose post office address is P. O. Box 2842, St. Petersburg, Florida 33731, hereinafter referred to as "Grantor", and Pinellas County, Florida, a political subdivision of the State of Florida, whose post office address is 440 court Street, Clearwater, Florida 33616, hereinafter referred to as "Grantee";

W I T N E S S E T H:

That for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid by the Grantee, the receipt of which is hereby acknowledged, and in consideration of the conditions and covenants contained herein, Grantor does hereby grant and convey to the Grantee an easement ("Easement") for public purposes, in and upon that certain land situated in Pinellas County, Florida, which is more particularly described in "Exhibit A", which is attached hereto and by this reference made a part hereof ("Easement Area"). Said public purposes shall include, the maintenance of an approach ramp and appurtenant structures and improvements ("Approach Ramp") to provide access to the Pinellas Trail overpass over 34th Street South, immediately west of the Easement Area ("Overpass").

The Grantee shall have the right to patrol, inspect, alter, improve, repair or replace and rebuild such Approach Ramp together with all the rights and privileges necessary or convenient for the full enjoyment and use thereof for the purposes above-described, including but not limited to the right to enter over and upon adjacent lands of the Grantor, its successors and assigns, for purposes of exercising the rights and privileges herein granted

Grantor further covenants with the Grantee that it is lawfully seized of the parcel described herein, subject to conditions of the federal Rails to Trails Act, that Grantor has good, right and lawful authority to grant the Easement described herein, and that it warrants that it has title to the parcel of land described herein and will defend the same against lawful claims of all persons claiming by through or under Grantor.

This Easement shall expire upon the expiration or earlier termination of the Airspace Agreement with the Florida Department of Transportation for the Overpass.

IN WITNESS WHEREOF, Grantor has caused these presents to be signed in its name as of the day and year first written above.

WITNESSES TO GRANTOR

GRANTOR:

CITY OF ST. PETERSBURG, FLORIDA

Jeannette Rebholz
Witness Signature

By: Rick Baker

Rick Baker

As its: Mayor

Jeannette Rebholz
Print Witness Name

ATTEST:

Amelia Preston
Witness Signature

Eva Andujar
Eva Andujar, City Clerk

Amelia Preston
Print Witness Name



(City Seal)

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this 12th day of June A.D. 2009, by Rick Baker and Eva Andujar, as Mayor and City Clerk, respectively, of the City of St. Petersburg, Florida, a municipal corporation, existing under the laws of the State of Florida, on behalf of the corporation. They are personally known to me and appeared before me at the time of notarization.

Notary Public - State of Florida

Cathy E. Davis
Notary Signature



(Notary Seal)

APPROVED AS TO CONTENT:

RBG
City Attorney (Designee)

By: RICHARD B. BADGLEY

Assistant City Attorney

APPROVED AS TO FORM:

RBG
City Attorney (Designee)

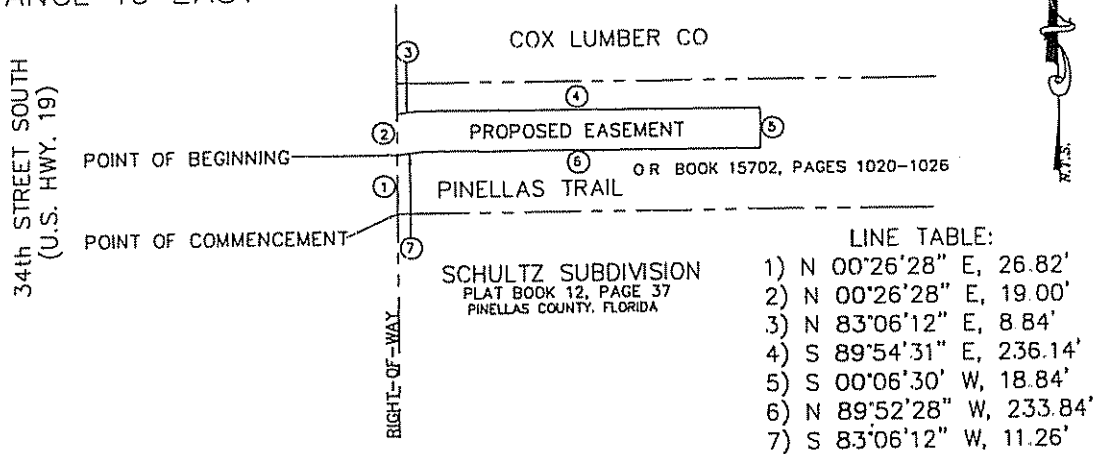
By: RICHARD B. BADGLEY

Assistant City Attorney

Legal: 00105900 doc V. 1

Exhibit A

SECTION 26,
TOWNSHIP 31 SOUTH,
RANGE 16 EAST



COMMENCING at the Northwest corner of Schultz Subdivision, recorded in Plat Book 12, Page 37, of the Official Records of Pinellas County, Florida, on the East right-of-way line of U.S. Highway 19;
Thence N 00°26'28" E, coincident with the East right-of-way of U.S. Highway 19, a distance of 26.82 feet to the Southwest corner of this easement and the POINT OF BEGINNING;
Thence N 00°26'28" E, coincident with the East right-of-way of U.S. Highway 19, a distance of 19.00 feet to the Northwest corner of this easement;
Thence leaving the said East right-of-way line of U.S. Highway 19, over and across that certain parcel of land deeded to the City of St. Petersburg by quitclaim deed recorded in Official Record Book 15702, Pages 1020-1026, of the Official Records of Pinellas County, Florida, the following courses and distances:

- 1) N 83°06'12" E, a distance of 8.84 feet;
- 2) S 89°54'31" E, a distance of 236.14 feet to the Northeast corner of this easement;
- 3) S 00°06'30" W, a distance of 18.84 feet to the Southeast corner of this easement;
- 4) N 89°52'28" W, a distance of 233.84 feet;
- 5) S 83°06'12" W, a distance of 11.26 feet to the POINT OF BEGINNING.

CONTAINING 4600 SQUARE FEET OF LAND (0.106 ACRE), MORE OR LESS.

SKETCH AND DESCRIPTION ONLY: THIS IS NOT A SURVEY

ENGINEERING AND CAPITAL IMPROVEMENTS DEPARTMENT
CITY OF ST. PETERSBURG

ENGINEERING SURVEY DIVISION
1744 NINTH AVENUE NORTH
ST. PETERSBURG, FLORIDA 33713
(727) 892-5346 892-5347
PROJECT NUMBER 06103-912
DATE: MARCH 3, 2009

CITY ATLAS
J-5

AIRSPACE AGREEMENT

ITEM/SEGMENT NO.: 257095 1

MANAGING DISTRICT: Seven

F.A.P. NO.: N/A

STATE ROAD NO.: 55

COUNTY: Pinellas

PARCEL NO.: N/A

THIS AGREEMENT, made this 15th day of June, 2009, between
City of St. Petersburg at Real Estate Department, 1-4th Street North, St. Petersburg, Florida 33701
(Lessee) and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (Department), an agency
of the State of Florida (State)

WITNESSETH:

WHEREAS, the Department may convey a leasehold in the name of the State, in any land, buildings, or other property, real or personal, acquired under Section 337.25, Florida Statutes; and

WHEREAS, the United States Department of Transportation, Federal Highway Administration (FHWA), requires any use of airspace above, and/or below the highway's established gradeline, lying within the approved right of way limits on a Federal Aid System, to be accomplished pursuant to an airspace agreement in accordance with 23 CFR, Part 710, and

WHEREAS, the Department has acquired sufficient legal right, title, and interest in the right of way of US Hwy. 19 S.
South of 7th Ave. S. which includes the property described in Exhibit "A" attached hereto and made a part hereof, which right of way is part of a highway on a Federal Aid System; and

WHEREAS, the Department desires to lease to Lessee the airspace above or below gradeline of the property described in Exhibit "A", attached and made a part hereof for the following purpose: Pinellas Trail Pedestrian Overpass

WHEREAS, the proposed use will not impair the full use and safety of the highway, require or permit vehicular access to such space directly from the established gradeline of said highway, or interfere with the free flow of traffic on said highway.

NOW, THEREFORE, in consideration of the premises made a part hereof, and the covenants, promises, understandings, and agreements made by each party to the other as set forth herein, the Department and the Lessee do hereby mutually agree as follows:

1. Premises

The premises hereto are true and correct and form an integral part of this Agreement.

2. Term

The Department does hereby lease unto Lessee the airspace above or below gradeline of the property for a period of fifty (50) years beginning with the date of this Agreement. One renewal of this Agreement may be made for fifty (50) years. However, except for a public purpose conveyance, such renewal may not exceed five years. Nothing herein shall be construed to in any way grant an interest in the property lying below said airspace.

3 Rent

a. Lessee shall pay to the Department as rent each ☐ month ☐ quarter ☒ year on or before the first day of each rent payment period, \$1.00 plus applicable sales tax. When this Agreement is terminated, any unearned rent and sales tax payment shall be refunded to Lessee. However, no such refund shall be made where termination is due to Lessee's violation of a term or condition of this Agreement.

b. The Department reserves the right to review and adjust the rental fee biannually and at renewal to reflect market conditions.

c. All rental payments are to be made by check or money order, payable to the State of Florida Department of Transportation and delivered on or before the due date to: Property Management, 11201 N. McKinley Drive, Tampa, Florida 33612

d. Lessee shall be responsible for all state, county, city, and local taxes that may be assessed, including real property taxes and special assessments. In the event that no rent is specified herein, then it has been determined that either the use by Lessee is a nonproprietary use by a governmental agency or an exception from the current fair market rental value requirement (23 U.S.C. Section 156) has been obtained for social, environmental, or economic mitigation (SEE) purposes. In the event that it should be determined at any time that the use is not a nonproprietary use by a governmental agency or that the SEE exception does not apply or has been revoked, Lessee agrees to pay, at that time, rent as determined to be the fair market rental value by an independent appraiser certified by the Department, and Lessee further agrees to pay such rent, under the remaining terms and conditions of this Paragraph 3, for the remaining term (including renewals) of this Agreement.

e. Any installment of rent not received within ten (10) days after the due date shall bear interest at the highest rate allowed by law from the due date thereof. This provision shall not obligate the Department to accept late rent payments or provide Lessee a grace period.

4. Use, Occupancy, and Maintenance

a. The Lessee shall be responsible for developing and operating the airspace as set forth herein.

b. The Lessee's proposed use of the airspace is as follows: Pedestrian Trail Overpass

c. The general design for the use of the airspace, including any facilities to be constructed, and the maps, plans, and sketches setting out the pertinent features of the use of the airspace in relation to the highway facility are set forth in composite Exhibit "B" attached hereto and by this reference made a part hereof. In addition, said composite Exhibit "B" also contains a three-dimensional description of the space to be used, unless the use is of a surface area beneath an elevated highway structure or adjacent to a highway roadway for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, or other similar uses, in which case, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits, may be substituted for said three-dimensional description in said composite Exhibit "B".

d. Any change in the authorized use of the airspace or revision in the design or construction of the facility described in Exhibit "B" shall require prior written approval from the appropriate District Secretary of the Department, subject to concurrence by the FHWA.

e. The Department, through its duly authorized representatives, employees, and contractors, and any authorized FHWA representative, may enter the facility at any time for the purpose of inspection, maintenance, or reconstruction of the highway and adjacent facilities, when necessary; or for the purpose of surveying, drilling, monitoring well installations, sampling, remediation, and any other action which is reasonable and necessary to conduct an environmental assessment or to abate an environmental hazard.

f. Lessee, at Lessee's sole cost and expense, shall maintain the facility to occupy the airspace so as to assure that the structures and the area within the highway right of way boundaries will be kept in good condition, both as to safety and appearance. Such maintenance will be accomplished in a manner so as to cause no unreasonable interference with the highway use. In the event that Lessee fails to so maintain the facility, the Department, through its duly authorized representatives, employees, and contractors, may enter the facility to perform such work, and the cost thereof shall be chargeable to the Lessee and shall be immediately due and payable to the Department upon the performance of such work.

g. Portable or temporary advertising signs are prohibited.

h. The design, occupancy, and use of the airspace shall not adversely affect the use, safety, appearance, or enjoyment of the highway by smoke, fumes, vapors, odors, droppings, or any other objectionable discharges or emissions, or nuisances of any kind therefrom.

i. When, for the proposed use of the airspace, the highway requires additional highway facilities for the proper operation and maintenance of the highway, such facilities shall be provided by the Lessee without cost to either the Department or the FHWA and subject to both Department and FHWA approval.

j. The proposed use shall not cause or allow any changes in the existing drainage on the property under the airspace.

k. Lessee shall not occupy, use, permit, or suffer the airspace, the property, the facility, or any part thereof to be occupied or used for any illegal business use or purpose, for the manufacture or storage of flammable, explosive, or hazardous material, or any other hazardous activity, or in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future federal, state, or local laws, orders, directions, ordinances, or regulations.

l. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations, or as those terms are understood in common usage, are specifically prohibited. The use of petroleum products, pollutants, and other hazardous materials affecting the property is prohibited. Lessee shall be held responsible for the performance of and payment for any environmental remediation that may be necessary, as determined by the Department. Similarly, if any contamination either spread to or was released onto adjoining property as a result of Lessee's use of the airspace under lease, the Lessee shall be held similarly responsible. The Lessee shall indemnify, defend, and hold harmless the Department from any claim, loss, damage, cost, charge, or expense arising out of any such contamination.

m. Existing utilities and all corresponding easements shall remain in place and Lessee shall not disturb or interfere with the same.

5. Indemnification. To the extent provided by law, Lessee 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 Lessee, its officers, agents, or employees, during the performance of the Agreement, except that neither Lessee, 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.

When the Department receives a notice of claim for damages that may have been caused by Lessee in the performance of services required under this Agreement, the Department will immediately forward the claim to Lessee. Lessee and the Department will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of Lessee in the defense of the claim or to require that Lessee defend the Department in such claim as described in this section. The Department's failure to promptly notify Lessee of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Lessee. The Department and Lessee will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any.

Note: No longer required for local governments.

6. Insurance. Lessee at its expense, shall maintain at all times during the term of this Agreement, public liability insurance protecting the Department and Lessee against any and all claims for injury and damage to persons and property, and for the loss of life or property occurring in, on, or about the land arising out of the act, negligence, omission, nonfeasance, or malfeasance of Lessee, its employees, agents, contractors, customers, licensees, and invitees. Such insurance shall be carried in a minimum amount of not less than N/A (\$ 0.00) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than N/A (\$ 0.00) for property damage, or a combined coverage of not less than N/A (\$ 0.00). All such policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless the Department is given at least sixty (60) days prior written notice of such cancellation or modification. Lessee shall provide the Department certificates showing such insurance to be in place and showing the Department as additional named insured under the policies. If self-insured or under a risk management program, Lessee represents that such minimum coverage for liability will be provided for the property.

7. Termination

a. This Agreement may be terminated by either party without cause upon _____ (180) days prior written notice to the other party.

b. It is understood and agreed to by the Lessee that the Department reserves the right to terminate this Agreement immediately without prior notice, in the event the Lessee violates any of the conditions of this Agreement and such violation is not corrected within a reasonable time after written notice of noncompliance has been given. In the event the Agreement is terminated and the Department deems it necessary to request the removal of the facility on the property, the removal shall be accomplished by the Lessee in a manner prescribed by the Department at no cost to the Department or the FHWA.

c. The Lessee must notify the Department of its intention to renew this Agreement not later than thirty (30) days prior to the expiration of the original term. Lessee's failure to comply with the foregoing notice provision may result in the Department's refusal to renew the Agreement.

d. Upon termination of this Agreement, Lessee shall deliver the property to the Department, or its agents, in the condition existing at the commencement of this Agreement, normal wear and tear excepted, unless a facility, any improvement, or any part thereof has been constructed on the property.

e. If removal of the facility, improvements, or any part thereof is requested by the Department, any such structures shall be removed by the Lessee at Lessee's expense by midnight of the day of termination of this Agreement and the property restored as nearly as practicable.

f. This Agreement is terminable by the Department in the event that the facility ceases to be used for its intended purpose or is abandoned.

8. Eminent Domain

Lessee acknowledges and agrees that its relationship with the Department under this Agreement is one of landlord and tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Agreement. Termination of this Agreement for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Agreement, including any residual interest in the Agreement or any other facts or circumstances arising out of or in connection with this Agreement.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from Lessee's loss of occupancy of the property specified in this Agreement, or any such rights, claims, or damages flowing from adjacent properties owned or leased by Lessee as a result of Lessee's loss of occupancy of the property specified in this Agreement. Lessee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of Lessee's loss of occupancy of the property, when any or all adjacent properties owned or leased by Lessee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Agreement is still in existence on the date of taking or sale or has been terminated prior thereto.

9. Miscellaneous

a. The airspace and Lessee's rights under this Agreement shall not be transferred, assigned, or conveyed to another party without the prior written consent of the Department, subject to concurrence by the FHWA.

b. In conformance with the Civil Rights Act of 1964 (Title VI, Appendix "C") and 49 CFR Part 21, Lessee agrees as follows:

1. That as a part of the consideration hereof, Lessee does hereby covenant and agree as a covenant running with the land that (1) no person, on the ground of race, color, sex, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said property and facility; (2) that in connection with the construction of any improvements on said property and facility and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors; and (3) that the Lessee shall use the property and facility in compliance with all other requirements imposed pursuant to 15 CFR Part 8, Subpart A.

2. That in the event of breach of any of the above covenants, the Department shall have the right to terminate this Agreement and to re-enter and repossess said property and the facility thereon, and hold the same as if this Agreement had never been made or issued

c. During the term of this Agreement Lessee shall, at Lessee's own cost and expense, promptly observe and comply with all present or future laws, requirements, orders, directions, ordinances, and regulations of the United States of America, the State of Florida, county or local governments, or other lawful authority whatsoever, affecting the land, property, and facility or appurtenances or any part thereof, and of all insurance policies covering the property, land, and facility, or any part thereof.

d. In addition to or in lieu of the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

e. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

f. Lessee acknowledges that it has reviewed this Agreement, is familiar with its terms, and has had adequate opportunity to review this Agreement with legal counsel of Lessee's choosing. Lessee has entered into this Agreement freely and voluntarily. This Agreement contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and any previous owner of the property and landlord of Lessee are merged in this Agreement, which alone, fully and completely express the agreement between Lessee and the Department with respect to the subject matter hereof. No modification, waiver, or amendment of this Agreement or any of its conditions or provisions shall be binding upon the Department or Lessee unless in writing and signed by both parties.

g. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the property.

h. This Agreement shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

i. All notices to the Department shall be sent to the address for rent payments and all notices to Lessee shall be sent to the property address provided herein or otherwise provided in writing to the Department.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written

City of St. Petersburg

LESSEE (Company Name, if applicable)

By:

Rick Baker

Name: Rick Baker

Title: Mayor

Attest:

Eva A. Andujar (Seal)

Name: Eva A. Andujar

Title: City Clerk



STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By:

Donald J. Skelton

District Secretary

Name:

Donald J. Skelton, P. E.

Attest:

Donna McDonald

Name/Title:

Donna McDonald, Executive Secretary
Florida Department of Transportation

Legal Review:

Marvin D. Hernandez

District Counsel

Name:

Marvin D. Hernandez

ADDENDUM

This is an Addendum to that certain Airspace Agreement between the City of St. Petersburg, Florida and the State of Florida Department of Transportation dated the ____ day of _____, 2009. In addition to the provisions contained in said Agreement, the following terms and conditions shall be deemed to be part thereof pursuant to Paragraph 9(d) of said Agreement.

1. Paragraph 4.1, shall not be interpreted to prohibit Lessee from utilizing hazardous materials or substances normally used in the construction of the anticipated improvements in the airspace or in the ongoing use of the airspace and improvements, provided that Lessee shall be liable for any contamination caused by such usage.

2. The third sentence of Paragraph 4.1. is amended by adding the underlined words as follows:

Lessee shall be held responsible for the performance of and payment for any environmental remediation that may be necessary, as determined by the Department, for contamination resulting from Lessee's activities in the airspace.

3. Delete Paragraph 5 as not applicable to Lessee as a local government.

4. A. Paragraph 7. a. - add the following: Provided, however, that the Department shall not deliver any such written notice prior to two (2) years after completion of construction of the facility and improvements within the property described in Exhibit "A" ("Trail Overpass"), or November 30, 2011, whichever occurs first.

B. Paragraph 7.b. is deleted and replaced with the following:

b. It is understood and agreed to by the Lessee that the Department reserves the right to terminate this Agreement immediately without prior notice, in the event the Lessee violates any of the conditions of this Agreement and such violation is not corrected within a reasonable time after written notice of noncompliance has been given. In the event the Agreement is terminated and the Department deems it necessary to request the removal of the facility on the property, the removal shall be accomplished in accordance with Paragraph 7.e.

C. Paragraph 7.e. is deleted and replaced with the following:

e. If removal of the Trail Overpass, or any part thereof, is required by the Department, Pinellas County, as assignee of the City, shall not be responsible for any expenses of such removal. The City shall bear such costs of removal, unless prior to receiving notice from

the Department of termination of this Agreement pursuant to Paragraph 7.a., above, the City removes, or causes to be removed, the existing overpass, known as the Gibbs Overpass, located south of the property described in Exhibit "A". Such removal of the Gibbs Overpass, shall relieve the City of any responsibility for payment for removal of the Trail Overpass, and the Department will be responsible for removal of the Trail Overpass at its own expense.

5. A. The Department recognizes that the City must comply with Section 166 241, Florida Statutes, Article VII of the Florida Constitution and Section 2-132 of the City Code. This Agreement shall not be construed to modify, in any way, the City's obligations under the statute, constitution and ordinance.

B. The Department recognizes that Pinellas County must comply with Sections 129.07 and 129.08, Florida Statutes, and Article VII of the Florida Constitution. Nothing in this Agreement shall be construed to cause the County or the members of the Board of County Commissioners to violate the provisions of the referenced statutes and constitutional provision. In the event funds are not appropriated by the County in any succeeding fiscal year for the purposes described herein, then the County shall prohibit access to the leased premises from the public. The County may restore access upon providing the Department with written notification that funds have been appropriated for maintenance of the leased premises. The parties agree that the Department may, at its discretion, terminate the lease and remove the structure at its own expense if the County is unable to appropriate funds in any succeeding fiscal year to maintain the structure.

6. This Agreement is assignable by the City to Pinellas County upon transfer of the Project to the County by the City. Upon such assignment, the City shall be released from all further duties and obligations of this Agreement. Provided, however, that the City shall remain liable for any duties and obligations under Paragraph 4 of this Addendum and for any other liabilities under this Agreement that are incurred prior to the date of such assignment.

CITY OF ST. PETERSBURG

LESSEE

By: Rick Baker

Print: Rick Baker

As Its: Mayor

Attest:

Eva A. Andujar
Eva A. Andujar, City Clerk

STATE OF FLORIDA

DEPARTMENT OF TRANSPORTATION

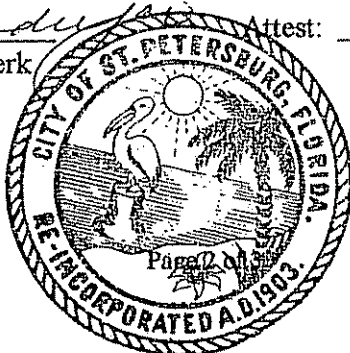
By: Donna McDonald

District Secretary

Donna McDonald, Executive Secretary
Florida Department of Transportation

Name: Donna McDonald

Attest:



Approved as to Content and Form: RBS

RBS
City Attorney (Designee)

By: RICHARD B. BADGLEY
Assistant City Attorney

Name/Title: Marta D. Hernandez

Legal Review: _____

District Counsel

Name: Marta D. Hernandez

Legal: 00107437.doc v. 9B

Assignment of Airspace Agreement

THIS ASSIGNMENT OF AIRSPACE AGREEMENT ("Assignment"), is made and entered into this ____ day of _____, 20__ by and among the City of St. Petersburg Florida, a municipal corporation, Pinellas County, a political subdivision of the State of Florida and the Florida Department of Transportation.

NOW THEREFORE, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and the promises and covenants contained herein, the City of St. Petersburg, Florida, as Assignor, hereby transfers and assigns to Pinellas County, as Assignee, all of Assignor's rights and interest in the Airspace Agreement between the Assignor and the Florida Department of Transportation dated _____, 2009, for a pedestrian overpass to provide safe passage of pedestrian and bicycle traffic over S.R.55 (U.S. 19, 34th Street South) ("Agreement"). A copy of the Agreement is attached hereto as Exhibit "A".

Assignor: City of St. Petersburg, Florida

By: Rick Baker

Rick Baker

As its: Mayor

Attest: Eva A. Andujar

Eva A. Andujar, City Clerk

Approved as to Content:

RBB

City Attorney (Designee)

By: RICHARD B. BADGLEY

Assistant City Attorney



Approved as to Form:

RBB

City Attorney (Designee)

By: RICHARD B. BADGLEY

Assistant City Attorney

Acceptance By Assignee

Pinellas County accepts the above assignment of the Agreement and agrees to perform all obligations to be performed by Assignor under the Agreement, according to the terms and conditions therein stated, and to release Assignor from all further duties and obligations of the Agreement, provided however, that such release shall not be effective for any liabilities under the Agreement that have been incurred prior to the date of this Assignment, and further provided that such release shall not be effective for any costs necessary for removal of improvements and structures required under Paragraph 7.e., it being understood among the Parties that the Assignor shall be solely liable for such costs, in accordance with the Agreement.

Assignee: Pinellas County

A political subdivision of the State of Florida

By: _____

Print: _____

_____, Chair, Board of County
Commissioners

Attest: _____

Clerk

Approved as to Form:

By: _____

County Attorney

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Consent By Department

The Florida Department of Transportation consents to this Assignment and agrees that the Assignor shall be released from all further duties and obligations of the Agreement, provided however, that such release shall not be effective for any liabilities under the Agreement that have been incurred prior to the date of this Assignment, and further provided that such release shall not be effective for any costs necessary for removal of improvements and structures required under Paragraph 7.e, it being understood among the Parties that the Assignor shall be solely liable for such costs, in accordance with the Agreement.

State of Florida

Department of Transportation

By: _____

Name: Donald J. Skelton, P.E.

Attest: _____

Name/ Title: _____

Legal Review: _____

District Counsel

Martin Hernandez

Legal: 00107371 doc V 3