

ATTACHMENT #1

**STATE OF FLORIDA
COUNTY OF ESCAMBIA**

**INTERLOCAL AGREEMENT BETWEEN ESCAMBIA COUNTY AND
THE CITY OF PENSACOLA RELATING TO THE WEST FLORIDA
PUBLIC LIBRARY SYSTEM**

THIS AGREEMENT is made this _____ day of _____, 2013, by and between the County of Escambia, a political subdivision of the State of Florida with an administrative address of P.O. Box 1591, Pensacola, Florida, 32597-1591, its successors and assigns (hereinafter, the "County"), acting through its Board of County Commissioners, and the City of Pensacola, a Florida municipal corporation created and existing under the laws of the State of Florida, with administrative offices at 222 West Main Street, Pensacola, Florida 32502 (hereinafter referred to as the "City").

WITNESSETH:

WHEREAS, the Parties, as local governmental units of the State of Florida, have legal authority to perform general government services within their respective jurisdictions; and

WHEREAS, the Parties are authorized by §§163.01, Florida Statutes, et seq., to enter into Interlocal Agreements and thereby cooperatively utilize their governmental powers and available resources in the most efficient manner possible; and

WHEREAS, the West Florida Public Library System provides library services to residents throughout the unincorporated areas of Escambia County and the corporate limits of the Town of Century and the City of Pensacola; and

WHEREAS, the County and City previously entered into an Interlocal Agreement, dated June 21, 2001, designating the City as the administrator of the Library System and establishing a joint funding mechanism whereby each contributed funds on a per capita basis pursuant to a specified funding formula; and

WHEREAS, the County previously enacted an Ordinance creating a Municipal Services Taxing Unit (MSTU) for the purpose of funding library services within the unincorporated areas of Escambia County; and

WHEREAS, the City has authorized the inclusion of the corporate limits of the City of Pensacola as part of the geographical area of the MSTU for the purpose of funding library services within the corporate limits of the City of Pensacola; and

WHEREAS, due to increasing budgetary constraints, the Parties recognize the most viable means to provide continued funding for the West Florida Library System is through a countywide MSTU assessment imposed for the purpose of funding library services; and

WHEREAS, the Parties recognize the most efficient and effective manner to provide continued operation of the West Florida Library System is to transfer all administrative and operational functions to the County; and

WHEREAS, the County is willing and able to administer and fund the West Florida Library System subject to the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and of the mutual benefits to flow each unto the other, and for other good and valuable consideration, the Parties agree as follows:

Section 1. Recitals. The recitals contained in the Preamble of this Agreement are declared to be true and correct and are incorporated into this Agreement.

Section 2. Purpose of Agreement.

Pursuant to §§163.01, Florida Statutes, et seq., this Agreement establishes the conditions, extent, and mechanism whereby the County will provide library services, within Escambia County and the corporate limits of the Town of Century and the City of Pensacola.

Section 3. Term of Agreement.

This Agreement shall commence on October 1, 2013, and remain in full force and effect until terminated as provided herein.

Section 4. Responsibilities of the Parties.

4.1 **Funding.** Effective October 1, 2013, all funding for the Library System shall be allocated by the County on an annual basis in an amount equal to that which is collected from the countywide MSTU assessment for library services. The County shall reserve the right to retain up to 5% of said funding as reimbursement for administrative costs incurred as a result of the Agreement.

Within one hundred and fifty (150) days from September 30, 2013, the City shall transfer to County all remaining funds reserved in the West Florida Library Fund and applicable grant funding from the State Aid to Libraries Grant Program. Said transfer of funding shall not be less than the total value of the accrued leave liability for employees of the library system as of September 30, 2013, provided that no employee shall be credited with a leave balance in excess of four hundred (400) hours upon transfer of funding and transfer of employment from the City to the County.

4.2 Operational Expenses. Effective October 1, 2013, the County shall be responsible for payment of all Operational Expenses and such other services provided pursuant to this agreement as approved in the Annual Budget adopted by the Escambia County Board of County Commissioners. For the purpose of this agreement, "Operational Expenses" shall include all employee wages and forms of compensation for library personnel; applicable insurance costs; utilities; rents and leases; office supplies; and any other charges, costs or expenses incident to the operation of the library system.

4.3 Assets. The use of all Library System physical assets shall be granted to the County at no cost or expense to the County, including, but not limited to, any real property, structures and appurtenances, and tangible personal property on Library System premises. The ownership of all tangible personal property, including all library materials, shall also be granted to the County at no cost or expense to the County. Individual lease agreements describing the leased premises and the terms and conditions of the lease will be executed for each City owned building in the Library System with an effective date to correspond to this agreement. The continued use of third party owned Library System facilities shall be contingent upon the City maintaining suitable lease agreements with the third party property owners.

4.4 Asset Use. Any buildings or other personal property acquired by the County as part of the Library System physical assets shall be used exclusively in perpetuity for the Library System. If, for any reason, any building or property utilized as part of the Library System is no longer utilized by the County as a public library facility or in the event this agreement is terminated pursuant to this agreement then such building or property shall be returned to the original owner.

4.5 Personnel. Effective October 1, 2013, all current Library System employees without any prior unsatisfactory performance evaluations or record of disciplinary action shall be transferred to the County at the same rate of compensation. All Library System employees hired after the effective date of this Agreement shall be County employees. As County employees, all Library System personnel shall be eligible for Escambia County employee benefits. The County shall not be responsible for providing employee benefits in excess of any benefits currently provided to eligible County employees. All part time Library System personnel shall be eligible for Escambia County part time employee benefits.

4.6 Director. Effective October 1, 2013, the County shall employ a Director with demonstrated experience in library operations who shall be known as the Director of the West Florida Public Library System. The Director shall be an employee of the County and be responsible for the administration and supervision of all branch libraries and personnel. The Director shall carry out policy as established by the West Florida Public Library Board of Governance under the direction of the County Administrator.

4.7 Library System Branches. The following facilities shall comprise the Library System:

City owned facilities-

Downtown Library located at 239 North Spring Street
Tryon Branch located at 1200 Langley Avenue
Legion Field Neighborhood Resource Center at 1301 West Gregory Street

Third party owned facilities-

Westside Branch located at 1580 West Cervantes Street
West Florida Genealogy Library located at 5740 North 9th Avenue

County owned facilities-

Southwest Branch located at 12248 Gulf Beach Highway
Century Branch located at 7991 North Century Boulevard
Molino Branch located at 6450 Highway 95-A North

Additional branches may be included as part of the Library System at the County's discretion. Any discontinuance in the operation and funding of any of the library system's facilities or consolidation of library system assets into remaining library system facilities must be approved by the West Florida Public Library Board of Governance.

The County shall assume the operation of the Westside Branch facility located at 1580 West Cervantes Street and the West Florida Genealogy Branch facility located at 5740 North 9th Avenue contingent upon the City maintaining suitable lease agreements with the respective third party property owners. The lease fees shall be reimbursed by the County from the MSTU.

4.8 Information Technology. Effective October 1, 2013, the County shall be responsible for information distribution technologies for all Library System facilities, including, but not limited to, support and management of computer hardware, software, electronics, semiconductors, internet, telecom equipment, and other network components.

4.9 Capital Improvements. The County shall not be responsible for capital improvements for City owned Library System facilities.

For the purpose of this Agreement, "Capital Improvements" shall mean all equipment, machinery, appurtenances, improvements, alterations, systems, including but not limited to, plumbing, electrical, wiring and conduits, heating and air conditioning systems, and items of identical or similar nature and character, having a purchase price of greater than five thousand dollars (\$5,000.00), and a life expectancy of greater than five (5) years.

4.10 Facilities Maintenance. Effective October 1, 2013, except as otherwise noted herein, the County shall be responsible for general maintenance for all Library System facilities, including, but not limited to, custodial maintenance, equipment

maintenance, security and security systems, digital direct control monitoring and life safety services inspection, pest control, chemical treatment, waste disposal, and grounds keeping.

For the purpose of this Agreement, "General Maintenance" shall mean the repair and replacement of parts, servicing, adjustment and rehabilitation of parts and components associated with the routine upkeep and cleaning of Library System facilities which is reasonably necessary to maintain a high level of service and which is aesthetically pleasing and consistent with prudent industrial practice, product specifications and design, manufacturer's recommendations, and promotion activities. The provision of general maintenance shall not include any capital improvements.

The City shall be responsible for providing grounds keeping at the Tryon Branch located at 1200 Langley Avenue for which County shall reimburse the City for related costs on a monthly basis in an amount not to exceed \$850.00 per month.

4.11 Accounting.

The County shall keep a separate accounting of MSTU funds and keep records and accounts of its financial affairs relating to the operation and management of the Library System which shall be available for examination by the City. Upon request, the County shall produce all documents required by such auditors detailing the expenditure of MSTU monies; and furnish, if issued, and requested by the City, a copy of any audit report of the Library System prepared by an independent certified public accountant licensed and in good standing in the State of Florida or such other financial examination report as may be issued.

4.12 Insurance.

During the term of this Agreement, the County shall be responsible for maintaining liability insurance coverage for the defense and satisfaction of claims for all Library System facilities as it relates to liability incurred in connection with, or arising out of, any negligence due to an occurrence caused by County, its officials, employees, authorized agents, and authorized representatives with regard to the performance of this agreement. The County is a qualified self-insurer pursuant to Florida Statutes for general liability and has established a self-insurance fund in lieu of purchasing liability insurance. Said self-insurance fund shall provide liability coverage, to the extent permitted by law, for claims arising out of such negligence up to the limits of sovereign immunity as provided for by Florida Statutes applicable to the County. The County shall also be responsible for the defense and satisfaction of all claims under federal or state laws which are not limited by Florida sovereign immunity.

For all City owned Library branch facilities, the City shall procure and maintain property insurance (which may be self-insured at the sole discretion of the City) with extended coverage for the full replacement value of all buildings, permanent improvements and fixtures.

In the case of fire, casualty or natural disaster, the City agrees to be responsible for the repair or replacement of such buildings, permanent improvements and fixtures not to exceed the extent of applicable insurance proceeds plus the deductible amount.

In the event that the City owned Library Branch facilities shall be damaged by fire, casualty or natural disaster and such damage renders the building totally destroyed or substantially untenable, the City reserves the right in its sole discretion to repair the building or terminate the executed building lease. For the purposes of this paragraph the term "totally destroyed" shall mean that the total aggregate cost to repair or replace the damage to the building exceeds fifty percent (50%) of the "actual cash value" of the building at the time of the casualty event.

For all City owned and leased Library Branch facilities and the Main Library located within the city limits, the County shall procure and maintain property insurance with extended coverage for the full replacement value of all personal property, including all library materials. The County agrees to be responsible for the repair or replacement of all personal property, including library materials, necessitated as a result of a disaster.

Section 5. The West Florida Public Library Board of Governance.

The West Florida Public Library Board of Governance (hereinafter "Board of Governance") shall establish policy of the West Florida Public Library System and make recommendations to the Escambia County Board of County Commissioners regarding the annual budget.

Section 6. Termination.

This Agreement may be terminated by any party at any time and for any reason no later than March 31st effective for the subsequent Fiscal Year; provided, however, that termination shall not affect the reimbursement of any costs then owing to the County by the City, or which subsequently are owed to the County by the City or owed to the City by the County as a result of enforcement actions concluded following the effective date of termination.

Section 7. Liability.

- (a) The parties hereto, their respective elected officials, officers, and employees shall not be deemed to assume any liability for the acts, omissions, or negligence of the other party. The City of Pensacola, as a local governmental body of the State of Florida as defined in §768.28, Florida Statutes, agrees to be fully responsible for its negligent acts or omissions or tortious acts which result in claims or suits against the County and agrees to be fully liable for any damages proximately caused

by said acts or omissions. Escambia County, as a subdivision of the State of Florida as defined in §768.28, Florida Statutes, agrees to be fully responsible for its negligent acts or omissions or tortious acts which results in claims or suits against the City and agrees to be fully liable for any damages caused by said acts or omissions. Nothing herein is intended to serve as a waiver of sovereign immunity by the City or the County and nothing herein shall be construed as consent by the City or the County to be sued by third parties in any matter arising out of this Agreement.

- (b) Each party is responsible for maintaining, in a form acceptable to the parties, all necessary records of personnel and equipment used under this Agreement for a period of five (5) years and each party's records shall be subject to audit after reasonable notice.

Section 8. Records.

The parties acknowledge that this Agreement and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes, as amended. In the event a party fails to abide by the provision of Chapter 119, Florida Statutes, the other party may, without prejudice to any right or remedy and after giving that party, seven (7) days written notice, during which period the party fails to allow access to such documents, terminate this Agreement.

Section 9. Assignment.

The Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the Parties, without the prior written consent of the other party.

Section 10. Headings.

Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

Section 11. Survival.

All other provisions, which by their inherent character, sense, and context are intended to survive termination of this Agreement, shall survive the termination of this Agreement.

Section 12. Interpretation.

- (a) For the purpose of this Agreement, the singular includes the plural and the plural shall include the singular. References to statutes or regulations shall include all statutory or regulatory provisions consolidating, amending, or replacing the statutes or regulations referred to. Words not otherwise defined that have well-known technical or industry meanings, are used in accordance with such recognized meanings.
- (b) References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities. This Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all of the terms and provision hereof.

Section 13. Severability.

The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

Section 14. Further Documents.

The parties shall execute and deliver all documents and perform further actions that may be reasonably necessary to effectuate the provision of this Agreement.

Section 15. Notices.

All notices required to be given under this Agreement shall be in writing, and shall be sent by first class United States mail, unless some other form of notice is established by the County Administrator, to the respective parties as follows:

<u>County</u>	<u>City</u>
County Administrator	City Administrator
Escambia County	City of Pensacola
Post Office Box 1591	Post Office Box 12910
Pensacola, Florida 32591	Pensacola, FL 32521

Section 16. Prior Agreements Superseded.

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or

understandings concerning the subject matter of this Agreement, that are not contained in this document. Accordingly, no deviations from the terms and conditions hereof shall be predicated upon any prior representations or agreements, whether oral or written.

It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

Section 17. Governing Law.

The Agreement shall be interpreted under and its performance governed by the laws of the State of Florida. The parties agree that any action relating to this Agreement shall be instituted and prosecuted in the courts of Escambia County, Florida, and therefore, each party to this Agreement hereby waives the right to any change of venue.

Section 18. No Waiver.

The failure of either party to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

Section 19. Effective Date.

This Agreement, after being properly executed by all parties named herein, shall become effective upon its filing with the Clerk of the Circuit Court of Escambia County, Florida. Escambia County shall be responsible for filing this document upon receipt of the executed Agreement from the City of Pensacola.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates under each signature: Escambia County, Florida through its Board of County Commissioners, signing by and through its duly authorized Chairman and the City of Pensacola, signing by and through its Mayor.

COUNTY:

Escambia County, Florida Board of County Commissioners, a political subdivision of the State of Florida acting through its duly authorized Board of County Commissioners signing by and through its Chairman.

By: _____
Gene M. Valentino, Chairman

Date: _____

**ATTEST: Pam Childers
Clerk of the Circuit Court**

By: _____
Deputy Clerk

(Seal)

**THE CITY OF PENSACOLA,
A FLORIDA MUNICIPAL CORPORATION**

By: _____
Ashton J. Hayward III, Mayor

ATTEST:

By: _____
City Clerk

(Seal)

Legal in form and valid as drawn:

James M. Messer, City Attorney