

EXHIBIT B

CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 9/7/10

Contract/Lease Control #: C10-1817-BCC

Bid #: N/A

Contract/Lease Type: MOU

Award To/Lessee: CITY OF DESTIN

Lessor/Owner: OKALOOSA COUNTY

Effective Date: 8/17/2010

Expiration Date: INDEFINITE

Description of Contract/Lease: EMERGENCY BEACH RESTORATION & MGMT

Department Manager: BCC

Department Monitor: J. CURYY

Monitor's Telephone #: 651-7515

Monitor's FAX # OR E-Mail: JCURRY@CO.OKALOOSA.FL.US

Date Closed: _____

Cc: Finance Dept Contracts & Grants Division

**MEMORANDUM OF UNDERSTANDING FOR EMERGENCY BEACH
RESTORATION AND MANAGEMENT**

WHEREAS, the City of Destin ("City") and Okaloosa County ("County") each have political jurisdiction over a portion of the beaches and dunes which front the Gulf of Mexico within the geographical boundaries of Okaloosa County in an area known as Holiday Isle and recognize their responsibility to protect and preserve these beaches and dunes; and

WHEREAS, the City and the County have already entered into an Interlocal Agreement relating to the establishment of a county wide beach restoration plan and designating the Okaloosa County Tourist Development Council as lead agency in carrying out this process in Okaloosa County, and

WHEREAS, the State of Florida Department of Environmental Protection ("FDEP") has issued an Emergency Final Order authorizing repairs and restoration of certain areas of Holiday Isle as made necessary by Tropical Storm Ida ("Emergency Order"); and

WHEREAS, the FDEP and USCOE have issued permits ("Emergency Permits") authorizing restoration of beaches between R-17 and R-20 on Holiday Isle ("Project Area") and the City and County are prepared to move forward with the execution of a construction contract with Weeks Marine Construction ("Project Construction Contract") and completion of the restoration project; and

WHEREAS, the parties have agreed, for this single effort, to the designation of the City as the lead body in relation to the management of the emergency restoration project through the adoption of this Memorandum of Understanding ("MOU").

THEREFORE, Okaloosa County and the City of Destin hereby designate the City of Destin ("City") as the lead body in relation to the restoration efforts under the Emergency Permits subject to the following terms and conditions:

**SECTION I.
AUTHORITY**

This MOU implements the terms of the existing Interlocal Agreement between the parties relating to the authorization for the implementation of a county-wide beach management plan dated Oct. 12, 2006.

**SECTION II.
PARTIES**

The parties to this MOU are the County and the City.

**CONTRACT # C10-1817-BCC
CITY OF DESTIN
EMERGENCY BEACH RESTORATION & MGMT
EXPIRES: INDEFINITE**

Instr # 2655342 BK: 2950 PG:1324, Page 1 of 5
Recorded 09/01/2010 at 09:46 AM.
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SECTION III.
FINDINGS

The recitals set forth above are hereby approved and incorporated herein.

SECTION IV
DESIGNATION OF THE CITY

The City will execute an overall plan for the emergency restoration of the Project Area pursuant to the conditions for said emergency actions provided in the Emergency Permits and the conditions of the Project Construction Contract.

SECTION V
SCOPE OF AUTHORITY FOR THE CITY

The City's responsibilities are to secure funding from HIOA, negotiate the terms of the Project Construction Contract and other contracts necessary to complete the emergency work and completing the work, including monitoring, as required in the Emergency Permits. Beyond funding its portion of the project as described below, the County will not be a party to the Project Construction Contract.

SECTION VI.
FUNDING FOR PROJECT

The County and the City agree that the construction project shall be funded such that each party shall be responsible for a portion of the total Project Costs as described below and that certain Holiday Isle condominium owners associations ("HIOA") will provide the funds for the remaining balance of the Project Costs.

1. The County will take all necessary and prudent actions to ensure that it secures a source of funds up to a maximum of Three Hundred Fifty Thousand Dollars (\$ 350,000.00), so that these funds are available when required from the City under the terms of the Project Construction Contract. The County will, upon presentation of requests for payment from the City, disburse those funds to the City for the payment of its proportionate share of the Project construction costs.
2. The City will take all necessary steps and actions to ensure that it secures a source of funds up to a maximum of Two Hundred Thousand (\$200,000.00) so that these funds are available when required under the terms of the Project Construction Contract. The City has already expended a portion of this fund on design and permitting costs required for the Emergency Permits.
3. The County and City both understand and agree that the HIOA funds required to cover the balance of the negotiated construction costs for the Project will be deposited into a separate City bank account prior to the execution of the

Project Construction Contract, so that these funds are available when required from the City under the terms of that contract. Should construction costs exceed the amount specified in the Project Construction Contract for any reason, the City and County understand that HIOA is responsible for depositing additional funds in escrow as necessary to fund such increased costs as soon as feasible after the increased cost is established by the City and the contractor.

SECTION VII.
RECORDS AND REPORTING

For the Project, the City shall maintain books, records, documents, and other evidence according to generally accepted governmental accounting principles, procedures, and practices which sufficiently and properly reflect all costs and expenditures of any nature, incurred by the City in connection with the Project or otherwise paid or to be paid from either incremental revenues or the proceeds of increment obligations, and said books, records, documents and other instruments shall be retained by the City for a period of three full years after termination of this Agreement. However, notwithstanding the above, construction records, documents, and reports shall be retained by the City for a period of three (3) full years after completion of the Project; and

SECTION VIII.
REPRESENTATIONS AND WARRANTIES

A. The County does hereby represent and warrant to the other parties hereto that it has all requisite power, authority, and authorization to enter into this Agreement, has taken all necessary actions required to enter into this Agreement, and to fulfill any and all of its obligations, duties, and responsibilities provided for or required of it by this Agreement, whether exercised individually or collectively.

B. The City does hereby represent and warrant to the other parties hereto that it has all requisite power, authority, and authorization to enter into this Agreement, has taken all necessary actions required to enter into this Agreement, make any payment contemplated hereby, and to fulfill any and all of its obligations, duties, and responsibilities provided for or required of it by this Agreement, whether exercised individually or collectively.

SECTION IX.
AMENDMENTS

Neither this Agreement nor any portion of it may be modified or waived orally. The provisions hereof may be amended or waived only pursuant to an instrument in writing, executed by both parties hereto.

SECTION X.
CONTROLLING LAW

The laws of the State of Florida shall govern any and all provisions of this Agreement and any proceeding seeking to enforce or challenge any provision of this Agreement. Venue for any proceeding pertaining to this Agreement shall be exclusively in Okaloosa County.

SECTION XI.
NOTICE

If written notice to a party is required under this Agreement, such notice shall be given by hand delivery, recognized overnight delivery service, or by first class mail, registered and return receipt requested as follows:

To the County:

James Curry
County Administrator
1804 Lewis Turner Blvd.
Suite 400
Fort Walton Beach, FL 32547

To the City:

Gregory A. Kisela
City Manager
City of Destin
4200 Indian Bayou Trail
Destin, FL 32541

SECTION XII
NO MEMBER LIABILITY

Neither the members of the governing body of the County, or the City, nor any official executing this Agreement, shall be liable personally or shall be subject to any accountability for reason of the execution by the County or the City or any executing authority of the County or the City for any act pertaining thereto. The City will ensure that the Project Construction Contract includes a requirement that both the City and the County are included as additional insureds on the contractors general commercial liability policy required under the contract terms.

SECTION XIII.
FORCE MAJEURE

A party's timely performance of its obligations under this Agreement, only to the extent it is specifically affected thereby, shall be suspended, without the incurring of any financial liability, when and only for as long as performance of such obligations is prevented by reasons of any of the following cases: (i) acts of God, including without limitation severe

weather events, (ii) operation of law, and (iii) any other event beyond the reasonable control of the party whose performance is affected, to the extent not caused by such party's willful or negligent acts or omissions, except in those cases where the party could have reasonably foreseen and reasonably avoided the occurrence. The party affected by any such event shall give written notice thereof to the other party as soon as practicable after it becomes aware of such an event and, to the extent practicable, shall specify the anticipated length of the delay. The affected party shall use reasonable efforts to minimize the impact of that delay on that party's performance. Neither party shall be liable to the other for damages caused by such events. This provision shall not apply to obligations to make payments under Paragraph VI of this Agreement.

SECTION XIV.
SOVEREIGN IMMUNITY

The County and the City further agree that nothing contained herein is intended to nor shall be construed a waiver of the County or City's rights and immunities under the common law or Section 768.28, Florida Statutes, as amended from time to time.

SECTION XV.
CONSTRUCTION

The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto, by and through the undersigned, have entered into this Interlocal Agreement on the date and year first above written.

OKALOOSA COUNTY, FLORIDA

By: James D. Curry
James Curry, County Administrator

Dated: 8/18/10

CITY OF DESTIN, FLORIDA

By: Gregory A. Kisela
Gregory A. Kisela
City Manager

Dated: 8/16/10