

CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 01/28/2020

Contract/Lease Control #: C20-2910-IDD

Procurement#: NA

Contract/Lease Type: AGREEMENT

Award To/Lessee: DEPARTMENT OF THE ARMY

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 01/24/2020

Expiration Date: UNTIL PROJECT COMPLETION

Description of MAINTENANCE DREDGING OF EAST PASS CHANNEL

Department: IDD

Department Monitor: ADAMS

Monitor's Telephone #: 850-651-7131

Monitor's FAX # or E-mail: JADAMS@MYOKALOOSA.COM

Closed:

Cc: BCC RECORDS

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
OKALOOSA COUNTY BOARD OF COUNTY COMMISSIONERS
FOR MAINTENANCE DREDGING OF
EAST PASS CHANNEL

This MEMORANDUM OF AGREEMENT (hereinafter the "MOA") is entered into this 24th day of January, 2020, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for Mobile District (hereinafter the "District Commander"), and Okaloosa County Board of County Commissioners (hereinafter the "Contributor"), represented by its County Administrator.

WITNESSETH, THAT:

WHEREAS, the East Pass Federal Navigation Channel (hereinafter the "Project") was constructed pursuant to Section 301 of the River and Harbor Act of 1965, Public Law 89-298, as amended;

WHEREAS, the amount of Federal funds available for maintenance dredging of the Project is insufficient to award any dredging contracts;

WHEREAS, the Contributor considers it to be in its own interest to contribute funds voluntarily to be used by the Government in conjunction with the Federal funds available to perform maintenance dredging of the Project (hereinafter the "Maintenance Work"); and

WHEREAS, the Government is authorized pursuant to 33 U.S.C. 701h to receive and expend funds to be used for the Maintenance Work.

NOW, THEREFORE, the Government and Contributor agree as follows:

1. The Contributor shall provide to the Government funds to pay all costs associated with the Maintenance Work, including the costs of environmental compliance, supervision and administration, and engineering and design, in excess of the Federal funds available for such Maintenance Work. The current estimate of costs associated with the Maintenance Work is \$2,000,000 and \$1,500,000 of Federal funds are available; therefore, the estimate of funds to be provided by the Contributor is \$500,000. While the Government will endeavor to limit costs associated with the Maintenance Work under this MOA to the current estimate, the Contributor acknowledges that the actual costs for the Maintenance Work may exceed this estimated amount due to claims or other unforeseen circumstances and that the Contributor is responsible for all costs, including any claims, related to the Maintenance Work in excess of the Federal funds available for such Maintenance Work.

2. Within thirty (30) calendar days of execution of this MOA, the Contributor shall provide to the Government the sum of \$500,000, which is the current estimate of funds to be required from the Contributor. If at any time the Government determines that additional funds are needed, the Government shall notify the Contributor in writing of the amount, and no later than thirty (30) calendar days from receipt of such notice, the Contributor shall provide to the Government the full amount of the additional funds.

3. The Contributor shall provide the funds to the Government by delivering a check payable to "FAO, USAED K5 Mobile District" to the District Engineer or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

4. The Government shall not commence any Maintenance Work until all applicable environmental laws and regulations have been complied with, including, but not limited to, the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and Section 401 of the Clean Water Act (33 U.S.C. 1341).

5. The Government shall provide the Contributor with quarterly reports of obligations for the Maintenance Work. The first such report shall be provided within thirty (30) calendar days after the final day of the first full quarter of the Government fiscal year following receipt of funds pursuant to this MOA. Subsequent reports shall be provided within thirty (30) calendar days after the final day of each succeeding quarter until the Government concludes the Maintenance Work.

6. Upon conclusion of the Maintenance Work and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of such work and furnish the Contributor with written notice of the results of such final accounting. Such final accounting shall in no way limit the Contributor's responsibility to pay for costs associated with the Maintenance Work, including contract claims or any other liability that may become known after the final accounting. If the costs of the Maintenance Work exceed the sum of the Federal funds and the amount of funds provided by the Contributor, the Contributor shall provide the required additional funds within thirty (30) calendar days of such written notice by delivering a check payable to "FAO, USAED K5 Mobile District" to the District Engineer or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If the costs of the Maintenance Work are less than the sum of the Federal funds and the amount of funds provided by the Contributor, the Government shall refund the excess to the Contributor within thirty (30) calendar days of such written notice.

7. No credit or repayment is authorized, nor shall be provided, for any funds provided by the Contributor and obligated by the Government for the Maintenance Work.

8. Nothing herein shall constitute, represent, or imply any commitment to budget or appropriate funds for the Project in the future; and nothing herein shall represent, or give rise to, obligations of the United States.

9. The Contributor shall hold and save the Government free from all damages arising from the Maintenance Work, except for damages due to the fault or negligence of the Government or its contractors.

10. In the exercise of their respective rights and obligations under this MOA, the Government and the Contributor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

11. Notices.

a. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and either delivered personally or mailed by first-class, registered, or certified mail, as follows:

If to the Contributor:

John Hofstad
County Administrator
Okaloosa County
1250 N. Eglin Parkway
Shalimar, Florida 32579

If to the Government:

District Commander
U.S. Army Corps of Engineers, Mobile District
Attn: CESAM-PM-C
P.O. Box 2288
Mobile, Alabama 36628-0001


b. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph. Any notice, request, demand, or other communication made pursuant to this paragraph shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven (7) calendar days after it is mailed.

12. This MOA may be modified or amended only by written, mutual agreement of the parties.

IN WITNESS WHEREOF, the parties have executed this MOA as of the day, month, and year first above written.

THE DEPARTMENT OF THE ARMY

OKALOOSA COUNTY, FLORIDA

BY: 
SEBASTIEN P. JOLY
COLONEL, U.S. ARMY
DISTRICT COMMANDER

BY: 
JOHN HOFSTAD
COUNTY ADMINISTRATOR

DATE: 24 JAN 2020

DATE: 1/8/20

CERTIFICATE OF AUTHORITY

I, Lynn M. Hoshihara, do hereby certify that I am the principal legal officer of OKALOOSA COUNTY, FLORIDA, that the OKALOOSA COUNTY, FLORIDA is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the COUNTY ADMINISTRATOR, and that the persons who have executed this Agreement on behalf of the OKALOOSA COUNTY, FLORIDA have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 7th
day of JANUARY 2020.



Lynn M. Hoshihara
County Attorney

CERTIFICATION REGARDING LOBBYING


The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



John Hofstad
County Administrator of Okaloosa County

DATE: 11/2/00