

CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 07/28/2016

Contract/Lease Control #: C16-2425-WS

Bid #:

Contract/Lease Type: CONTRACT

Award To/Lessee: CITY OF FORT WALTON BEACH

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 07/21/2016

Term: INDEFINITE

Description of Contract/Lease: INTERLOCAL AGREEMENT WASTEWATER TREATMENT

Department: WS

Department Monitor: LITTRELL

Monitor's Telephone #: 850-651-7171

Monitor's FAX # or E-mail: JLITTRELL@CO.OKALOOSA.FL.US

Closed: _____

cc: Finance Department Contracts & Grants Office

Multijurisdictional Agreement between
Okaloosa County, Florida and
City of Fort Walton Beach, Florida

This Agreement is entered into this 21st day of July, 2016, by and between **Okaloosa County, Florida**, a political subdivision of the State of Florida (the "County"), whose mailing address is 1250 N. Eglin Parkway, Suite 100, Shalimar, Florida 32579 and the **City of Fort Walton Beach, Florida**, a municipal corporation organized under the laws of the State of Florida (the "City"), whose mailing address is 107 Miracle Strip Parkway SW, Fort Walton Beach, Florida 32548.

RECITALS

WHEREAS, the parties to this Agreement previously entered into a Wastewater Service Interlocal Agreement, executed on September 4, 2009, whereby the County agreed to provide wastewater treatment and reclaimed water for use within the City Service Area (the "Interlocal Agreement"); and

WHEREAS, pursuant to Section 16 of the Interlocal Agreement, the City agreed to require all entities discharging industrial wastes ("Industrial Users") that contribute to the waste flow to the County's Arbennie Pritchett Water Reclamation Facility ("APWRF") to pretreat industrial waste to the requirements of applicable City or County ordinances and standards, whichever is greater; and

WHEREAS, pursuant to 40 CFR Part 403 and Chapter 62-625, F.A.C., the County is required to implement and enforce a pretreatment program to control discharges from all industrial users of its wastewater treatment system, including those located in the City Service Area; and

WHEREAS, the parties desire to establish a uniform pretreatment program applicable to all industrial users of the APWRF; and

WHEREAS, the pretreatment of industrial waste is in the best interest of both the County and the City, as industrial wastewater can negatively impact the APWRF and the City's collection system.

NOW THEREFORE, in consideration of the foregoing and the mutual obligations set forth below, the parties, intending to be legally bound, agree as follows:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein as essential terms of this Agreement.

Section 2. Local Control Authority. Pursuant to APWRF's operating permit issued by the Florida Department of Environmental Protection ("FDEP"), the County shall be the local Control Authority for pretreatment standards, permitting, monitoring, and enforcement.

Section 3. City's Sewer Use Ordinance. The City agrees to adopt the County's established standards and regulations for the pretreatment of industrial waste and any amendments there to. Within 21 days of the date of this Agreement, the City will provide a draft of its proposed ordinance to the County for review and comment. The City shall adopt the County's established standards and regulations for the pretreatment of industrial waste within 45 days of receiving the County's comments. If the County

amends its established standards and regulations for the pretreatment of industrial waste, the City shall adopt such amendments following the same process as outlined in this Section.

Section 4. County Responsibilities. The County agrees to be responsible for implementing and enforcing its Pretreatment Program within the City's Service Area. Such responsibilities shall include:

- 1) Updating the industrial waste survey of all of the City's industrial users within the City's Service Area to determine if pretreatment of the industrial waste is required;
- 2) For those industrial users for which pretreatment of industrial waste is required, the County shall impose and collect pretreatment regulatory fees as contained in Appendix A of Okaloosa County Ordinance No. 14;
- 3) Issuing permits to all qualified industrial users required to obtain a permit;
- 4) Conducting inspections, sampling and analysis;
- 5) Enforcement action as outlined in the County's Enforcement Response Plan; and
- 6) Performing any other technical or administrative duties the parties deem appropriate.

Section 5. Emergency Measures. In the event any discharge 1) presents or may present an imminent danger to the health or welfare of individuals, 2) reasonably appears to threaten the environment, or 3) which threatens to cause interference, pass through, or sludge contamination, the City shall take necessary emergency measures to stop or prevent such discharge, including severing water and sewer services, upon receiving notice from the County. The City agrees not to reinstate water or sewer service to such a user until the City is notified by the County, in writing, that the user is in compliance with applicable standards and regulations and any outstanding fees and fines have been paid.

Section 6. New Industrial Users Outside the City Service Area. The parties agree that prior to any industrial user located outside the City service area discharges into the City's sewer system, the City and the County shall enter into an agreement with the appropriate governing entity where such industrial user is located.

Section 7. Compliance. The parties agree to periodically review and revise this Agreement to ensure continued compliance with the Federal Clean Water Act, 42 U.S.C. §1251 et seq. and 40 CFR Part 403.

Section 8. Effective Date and Term of Agreement. This Agreement shall be effective upon the execution by all parties and shall remain in effect until terminated by either party.

Section 9. Termination, Default and Dispute Resolution. This Agreement may only be terminated upon 90 days' written notice to the other party. In the event of a material breach of this Agreement, which is not cured within thirty (30) days following receipt of written notice of the default, then the non-breaching party may terminate this Agreement or institute litigation to protect their rights under this Agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs of such litigation. If the material breach cannot be cured within thirty (30) days, the period for remedy or cure shall be extended for a reasonable time provided the breaching party has made and continues to make a diligent effort to affect such a remedy or cure.

Section 10. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of the parties and no right or cause of action shall accrue to or for the benefit of any third party that is not a formal party hereto. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or give any person or corporation other than the parties any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions of it; and all of the provisions, covenants, and conditions herein contained shall inure to the sole benefit of and shall be binding upon the parties.

Section 11. Authority. Each party represents and warrants that it, through its elected board, has the right, power, and authority to execute and deliver this Agreement and to perform all of the obligations stated herein.

Section 12. Notice. Any notice or document required to be delivered under this Agreement shall be in writing and shall be deemed received by the other party at the earlier of the date actually received, or five (5) business days after the date deposited in a United States Postal Service depository, postage prepaid, registered or certified mail, addressed to the County or the City as the case may be, at the addresses set forth below:

As to the City:

City Manager
City of Fort Walton Beach
107 Miracle Strip Parkway SW
Fort Walton Beach, Florida 32548

As to the County:

County Administrator
Okaloosa County
1250 N. Eglin Parkway, Suite 102
Shalimar, Florida 32579

Section 13. Entire Agreement. This Agreement represents the entire understanding between the parties with respect to the undertakings covered hereunder and there are no oral or collateral agreements with respect thereto between the parties.

Section 14. Governing Law and Venue. The validity, construction and performance of this Agreement shall be governed by the laws of the State of Florida. Venue for any action arising out of this Agreement shall be in Okaloosa County, Florida.

Section 15. Construction. The parties acknowledge and agree that this Agreement has been drafted jointly by the parties and that no uncertainty or ambiguity as to the proper application or interpretation of the Agreement or any term herein is to be construed against either party as the drafter of the Agreement.

Section 16. Assignment. This Agreement shall not be assigned except by consent of the parties.

Section 17. Indemnification.

A) Subject to the limitations provided in section 768.28, Florida Statutes, and without otherwise waiving sovereign immunity, the City shall indemnify and hold harmless the County from and against any and all third party claims, demands, damages, losses, and expenses, including attorney's fees and costs, arising out of the County's participation in this Agreement, except for those claims, demands, damages, losses, and expenses arising out of the County's negligence, malfeasance, nonfeasance, or misfeasance.

B) Subject to the limitations provided in section 768.28, Florida Statutes, and without otherwise waiving sovereign immunity, the County shall indemnify and hold harmless the City from and against any and all third party claims, demands, damages, losses and expenses, including attorney's fees and costs, arising out of the City's participation in this Agreement, except for those claims, demands, damages, losses and expenses arising out of the City's negligence, malfeasance, nonfeasance, or misfeasance.

Section 18. Severability. If any portion of the Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party, is for any reason held or declared to be invalid or unenforceable, such determination shall not affect the remaining portions of this Agreement. If this Agreement or any portion of this Agreement is held or declared to be inapplicable to any person, property or circumstance, such determination shall not affect its applicability to any other person, property or circumstance.

Section 19. Conflicting Provisions. Any provision(s) of the Wastewater Service Interlocal Agreement, executed on September 4, 2009, in conflict with this Agreement are deemed repealed and the terms in this Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.



ATTEST:

Kim M Barnes
Kim Barnes, City Clerk

CITY OF FORT WALTON BEACH

By: Mike Anderson
Mike Anderson, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Raymond R. [Signature]
Attorney for City of Fort
Walton Beach

BOARD OF COUNTY COMMISSIONERS OF
OKALOOSA COUNTY, FLORIDA

ATTEST:

J. D. Peacock II
Okaloosa County, Clerk of Court
J. D. PEACOCK II
CLERK OF CIRCUIT COURT



By: Charles K. Windes, Jr.
Charles K. Windes, Jr., Chairman



APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

[Signature]
County Attorney