

CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 01/26/2024

Contract/Lease Control #: C24-3942-TDD

Procurement#: N/A

Contract/Lease Type: CONTRACT-AGREEMENT

Award To/Lessee: OKALOOSA COUNTY MUNICIPALITIES

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 03/01/2022

Expiration Date: 03/01/2042

Description of: FUNDING ALLOCATION OF OKALOOSA COUNTY TOURIST

DEVELOPMENT TAX REVENUES

Department: TDD

Department Monitor: ADAMS

Monitor's Telephone #: 850-651-7131

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

Closed: _____

CC: BCC RECORDS

**INTERLOCAL AGREEMENT BETWEEN OKALOOSA
COUNTY AND OKALOOSA COUNTY MUNICIPALITIES
FOR A FUNDING ALLOCATION OF OKALOOSA COUNTY
TOURIST DEVELOPMENT TAX REVENUES.**

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into this 8th day of September 2021, by and between **OKALOOSA COUNTY, FLORIDA**, a political subdivision of the State of Florida (the "County") and the municipalities of **CINCO BAYOU, CRESTVIEW, DESTIN, FORT WALTON BEACH, LAUREL HILL, MARY ESTHER, NICEVILLE, SHALIMAR, and VALPARAISO**, municipalities organized under the laws of the State of Florida (the "Municipalities") (collectively the County and Municipalities shall be referred to as the "Parties") for the annual distribution of Tourist Development Tax ("TDT"), as currently levied pursuant to section 125.0104, Florida Statutes, and as shall be levied if the Referendum set for October 5, 2021, is approved by the voters.

WHEREAS, the Parties agree that the TDT, as a whole, benefits the general public of Okaloosa County; and

WHEREAS, the City of Destin instituted a Chapter 164, Florida Statutes, Local Government Conflict Resolution process against the County related to the proposed expansion of the Tourist Development District; and

WHEREAS, the municipalities of Crestview, Fort Walton Beach and Mary Esther all passed resolutions to join in the conflict resolution process as primary conflicting governmental entities; and

WHEREAS, this Agreement reflects the terms and conditions of the resolution to the Chapter 164 conflict between the Parties.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

SECTION 1. AUTHORITY. This Agreement is entered into pursuant to the provisions of Chapter 163.01, Florida Statutes, and other applicable provisions of law. Upon execution, this Agreement shall be recorded in the Official Records of Okaloosa County.

SECTION 2. RECITALS. The above recitals are true and accurate and are incorporated herein as essential terms of this Agreement.

SECTION 3. PARTIES. The Parties to this Agreement are the County and the Municipalities, who execute this Agreement in accordance with its terms.

SECTION 4. TERM. This Agreement shall conditionally take effect once the County and at least one of the Municipalities executes this Agreement; as other Municipalities execute the

Agreement, they shall also become conditionally bound. The entirety of this Agreement is conditional on the voters approving the Referendum mentioned above. If the voters approve the Referendum, then the obligations contained herein shall be binding on the Parties who execute the Agreement for a term of twenty (20) years beginning on March 1, 2022, the defined start date of countywide TDT collection.

SECTION 5. RESOLUTION. The County agrees to earmark TDT revenues for the Municipalities as set forth under Section 6. In return for the County's funding commitment, each Municipality that executes this Agreement agrees to dismiss the Chapter 164 proceedings and shall further waive any legal or equitable claims that were raised, or which could have been raised resulting from the County's expansion of the Tourist Development District, including the Referendum and Ordinance.

SECTION 6. TDT FUNDING. The County agrees to monthly earmark 12.5% of TDT revenues collected for the Municipalities, except for any future levy of the "6th" penny High Tourism Impact Tax, for twenty (20) years subject to the following requirements:

- A. Use of the earmarked funds by the Municipalities shall be on a reimbursement basis and shall comply with the provisions of section 125.0104, Florida Statutes, County ordinance and the TDD Manual, and any amendments thereto, as determined by the County;
- B. Proposed uses of these funds shall be presented to the Tourist Development Council ("TDC") for a recommendation and the Board of County Commissioners for final approval;
- C. The Municipalities shall enter into a separate Interlocal Agreement, of which the County is not a party to, which details the annual percentage/amounts earmarked for each municipality. A copy of this Interlocal Agreement shall be provided to the County upon full execution and any time there is a change to the annual percentage/amounts earmarked for each municipality;
- D. These funds shall not be used by the Municipalities for public safety expenditures; and
- E. Each Municipality shall submit an expenditure plan by March 1 of each year for the upcoming fiscal year. The expenditure plans shall contain a list of proposed projects that the municipality proposes to be funded by TDT revenues and shall be updated annually. The expenditure plans shall be reviewed and processed in accordance with the Operational and Capital Funding Requests under the TDD Manual. Municipalities may submit multi-year plans for long-term projects or projects financed with bonds. If a project is financed with bonds, the Municipality shall maintain sole liability of the full faith and credit of the Municipality and be fully responsible for repayment of any debt obligations.

In no event shall the County be a party to such financing. The County shall not assume, directly or indirectly, any liability towards any municipality or any third party, for any debt obligations or other obligations that a municipality incurs as a result of pledging TDT revenues funded by this Agreement.

SECTION 7. RECORDS AND REPORTING.

A. The Parties agrees to 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 projects or services funded by allocated TDT revenues covered under this Agreement.

B. No entity shall assume any responsibility for the other entity's failure to respond, timely, or at all, to a public records request. A request upon one entity, shall not be deemed to be a request on any other entity.

C. The Municipalities agree to include, in all contracts for services related to the Project, the public records statement as required under section 119.0701, Florida Statutes.

SECTION 8. AUDIT. The County shall have the right from time to time at its sole expense to audit the compliance by any municipality with the terms and conditions of this Agreement and such right shall extend for a period of three (3) years after termination of this Agreement. The County shall have full access to all required and necessary documentation for inspection, review and audit purposes.

SECTION 9. REPRESENTATIONS AND WARRANTIES. Each Party hereby represents and warrants to all others 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.

SECTION 10. 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, approved by and jointly executed by the Parties hereto. This Agreement shall be enforced and be binding upon, and inure to the benefits of, the Parties hereto and their respective survivors and assigns, if any. This Agreement shall not be assigned without the permission of all Parties to the Agreement.

SECTION 11. DISPUTE RESOLUTION. The Parties shall attempt to resolve any dispute that arise under this Agreement in good faith by participating in mediation. The mediator shall be mutually agreed upon by the Parties and the cost of mediation shall be borne equally

between the Parties. In the event the matter is not resolved through the mediation process, each party shall be free to pursue any of its available remedies.

SECTION 12. JURY TRIAL WAIVER. IN THE EVENT THAT LITIGATION IS FILED BY ANY PARTY TO ENFORCE ANY TERMS OF THIS AGREEMENT, THEN ALL PARTIES AGREE THAT THEY HEREBY WAIVE ANY RIGHT TO A JURY TRIAL ON ANY ISSUES ARISING OUT OF THIS AGREEMENT.

SECTION 13. ATTORNEYS' FEES. If litigation is instituted seeking to enforce the terms of this Agreement, or in any way related to this Agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and costs incurred in the litigation, including fees and cost incurred in any resulting appeal, and any fees and costs incurred litigating entitlement to and the reasonableness of any attorney's fees and costs.

SECTION 14. SEVERABILITY. If any one or more of the provisions of this Agreement shall be held contrary to any express provision of law or contrary to any policy of express law, then the remainder of this Agreement shall remain in full force and effect.

SECTION 15. 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 16. 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 17. NO MEMBER LIABILITY. No members of the governing bodies of the Parties, nor anyone executing this Agreement, shall be liable personally or shall be subject to any accountability for reason of the execution by the Parties or any executing authority of the Parties for any act pertaining thereto.

SECTION 18. SOVEREIGN IMMUNITY. The Parties further agree that nothing contained herein is intended to nor shall be construed a waiver of the Parties' rights and immunities under the common law or section 768.28, Florida Statutes, as amended from time to time.

SECTION 19. 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 provisions of this Agreement.

SECTION 20. FORCE MAJEURE. If the County experiences a catastrophic event such as, but not limited to, acts of God, natural disaster, disease, epidemics, pandemics, war, terrorist acts, riots, or other causes beyond the control of the County, and a state of emergency is declared by the Board of County Commissioners, Governor or President, the 12.5% allocation to the Municipalities may be reduced or suspended as necessary to respond to such event. If the funding allocation is temporarily suspended, this Agreement shall be extended on a month-to-month basis for an equal number of months of any suspension. If the funding allocation is temporarily reduced, this Agreement shall be extended for the duration of time necessary to replace the amount of reduction in revenue. In the event there is a change in law restricting the use of TDT funds and/or TDT collections, the 12.5% allocation to the Municipalities shall be restricted as necessary.

SECTION 21. FILING. The Parties are hereby authorized and directed after approval, to file this Agreement with the Clerk of the Circuit Court of Okaloosa County, Florida, for recording in the public records of Okaloosa County, Florida as provided in Section 163.01 (11), Florida Statutes.

SECTION 22. WAIVER. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

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

**BOARD OF COUNTY COMMISSIONERS OF
OKALOOSA COUNTY, FLORIDA**

Carolyn N. Ketchel

Carolyn N. Ketchel, Chairman

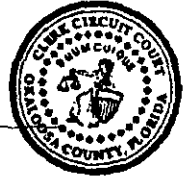


ATTEST:

J.D. Peacock II

Digitally signed by JD
Peacock II

Date: 2021.09.09
08:10:47 -05'00'



J.D. Peacock II, Clerk of Circuit Court

APPROVED AS TO FORM:

Lynn M. Hoshihara

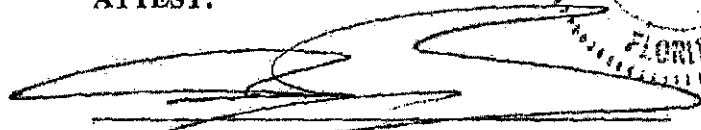
Lynn M. Hoshihara, County Attorney

CITY COUNCIL FOR THE CITY OF
DESTIN, FLORIDA



Gary Jarvis, Mayor

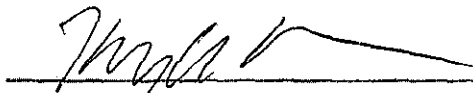
ATTEST:



Roy Bailey, City Clerk



APPROVED AS TO FORM:



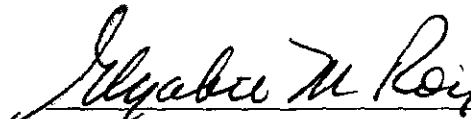
Kyle S. Bauman, City Attorney

CITY COUNCIL FOR THE CITY OF
CRESTVIEW, FLORIDA



JB Whitten, Mayor



ATTEST:


Elizabeth M. Roy, City Clerk

APPROVED AS TO FORM:


Jonathan Holloway, City Attorney

**CITY COUNCIL OF THE CITY OF
FORT WALTON BEACH, FLORIDA**

Dick Ryne

Dick Rynearson, Mayor



ATTEST:

Kim Barnes

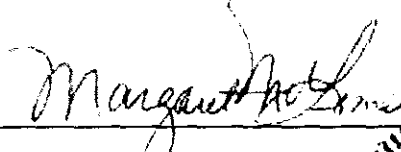
Kim Barnes, City Clerk

APPROVED AS TO FORM:

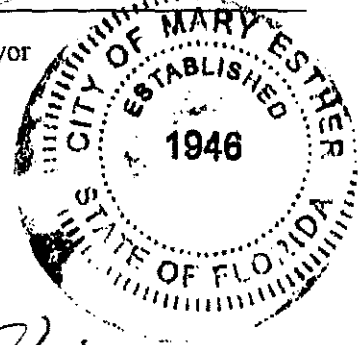
Hayward Dykes

Hayward Dykes, City Attorney

**CITY COUNCIL OF THE CITY OF
MARY ESTHER, FLORIDA**



Margaret McLemore, Mayor

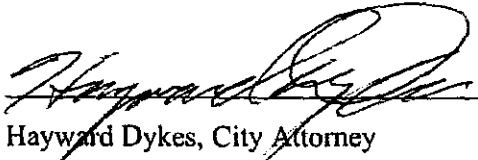


ATTEST:



Dana Williams, Clerk

APPROVED AS TO FORM:



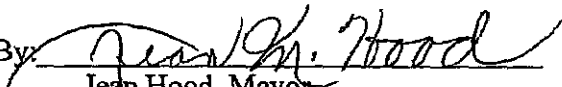
Hayward Dykes, City Attorney

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF CINCO BAYOU,
FLORIDA ON THIS 9th DAY OF SEPTEMBER 2021.**


THE TOWN OF CINCO BAYOU, FLORIDA

ATTEST:


By: 
Keith Williams, Town Manager/Clerk

By: 
Jean Hood, Mayor

**The form and legal sufficiency of
the foregoing have been reviewed
and approved by the Town
Attorney.**

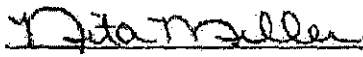

C. Jeffrey McInnis, Town Attorney

CITY COUNCIL OF THE CITY OF
LAUREL HILL, FLORIDA



Robby Adams, Mayor

ATTEST:



Nita Miller, City Clerk

APPROVED AS TO FORM:



Kyle S. Bauman, City Attorney

**CITY COUNCIL OF THE CITY OF
NICEVILLE, FLORIDA**



Daniel Henkel, Mayor

ATTEST:



Daniel Doucet, Clerk

APPROVED AS TO FORM:



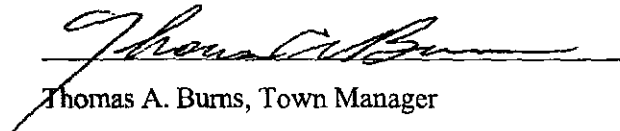
Dixie Dan Powell, City Attorney

**TOWN COMMISSION OF THE TOWN OF
SHALIMAR, FLORIDA**




Mark Franks, Mayor

ATTEST:



Thomas A. Burns, Town Manager

APPROVED AS TO FORM:



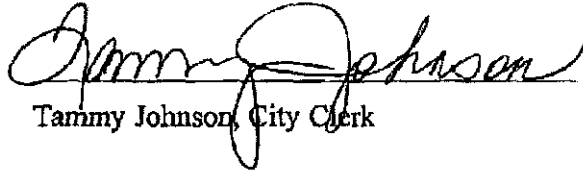
Michael Chesser, City Attorney

CITY COMMISSION OF THE CITY OF
VALPARAISO, FLORIDA



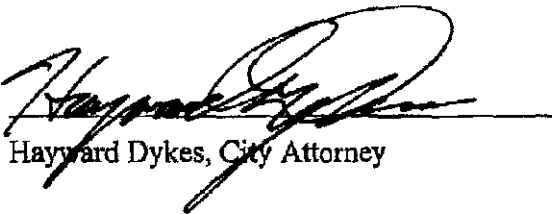
Hubert B. Smith, Mayor

ATTEST:



Tammy Johnson, City Clerk

APPROVED AS TO FORM:



Hayward Dykes, City Attorney