

EXHIBIT B

CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 10/10/2003

Contract/Lease Control #: C02-0785-PWI-72

Bid #: N/A Contract/Lease Type: AGREEMENT

Award To/Lessee: FL DEPARTMENT OF TRANSPORTATION

Lessor: _____

Effective Date: 12/12/2002 \$25,000.00

Term: INDEFINITE

Description of Contract/Lease: LANDSCAPE MAINTENANCE SR 20/MAGNOLIA PLANTATION

Department Manager: PUBLIC WORKS

Department Monitor: JAMES PUCKETT

Monitor's Telephone #: 689-5772

Monitor's FAX #: 689-5786

Date Closed: _____

CONTRACT: LANDSCAPE MAINTENANCE
SR 20 AT MAGNOLIA PLANTATION
CONTRACT NO.: C02-0785-PWI-72
FL DEPT OF TRANSPORTATION
EXPIRES: INDEFINITE

F.P.I.D. No. 411101-1-52-01

MAINTENANCE
HIGHWAY LANDSCAPING
MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this 12TH day of DECEMBER, 2002, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, a component agency of the State of Florida, hereinafter called the "DEPARTMENT" and the OKALOOSA COUNTY COMMISSION, a political subdivision of the State of Florida, existing under the Laws of Florida, hereinafter called the "COUNTY".

WITNESSETH

WHEREAS, as a part of the continual updating of the State of Florida Highway System, the Department, for the purpose of safety, protection of the investment and other reasons, has constructed and does maintain the highway facilities outlined in Exhibit "A" attached hereto and incorporated by reference herein, within the corporate limits of the COUNTY, and

WHEREAS, the COUNTY is of the opinion that said highway facilities that contain landscaped areas shall be maintained by periodic trimming.

WHEREAS, the parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party; and

WHEREAS, the COUNTY by Resolution No. 01-236 dated December 4, 2001, attached hereto and by this reference made a part hereof, desires to enter into this Agreement and authorized its officers to do so.

NOW THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. The COUNTY shall perform the following standards in a reasonable manner and with all due care:

The COUNTY hereby agrees to maintain the plantings, following the Department's landscape guidelines, safety and plant care. The COUNTY's responsibility for maintenance shall include all landscaped areas on Department of Transportation right-of-way within the limits of the project. Such maintenance to be provided by the COUNTY is specifically set out as follows:

To maintain, which means to properly prune all plants which includes (1) removing dead or diseased parts of plants, or (2) pruning such parts thereof which present a visual hazard for those using the roadway.

To maintain also means removing or replacing dead or diseased plants in their entirety.

~~To maintain also means to keep litter removed from the landscaped areas within the said project.~~ Plants shall be those items which would be scientifically classified as plants and include, but are not limited to, trees, ~~grass~~ or shrubs. ARR 12-04-01

The above named functions to be performed by the COUNTY, shall be subject to periodic inspections by the Department. Such inspection findings will be shared with the COUNTY and shall be the basis of all decisions regarding payment reduction, reworking or agreement termination.

2. If at any time after the COUNTY has assumed the maintenance responsibility above mentioned, it shall come to the attention of the Department's District Secretary that the limits of Exhibit "A" or a part thereof is not properly maintained pursuant to the terms of this Agreement, the District Secretary may at his option issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter in care of County Manager, to place said COUNTY on notice thereof. Thereafter, the COUNTY shall have a period of thirty (30) calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within the said period, the District Secretary may, at his option, suspend the COUNTY's right to receive payment for the project.

3. It is understood between the parties hereto that the LANDSCAPING covered by this Agreement may be removed, relocated or adjusted at any time in the future as determined to be necessary by the Department in order that the adjacent state road be widened, altered or otherwise changed to meet with future criteria or planning of the Department. The COUNTY shall be given sixty (60) calendar days notice to remove said LANDSCAPING after which time the Department may remove said LANDSCAPING.

4. This agreement may be terminated under any one of the following conditions:

- (a) By the Department, if the COUNTY fails to perform its duties under Paragraph 2, following ten (10) days written notice.
- (b) By the Department, for refusal by the COUNTY to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes and made or received by the COUNTY in conjunction with this agreement.
- (c) By either party following sixty (60) calendar days written notice.
- (d) By both parties, thirty (30) calendar days following the complete execution by both parties; of an agreement to terminate this Agreement.

5. The terms of this Agreement shall begin on the date of execution and continue until such time as the Agreement is terminated as provided for in Paragraph 4.

6. The COUNTY covenants and agrees that it will indemnify and hold harmless to the extent provided by Florida Statutes 768.28, DEPARTMENT and all of DEPARTMENT'S officers, agents and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, action neglect or omission by the COUNTY during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which DEPARTMENT or said parties may be subject, except that neither the COUNTY nor any of its sub-contractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of DEPARTMENT or any of its officers, agents or employees.

7. This writing embodies the entire Agreement and understanding between the parties hereto and there are no other Agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

8. The Department's District Secretary shall decide on all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution or fulfillment of the service hereunder and the character, quality, amount and value thereof; and his decision upon all claims, questions and disputes shall be final and conclusive upon the parties hereto.

9. This Agreement may not be assigned or transferred by the COUNTY, in whole or in part without consent of the Department.

10. Vendors providing goods and services to an agency should be aware of the following time frames. Upon receipt, an agency has five (5) working days to inspect and approve the goods and services unless the bid specifications, purchase order, or contract specifies otherwise. An agency has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

If a payment is not available within 40 days after receipt of the invoice and receipt, inspection and approval of goods and services, a separate interest penalty of 0.03333 percent per day will be due and payable, in addition to the invoice amount to the vendor. The interest penalty provision applies after a 35 day time period to health care providers, as defined by rule. Interest penalties of less than one (1) dollar will not be enforced unless the vendor requests payment. Invoices which have to be returned to a vendor because of vendor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the agency.

A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850-488-2924 or by calling the State Comptroller's Hotline, 1-800-848-3792.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail.

EXHIBIT "A"

LOCATION

Southside of SR 20, Section 57040, from Magnolia Bay Plantation Entrance (M.P. 17.546) Station 494 + 32, East along Southside of SR 20 adjacent to Magnolia Bay Plantation Subdivision. Maintenance shall be for the depth of the landscaping areas only (15').

RESOLUTION NO. 01-236

WHEREAS, the Florida Department of Transportation is in the last stages of constructing the four-laning of Highway 20 in the Bluewater Bay community; and

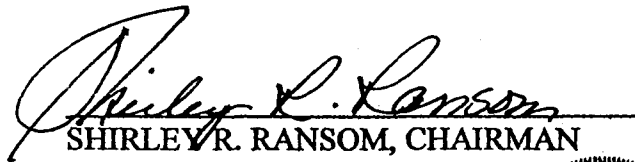
WHEREAS, the Florida Department of Transportation has agreed to providing funding for the landscaping of areas beginning at the Magnolia Plantation Subdivision and continuing east to Range Road; and

WHEREAS, the Florida Department of Transportation requires maintenance of the landscaped areas by Okaloosa County. To maintain means to prune plants which present a visual hazard for those using the roadway or to remove dead or diseased parts of plants.

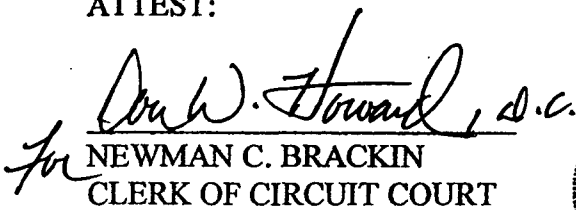
THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF OKALOOSA COUNTY, FLORIDA THAT: The county agrees to periodic trimming or pruning of the plants, removing or replacing dead or diseased plants. Plants shall be classified as trees or shrubs.

PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF OKALOOSA COUNTY THIS 4TH DAY OF DECEMBER, 2001.

BOARD OF COMMISSIONERS
OKALOOSA COUNTY, FLORIDA


SHIRLEY R. RANSOM, CHAIRMAN

ATTEST:


NEWMAN C. BRACKIN
CLERK OF CIRCUIT COURT

