

LEE COUNTY ORDINANCE NO. 23-21

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, AMENDING ORDINANCE 18-22, AS AMENDED BY ORDINANCE 22-06, RELATING TO THE PROCUREMENT OF GOODS AND SERVICES; INCREASING SOLICITATION THRESHOLDS IN ACCORDANCE WITH FEDERAL STANDARDS; PROVIDING FOR RATIFICATION OF EMERGENCY PURCHASES; CLARIFYING EXEMPTIONS; PROVIDING FOR SOLICITATION OF REVENUE GENERATING CONTRACTS; AMENDING EXHIBIT 1 FEDERAL PROCUREMENT STANDARDS IN ACCORDANCE WITH FEDERAL LAW; PROVIDING FOR CONFLICTS OF LAW; SEVERABILITY; CODIFICATION AND SCRIVENER'S ERRORS; PROVIDING FOR MODIFICATION THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners (the "Board") is the governing body in and for Lee County, a political subdivision and Charter County of the State of Florida ("County"); and

WHEREAS, the Board is authorized pursuant to Chapter 125, Florida Statutes, to enact Ordinances necessary in the exercise of its powers; and

WHEREAS, the Board adopted Ordinance No. 18-22 on September 18, 2018, establishing the County Procurement Ordinance and rescinding certain prior Lee County Ordinances and Administrative Codes related to the procurement of goods and services; and,

WHEREAS, the Board adopted Ordinance No. 22-06 on March 1<sup>st</sup>, 2022, amending the County Procurement Ordinance, enhancing the County's Local Vendor Preference provisions and rescinding certain prior Lee County Ordinances related to Local Vendor Preference; and,

WHEREAS, the Board has directed staff to update the County Procurement Ordinance in order to amend the Procurement Method/Approval Thresholds and clarify provisions related to revenue generating contracts; and

WHEREAS, the Board has determined that it is in the County's best interests to amend and restate the County Procurement Ordinance as follows.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA THAT:

**SECTION ONE: AMENDED COUNTY PROCUREMENT ORDINANCE**

Upon adoption of this Ordinance, Lee County Ordinance 18-22, as amended by Ordinance 22-06, is hereby amended as follows with strikethrough identifying deleted text and underline identifying new text:

## SECTION 1. DEFINITIONS

*[Addendum thru Informal Procurement remain unchanged]*

**Invitation to Bid (ITB).** A written Solicitation used for Competitive Procurement of Commodities, or Services or Construction when Specifications are available and the selection will be based upon the lowest Responsive Bid submitted by a Responsible Vendor.

**Invitation to Negotiate.** A written Solicitation used for the Competitive Procurement of Commodities, or Services or Construction when the County is seeking to select one or more Businesses with which to commence negotiations.

*[Lease thru Quotation remain unchanged]*

**Ratification.** A formal notification to the Board of County Commissioners of expenses already incurred and/or paid during and/or as a result of an Emergency.

*[Remainder of Section is unchanged]*

## SECTION 2. PURPOSE AND ETHICS.

*[Section 2 remains unchanged]*

## SECTION 3. GENERAL GUIDELINES.

### 3.1. Procurement Solicitation Thresholds.

Unless otherwise authorized in this Ordinance, all Purchases for Commodities and Services, when the estimated cost thereof reaches or exceeds ~~one hundred thousand dollars (\$100,000.00)~~ two hundred fifty thousand dollars (\$250,000), shall be purchased through Competitive Procurement in the manners specified herein or as required by local, state or federal guidelines. All Purchases of ~~\$99,999.99~~ \$249,999.99 or less, except as noted in the table below, shall ~~may~~ be Purchased through Informal Procurement in the manners specified herein, which are designed to maximize competition and ensure the County receives fair pricing balanced by efficient use of staff resources. At the discretion of the County Manager or Designee or the Board, in accordance with the authority granted herein, the requirements for Competitive Procurement or Informal Procurement may be waived when deemed in the best interest of the County.

### 3.2. Procurement Categories and Approval Thresholds.

- A. The Procurement method and approval authority varies based upon the amount of the Purchase. Unless otherwise authorized in this Ordinance, the following Procurement thresholds and procedures are hereby established to govern the Procurement of Commodities, Services and Revenue Generating contracts. Additionally, the authority for approving Purchases within the established thresholds set forth below is hereby assigned and delegated to the persons and entities with designated approval authority.

PROCUREMENT METHOD/APPROVAL AUTHORITY THRESHOLDS				
TIERS	PROCUREMENT REQUIREMENTS	THRESHOLD AMOUNTS	PROCURING ENTITY	APPROVAL AUTHORITY
Tier 1	Petty Cash*	Not to exceed \$200	Department	Department Director
Tier 1	P-Card*	Not to exceed \$5000 or unless authorized in accordance with Sec. 4.1(C).	Department	Department Director
Tier 2	Quotation/Written Work Orders, Change Orders, Amendments	Not to Exceed \$49,999.99	Department	Department Director
Tier 3	Three (3) Written Quotations Work Orders, Change Orders, Amendments	Not to Exceed <del>\$99,999.99</del> <u>\$249,999.99</u>	Department or Procurement	County Manager, or Designee County Attorney, or Designee <u>up to \$99,999.99;</u> <u>Board for \$100,000.00 and up</u>
Tier 4	Competitive Procurement  Electrical work  <u>Professional Services as defined by Section 287.055 Florida Statutes</u>	<del>\$100,000.00</del> <u>\$250,000 and up</u>  \$75,000 and up  <u>\$35,000 and up</u>	Procurement	Board for \$100,000 and up
Tier 5	Commodities and Services - Competitive Procurement	Up to <del>\$150,000.00</del> <u>\$249,999.99</u> for the Purchase of Real Property, new Construction, or rehabilitation of existing homes for the purposes described in Section 3.2(E) of this Ordinance.	<u>Housing and Public Assistance Programs Only</u>	County Manager, or Designee
Tier 6	Competitive Procurement	<del>Over \$1250,000.00 and</del> <u>over for the Purchase of Real Property, new Construction, or rehabilitation of existing homes for the purposes described in Section 3.2(E) of this Ordinance.</u>	<u>Housing and Public Assistance Programs Only</u>	Board

Tier 7	Construction – Competitive Procurement	\$.01 to \$49,999.99 one written quote. \$50,000 -\$299,999.99 three written quotes. \$300,000 and over formal solicitation. <u>If federal funds are used, competitive procurement for all projects \$250,000 and over.</u>	Procurement	Board approval over \$100,000, County Manager, or Designee \$50,000 \$99,999.99, and Director under \$50,000
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\*See Requirements in Section 4.1.

- B. The calculation of the threshold amount for procurement method and approval authority purposes is based on the total anticipated cost for like services countywide, the original period of the Award, and all optional renewals or extensions. The determination of like services will be made at the discretion of the Procurement Management Department.
- C. Supplemental Task Authorizations (STA's) and County Project Authorizations (CPAs) are approved by the approval authority based on the threshold amount per project.
- D. An Amendment, County Project Modification (CPM) or a Change Order must be approved by the approval authority for the total threshold amounts for the project.
- E. Purchasing by Lee County Department of Human Services—Housing Associated with Public Assistance Programs.
  - 1. The County Manager, or Designee, is authorized to approve Purchases Ffor the purposes of new Construction, the acquisition of vacant land, and/or rehabilitation of existing housesresidential units that does not exceed under\$4250,000.00, the County Manager, or Designee is authorized to approve. Any Purchase everof \$4250,000.00 or more will require Board approval. Such Purchases are solely for rehabilitation, Construction or replacement of affordable and/or supportive housing for use by the elderly, disabled, low income families and hurricane survivors for revitalization in targeted neighborhoods. Such Purchases must be made in accordance with an approved action plan, community development plan, or other similar, adopted governing document under a specific County public assistance program.
  - 2. For all other Purchases made by the Department of Human Servicesfor public assistance programs, the County Manager's signature is required for purchases from \$50,000.00 to \$100,000.00-249,999.99. Purchases under \$10250,000.00 require three (3) quotes and Purchases everof \$10250,000.00 or more require a Competitive Procurement to be issued, as provided in Procurement Threshold Tier 4.
- F. Splitting Purchases to avoid obtaining Quotations or Competitive Procurement is prohibited.

*[Section 3.3 remains unchanged]*

### **3.4. Emergency Procurement.**

- A. Emergencies under this section are defined in Section 1.0 Definitions, or as otherwise provided by applicable law.
- B. In the case of emergencies that require the immediate Purchase of Commodities, ~~or~~ Services or Construction, the County Manager or Designee, is empowered to secure such Commodities, Services or Construction without Competitive Procurement. In this event, all measures as are reasonably possible under the circumstances, shall be taken to assure the maximum cost benefit to the County of the Commodities, ~~or~~ Services or Construction procured. Written quotes should be obtained to ensure competition for Tier 3 and above, if time permits.
- C. As soon as possible following all Purchases under this Emergency Procurement section, an emergency form shall be prepared by the Department that initiated the Procurement. The report must include complete documentation clearly stating justification for exception from normal Procurement procedures, an itemization of all individual transactions relating to the Emergency Procurement, an itemization of any additional work hours above and beyond the affected employees usual work schedule, and documentation of communication with other governmental entities (FEMA, SERT, etc.) that have taken place. This report must be submitted to the Procurement Management Department, and, if required, to the Board of County Commissioners in concurrence with any ~~R~~atification.
- D. All Emergency Purchases at Tier 4 and 7 level shall be submitted to the Board for ~~R~~atification at the next regularly scheduled Board meeting .
  - 1. In the case of a minor emergency, a single situation that poses an immediate threat to public safety, health, or welfare requiring urgent action to mitigate impact, a complete package shall be presented to the Board for Ratification at the next available Board meeting.
  - 2. In the case of a major emergency, a large situation that poses an immediate threat to public safety, health, or welfare, causes or threatens injury or death, serious disruption of essential services or damage to property, the environment or infrastructure beyond the normal capabilities of the principal emergency services, and requires urgent action to mitigate impact:
    - a. A summary of purchases shall be presented to the Board at the next available Board meeting.
    - b. A complete package shall be provided for Ratification within 45 days or the first scheduled Board meeting thereafter.
- E. In the event of a State of Local Emergency where the County is no longer operational, all Emergency Procurement shall be handled in accordance with this Ordinance.

- F. In the event a State of Emergency is declared by the State of Florida, all Emergency Procurement shall be handled in accordance with this Ordinance and all applicable State requirements.
- G. In the event a State of Emergency is declared by a National Declaration, all Emergency Procurement shall be handled in accordance with this Ordinance and 2CFR 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- H. The Clerk of Courts is authorized to pay invoices for purchases for the emergencies as declared or documented that is allowed by this Ordinance and State Statutes.

*[Section 3.5 remains unchanged]*

### **3.6. Cooperative Procurement and Piggybacking.**

- A. The County shall have the authority to Purchase from and join with other units of governments in Cooperative Procurement ventures when the best interest of the County would be served thereby. It is standard policy of the County to cooperate with other government agencies in the Purchase of Commodities and Services required by the County.
- B. In the event the County participates in a Cooperative Procurement and is not the lead agency, the applicable policies and procedures of the lead agency shall govern the solicitation and Award process unless otherwise in conflict with State or federal law. The term "lead agency" shall mean the member entity responsible for issuance of the cooperative Solicitation.
- C. Where the public purchasing unit administering a cooperative Purchase complies with the requirements of their applicable policies and procedures when participating in such a Purchase, they are deemed to have complied with the provisions of this Ordinance. Such Purchases may be made without additional County Competitive Procurement provided that funding has been appropriated and approved by the Board and the Purchase has been authorized by the entity granted approval authority in Section 3.2.
- D. Unless a Piggyback is prohibited by State or federal law, the County may Piggyback when any other government agency or cooperative (e.g., National Joint Powers Alliance (NJPA)) has competitively procured and Awarded a Contract for any Commodity or Service. The County may Purchase that Commodity or Service from the Awarded Vendor if the originating agency's solicitation and/or award includes language that allows it.
- E. The County may solicit and Award the Purchase of any Commodities, ~~or~~ Services or Construction with the stipulation that any other government agency may also Purchase the Awarded Commodity or Service at the same Awarded price.

*[Section 3.7 remains unchanged]*

### **3.8. Exemptions.**

- A. The requirement for Competitive Procurement is waived for the following Purchases unless the Procurement Management Department determines that a Competitive Procurement or written Quotation is warranted in the best interest of the County for a specific Purchase. The procurement thresholds established in Section 3.2 of this ordinance will determine approval authority.
1. All books, periodicals, software intended primarily for direct use by the general public, printed materials, photographs, film, disk or similar materials in either physical or electronic format;
  2. All Purchases of used Equipment having a value of \$49,999.99 or less; however, each such Purchase shall be supported by one independent estimate of value;
  3. Cooperative Procurement (ref: Section 3.6);
  4. Except as required by other applicable law, all County All purchases related to the sale, lease, or other use of interest in real property, including appraisals and title insurance, ~~except as required by other applicable law;~~
  5. Single and Sole Source Purchases (ref: Section 3.9);
  6. Health and Social Services, including but not limited to substance abuse and mental health treatment, medical examiner services, burials and indigent patient Services, and medications for the treatment of humans or animals;
  7. Dues and memberships in trade or professional organizations;
  8. Fees and costs of job-related seminars and training;
  9. Travel;
  10. Artists, music ensembles (bands) and other entertainment providers;
  11. Emergency Procurement (ref: Section 3.4);
  12. Procurements where another process is required by statute;
  13. Interlocal governmental Contracts
  14. Studies conducted by institutions of higher education, such as state universities;
  15. Other Commodities, Services or Construction, as determined by the Board;
  16. Revenue-generating contracts that have a fee schedule adopted by the Board or that are non-exclusive;

17. Advertising;

18. Commodities purchased for the sole purpose of resale. County Departments intending to sell commodities must maintain a current Annual Resale Certificate for Sales Tax.

B. The County Manager, or designee, is authorized to approve the following Procurements, without respect to the Solicitation or Approval Thresholds in Sections 3.1 and 3.2:

1. Postage;
2. Public utilities services whose rates are determined and controlled by the Public Service Commission or other governmental authority, including but not limited to electricity, water, sewer telephone and cable television services;
3. Housing and utility assistance payments and related documents;
4. Payment for hospital care under the Health Care Responsibility Act;
5. Payment for the County's portion of hospital and nursing home care for Medicaid eligible recipients pursuant to Section 409.915, Florida Statutes;
6. Payment for costs of medical examinations, x-rays and medical treatment of abused, abandoned or neglected children pursuant to Section 39.304, Florida Statutes;
7. Court ordered payments;
8. The County's annual membership in the Florida Association of Counties.

C. The County Attorney is authorized to approve the purchase of legal services, including but not limited to attorney, paralegal, expert witness, appraisal, or mediator services, in any amount, without respect to the Solicitation and Approval Thresholds in Sections 3.1 and 3.2.

**3.9. Sole Source.**

- A. Except as otherwise provided under State law, Purchases of Commodities, or Services or Construction may be Awarded without Competitive Procurement or obtaining written Quotations when the Procurement Department certifies in writing, after conducting a good faith review of available Vendors, that there is only one Sole Source for the required Commodities, or Services or Construction.
- B. Prior to the Sole Source certification, the Solicitation for the Commodities, or Services or Construction shall be Posted on the County website for ~~a minimum of seven (7)~~ at least fifteen (15) business days to verify that a Sole Source certification is warranted.



- C. Such Awards will be made within the authorized Procurement limits identified in Section 3.2 of this Ordinance. When a Purchase exceeds the threshold amount for Tier 3 approval, the item and certification that the Vendor has been determined to be a Sole Source will be placed on an agenda for Board approval.
- D. The Sole Source certification shall remain in effect for one year or for the term specified in the Sole Source contract. Purchases made under the Sole Source must not exceed the amount approved on the justification form. Any additional purchases will be subject to Sole Source eligibility requirements and procurement thresholds.

**3.10. Single Source.**

- A. Except as otherwise provided under State law, Purchases of Commodities, or Services or Construction from a Single Source may be exempted from the Competitive Procurement and written Quotation requirements when the Procurement Management Department certifies in writing that: (1) the use is justified based on costs or interchangeability of parts, standardization, or compatibility factors; and (2) the use is recommended by the project architect, engineer, or affected Department Director.
- B. Prior to the Single Source determination, the Solicitation for the Commodities, Services or Construction shall be posted on the County website for at least fifteen (15) business days to verify that a Single Source determination is warranted.
- C. Such Awards will be made within the authorized Procurement limits identified in Section 3.2 of this Ordinance. When a Purchase exceeds the threshold amount for Tier 3, the item will be placed on the agenda for Board approval and certification that the Vendor has been determined to be a Single Source.
- D. The Single Source certification shall remain in effect for one year or for the term specified in the Single Source contract. Purchases made under the Single Source must not exceed the amount approved on the justification form. Any additional purchases will be subject to Single Source eligibility requirements and procurement thresholds.

**SECTION 4. INFORMAL PROCUREMENT.**

*[Section 4.1 remains unchanged]*

**4.2. Tiers 2 and 3: Written Quotations (not to exceed ~~\$100,000~~250,000).**

- A. Commodities, Services or Construction with an estimated cost within the thresholds for Tiers 2 and 3 in Section 3.2, and revenue-generating contracts with an estimated revenue within the thresholds for Tiers 2 and 3 in Section 3.2, shall be procured by competitive, written Quotations. In the Solicitation for the written Quotations, the requested Commodities, Services or Construction must be adequately described on a consistent basis to assure a like-to-like comparison among Vendors.
  - 1. For Purchases within the threshold for Tier 2, only one (1) written Quotation must be obtained for each Purchase unless the Procurement Management

Department determines that additional Quotations are warranted to ensure the County is receiving a fair and competitive price for the Commodities, or Services or Construction.

2. For Purchases within the threshold for Tier 3, at least three (3) written Quotations must be obtained for each Purchase. In those instances where the securing of three (3) Quotations is not practicable, the Department Director shall provide written justification to the Procurement Management Department that they attempted to obtain written qualifications from at least five (5) qualified Vendors, and then the County Manager or Designee may waive the requirement for three (3) written Quotations.
- B. Quotations must be provided through email, hand delivered, or faxed on a County approved Quotation form, or in a similar format. The Quotation must include a date and be submitted by an authorized representative of the Vendor.
- C. All Vendors providing Quotations must have the required expertise and capability to perform the work or supply the Services and/or Commodities. In determining if a Vendor has the capability to perform the work or supply the Commodities, Services or Construction, consideration may be given to the Vendor's geographic proximity to the County for future ease of delivery, mobilization, or customer support after a Purchase. The Responsible Vendor with the lowest Responsive Bid, who is capable of performing the Services or supplying the Commodities shall be Awarded the Contract or Purchase Order, as applicable.
- D. Noticing of Requests for Quotation shall not require a newspaper ad.

#### **4.3 Tier 7: Written Quotations ~~(not to exceed \$300,000)~~.**

- A. Construction with an estimated cost within the threshold for Tier 7 in Section 3.2 shall be procured by competitive, written Quotations. In the Solicitation for the written Quotations, the requested Construction must be adequately described on a consistent basis to assure a like-to-like comparison among Vendors.
1. For Construction projects within the threshold for Tier 7, at least three (3) written Quotations must be obtained for each project under \$200,000. In those instances where the securing of three (3) Quotations is not practicable, the Department Director or designee shall provide written justification to the Procurement Management Department that they attempted to obtain written Quotations from at least five (5) qualified Vendors, and then the County Manager or Designee may waive the requirement for three (3) written Quotations.
  2. For Construction projects within the threshold for Tier 7, over \$200,000 a Request for Quotation must be publicly advertised in general circulation within the County where the project is located at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference.
- B. Quotations must be provided through email, hand delivered, or faxed on a County approved Quotation form, or in a similar format unless stated otherwise in the

Request for Quotation. The Quotation must include a date and be submitted by an authorized representative of the Vendor.

- C. All Vendors providing Quotations must have the required expertise and capability to perform the work or supply the Services, Commodities and/or Construction. In determining if a Vendor has the capability to perform the work or supply the Services, Commodities, and/or Construction, consideration may be given to the Vendor's geographic proximity to the County for future ease of delivery, mobilization, or customer support after a Purchase. The Responsible Vendor with the lowest Responsive Bid, who is capable of performing the Services or supplying the Commodities, and/or Construction shall be awarded the Contract or Purchase Order, as applicable.
- D. Noticing of Requests for Quotation for Construction with a projected cost of more than \$200,000 requires a newspaper ad in accordance with Section 255.0525, Florida Statutes.

## **SECTION 5. COMPETITIVE PROCUREMENT.**

### **5.1. Tier 4 and 7: Competitive Procurement Methods.**

Commodities and Services with an estimated cost within the threshold for Tier 4 and Construction for Tier 7 (and Tier 6 for Housing only), and revenue-generating contracts with an estimated revenue within the threshold for Tier 4, shall be procured competitively through one of the following methods:

#### **A. Invitation to Bid**

- 1. The Invitation to Bid is used when the County is capable of establishing precise Specifications or defining, with specificity, a scope of Services for the Commodities, Services or Construction sought. Through this process, Vendors are able to compete on a cost or revenue basis for like Commodities, Services or Construction.
- 2. Invitations to Bid shall include Specifications, required qualifications, and all principal terms and conditions applicable to the Procurement.
- 3. The Award will be made to the Responsible Vendor with the lowest Responsive Bid, or the highest estimated revenue for the County for revenue-generating contracts.
- 4. In an Invitation to Bid process, the County may consider the following factors in addition to price when determining whether a Vendor is Responsible and a Bid is Responsive:
  - a. Ability, capacity and skill of the Vendor to perform the Contract.
  - b. Whether the Vendor can perform the Contract within the time specified, without delay, interference, or conflict with current workload.

- c. Character, integrity, reputation, judgment, experience and efficiency of the Vendor.
  - d. Quality of performance of previous engagements.
  - e. Previous and existing compliance by the Vendor with laws and regulations relating to the Contract.
  - f. Sufficiency of the financial resources and ability of the Vendor to perform the Contract or provide the Commodity, Service or Construction.
  - g. Quality, availability and adaptability of the Commodities, Services or Construction to the particular use required.
  - h. Ability of the Vendor to provide further maintenance and Service for the use of the subject of the Contract.
  - i. Number and scope of conditions attached to the Bid.
  - j. Qualifications of Vendor, licensing and corporate qualifications.
  - k. Evidence of negative litigation history.
  - l. Use of one or more subcontractors with a record of poor performance.
5. For the purposes of this Section, the County may consider evidence from the ten (10) year period preceding the subject Invitation to Bid.
  6. In the event the lowest, Responsive Bid submitted by a Responsible Vendor exceeds the architectural or engineering cost estimates, the County Manager or Designee is authorized, when time or economic considerations preclude re-bidding of work of a reduced scope, to negotiate an adjustment of the scope of work with the Responsible Vendor with the lowest, Responsive, Bid, in order to bring the Bid within the amount of available funds.

#### B. Request for Proposal

1. The Request for Proposal method of Procurement is used when it is not practicable for the County to specifically define the scope of work for which the Commodities, Services or Construction are needed. Instead, the County can describe what it wants to accomplish but the methods or means to accomplish the desired outcome cannot be easily defined. There may be several methods available to accomplish a task and the County is considering all the available options.
2. Requests for Proposal shall include a description of desired outcome to be accomplished through the Procurement, evaluation criteria for the specific Procurement, which set forth the relative importance of price, if any, and the other evaluation criteria, and all principal terms and conditions applicable to the Procurement.

3. All Responses to a Request for Proposal that are deemed to meet the basic requirements of the Competitive Procurement and have not been rejected shall be distributed to an evaluation committee for review in accordance with the established time frames outlined in the Competitive Procurement. Proposers shall be ranked by an evaluation committee designated by the Board or Procurement Management Department based upon the evaluation criteria included within the Request for Proposal. The evaluation committee may request presentations/interviews for further consideration.
4. The selection will be Aawarded to the highest ranked Proposer or as outlined in the Solicitation documents.

#### C. Invitation to Negotiate

1. The Invitation to Negotiate is used when the scope of the project is not clearly defined, and the County has determined that negotiations may be necessary to receive the best value. The Invitation shall invite Vendor input on the scope, schedule, and process for initiating the project. This method of Procurement may be used in areas of Procurement experiencing constant change in the marketplace, when the County wants the opportunity to obtain current up-to-date Commodities, or Services or Construction at the time of Contracting, and/or if the County wishes to identify one or more Responsible Vendors with whom to negotiate.
2. Invitations to Negotiate shall include a description of the questions or issues being explored, the facts being sought, and the specific goals or problems that are the subject of the Procurement, along with evaluation criteria, and all principal terms and conditions applicable to the Procurement.
3. All Responses to an Invitation to Negotiate that are deemed to meet the basic requirements of the Competitive Procurement and have not been rejected shall be distributed to an evaluation committee for review. Proposers shall be ranked and analyzed by the evaluation committee designated by the Board or Procurement Management Department based upon the evaluation criteria included within the Invitation to Negotiate. The evaluation committee may request presentations/interviews for further consideration.
4. The evaluation committee will complete initial negotiations with all Proposers meeting the criteria outlined above.
5. The evaluation committee will provide recommendations to the Board. The listing will be provided in the order of Proposers providing the most benefit to Lee County.
6. Once the Board selects a proposal, award and negotiations will proceed as outlined in Section 5.4 of this Ordinance.

#### D. Procurement Methods

Other Procurement methods may be used as deemed necessary by the County Manager or Designee.

**5.2. Advertisements for Competitive Procurement.**

A. Adequate public notice of all Competitive Procurements shall be provided as follows:

1. Noticing of all Competitive Procurements (unless otherwise provided herein, by general law, grant funding requirements or waived by the Board) shall be done by publishing an Advertisement once in a newspaper of general circulation in the County at least fifteen (15) calendar days prior to the date set for the receipt of Competitive Procurement Responses as follows:

Purchase Amount	Publishing Date of Advertisement
\$100,000.00 to \$200,000.00	15 calendar days
\$200,000.01 to \$500,000.00	21 calendar days
Over \$500,000.00	30 calendar days

2. Construction projects, projected to cost more than two hundred thousand dollars (\$200,000.00), shall be publicly advertised in accordance with Section 255.0525, Florida Statutes.
3. All Procurements for CCNA Professional Services must be noticed by publishing an Advertisement once in a newspaper of general circulation at least thirty (30) calendar days prior to the date set for receipt of Responses.
4. The Advertisement shall include a general description of the Commodities, or Services or Construction to be Purchased, the location where Specifications may be obtained, closing date, and the time and place for receipt of and the opening of the Competitive Procurement.

B. All Advertisements shall be listed on the official County website.

C. Any Addendums to a Competitive Procurement shall be listed on the official County website.

D. Upon the Advertisement of a Competitive Procurement, the Cone of Silence shall apply. The Cone of Silence shall terminate upon the issuance of a Contract, the rejection of all Responses, or the termination of the Competitive Procurement, whichever occurs first. Violation of the Cone of Silence by a Vendor shall disqualify the Vendor from participation in the Competitive Procurement and may subject the Vendor to Suspension or Debarment in accordance with Section 8 of this Ordinance. The Cone of Silence shall not apply to:

1. Communications at any public proceeding or meeting, including Pre-Bid Conferences, evaluation committee presentations or pre-Award meetings.
2. Communications during Contract negotiations between designated County employees and the intended Vendor.
3. Communication with a Vendor by a Procurement Management Department employee following Competitive Procurement opening to clarify the Vendor's Response.

4. Communication following the filing of a protest to a Competitive Procurement between the protesting Vendor or the selected Vendor and the Procurement Management Department, County Manager's Office, and County Attorney's Office concerning the protest.
5. Purchases exempt from Competitive Procurement pursuant to this Ordinance.

*[Section 5.3 remains unchanged]*

#### **5.4. Award and Negotiation.**

- A. Once a Vendor has been selected in accordance with Section 5 of this Ordinance, the Procurement Management Department shall prepare and Post a Notice of Intended Decision.
  1. The Notice of Intended Decision shall also be Posted on the County website within a reasonable time of the selection.
  2. The time period for a Procurement Protest, as outlined in Section 5.7, shall begin to run upon Posting of the Notice of Intended Decision.
- B. After the Protest period in Section 5.7 has expired, the Procurement shall be awarded with reasonable promptness. After conclusion of Contract negotiations, as provided below, all Procurements will be formalized by entering into either a Contract with the Awarded Vendor or issuing a Purchase Order to the Awarded Vendor.
- C. In regards to a Request For Proposal, After the Notice of Intended Decision is issued, the Negotiation Team, if one is appointed, or the Department Director and Procurement Management Department with the assistance of the County Attorney's Office and County Manager's Office, if requested, will negotiate a Contract with the top ranked Vendor or a Purchase Order shall be issued to the selected Vendor in accordance with County policies and procedures. In the event the selected Vendor and County are unable to enter into a satisfactory Contract within a reasonable time, the Procurement Management Department may formally terminate negotiations, and begin negotiations with the next ranked Vendor. The Procurement Management Department may repeat this process with the ranked Vendors, in order, until a satisfactory Contract is achieved; however, at any time the Procurement Management Department may determine that it is in the best interest of the County to re-procure rather than continue negotiations with the ranked list of Vendors.
- D. In regards to an Invitation to Negotiate the Negotiation Team, if one is appointed, or the Department Director and Procurement Management Department with the assistance of the County Attorney's Office and County Manager's Office, if requested, will negotiate with all Vendors until one is recommended for Contract award.
- E. Once a satisfactory Contract has been reached, the Contract shall be presented for approval and execution by the Department with Approval Authority as provided in Section 3.2. Upon execution by both parties, the Notice to Proceed shall be issued to the Vendor. For Purchases that must be approved by the Board, the Award of a Procurement and approval of a Contract with the Vendor may be brought to the Board

at the same time and approved with a single majority vote of the Board members who are present and eligible to vote.

- F. In the event of a Tie in a Competitive Procurement, the Procurement Management Department shall Award the Contract as outlined in the Solicitation documents.

### **5.5. Consultants' Competitive Negotiation Act (CCNA) Professional Services.**

The purpose of obtaining CCNA Professional Services is to offer to the County special expertise, practical experience, knowledge, resources and an objective outside professional opinion. The provisions and exemptions contained in Section 287.055, Florida Statutes (commonly known as the Consultants' Competitive Negotiation Act, "CCNA"), shall apply herein for the Procurement of all professional architecture, engineering, landscape architecture, or registered surveying and mapping Services for projects that exceed the CCNA Thresholds.

The following provisions are applicable to the County's selection, engagement, and use of CCNA Professional Services for County projects exceeding CCNA Thresholds and for which CCNA Professional Services are required to be secured.

- A. The Competitive Procurement of CCNA Professional Services shall be conducted in accordance with the procedures in this Section 5.5 for Request for Proposal with the following exceptions:
  - 1. Price and compensation shall not be considered in the initial evaluation of Responses.
  - 2. In ranking responding Vendor's qualifications, the evaluation committee may consider: ability and adequacy of professional personnel; if applicable; past performance; willingness to meet time and budget requirements; location and whether the firm is a Local Vendor, if applicable; recent, current, and projected workloads; and other factors relevant to the specific Procurement, if any.
  - 3. In lieu of the procedures in Sections 5.45(B) and (C), the evaluation committee will rank all Vendors in numerical order and select no fewer than the top ranked three (3) firms deemed to be the most highly qualified for purposes of competitive negotiations. In the event three (3) qualified Vendors do not respond, the Procurement Management Department will reject all Proposals and reissue the Request for Proposal unless the Procurement Management Department deems it is in the best interest of public health, safety or welfare to move forward with two (2) or less Proposals. In the event the County does not receive three (3) qualified Proposals on the second Procurement, the Procurement Management Department may proceed with less than three (3) Proposals.
- B. Competitive negotiations for the Procurement of CCNA Professional Services shall be conducted in accordance with the Contract negotiation procedures in Section 5. The County may request, accept, and consider Proposals for compensation only during the competitive negotiation phase.



- C. The County may enter into Continuing Contracts with Vendors providing CCNA Professional Services; provided, however, that individual projects exceeding those amounts in Section 287.055(2)(g), Florida Statutes, shall not be authorized under a Continuing Contract.
- D. At the discretion of the Procurement Management Department, the County may procure Design-Build Contracts with Vendors pursuant to this Section 5.5 via a Request for Proposal with the following conditions:
  - 1. The CCNA Professional Services Vendor, including any sub-Vendor that prepares the Design Criteria Package must be procured in accordance with Section 5.5 and said Vendor will not be eligible to provide design-build Services or act as a sub-Vendor on the same project. The County is not prohibited from preparing the Design Criteria Package as the Design Criteria Professional.
  - 2. The County shall solicit, through a Competitive Procurement process Responses based on the Design Criteria Package and evaluate the Responses based upon the evaluation criteria in the Competitive Procurement documents which may include price, technical, and design aspects of the public Construction project, weighted for the project.
- E. At the Procurement Management Department's discretion, the County may procure a Construction Manager at Risk pursuant to this Section 5.5, which Vendor shall provide advice to the County during the project planning phase on cost effectiveness of various design and Construction alternatives, scheduling, value engineering, and management, and will then take on the obligation for Construction of the project.
  - 1. The Construction Manager at Risk Vendor shall establish a Guaranteed Maximum Price and guaranteed completion date after the planning and design of the public Construction project is completed and prior to the initiation of Construction Services. The Guaranteed Maximum Price and guaranteed completion date shall be included in an Amendment and approved by the Vendor and the County.
  - 2. Performance and Payment Bonds, when required, must be provided prior to the Notice to Proceed for the Construction phase.

*[Section 5.6 remains unchanged]*

**5.7. Procurement Protest.**

- A. Any Notice of Intended Decision of a Competitive Procurement may be protested by a Vendor that submitted a Bid, Proposal, or Response to the County, with a substantial interest, as defined below, on the grounds of Material Deviations in the Procurement procedure or Material Deviations in the evaluation of the Responses. To initiate a protest, the protestor must file a Notice of Intent to Protest the Procurement in writing with the Procurement Management Director within seventy-two (72) hours, excluding weekends and County holidays, of Posting of the Notice of Intended Decision in accordance with Section 5.4. A formal written Procurement Protest must then be filed with the Procurement Management Director within ten (10) business days of Posting of the Notice of Intended Decision. Failure to file a timely Notice of Intent to Protest or failure to file a timely formal written Procurement Protest

shall constitute a waiver of the protestor's right to protest the Competitive Procurement and Award.

1. Only protestors with a "substantial interest" that has been adversely affected by the County's intended Award may protest the selection by complying with the requirements set forth herein. A protestor has a "substantial interest" if the protestor would have been Awarded the Contract but for the alleged mistake or irregularity described in the protest. If the Procurement Management Director determines that a protestor does not have a "substantial interest," that protestor is precluded from bringing a protest pursuant to this section.
2. A protestor objecting to terms, conditions, Specifications, procedures, selection criteria, or other matters set forth in the Competitive Procurement documents must make such objections in writing during the period of time set forth for questions and answers in the Competitive Procurement documents. A protestor who has not raised such objections in writing during the question and answer time may not use the Procurement Protest process to object to these matters once a Notice of Intended Decision has been Posted.
3. The protest shall only come from the firm submitting the proposal. Subcontractors cannot file protests.

B. The Notice of Intent to Protest shall contain at a minimum:

1. Name of the protestor;
2. Protestor's address;
3. E-mail address;
4. Fax number and phone number;
5. Name of the protestor's representative to whom notices may be sent;
6. Project name and number of the Competitive Procurement; and
7. A brief factual summary of the basis of the intended protest.

C. The formal written Procurement Protest shall:

1. Identify the protestor and the Competitive Procurement involved.
2. Include a clear statement of the grounds on which the protest is based, refer to the Statutes, laws, Ordinances, or other legal authorities which the protestor deems applicable to such grounds, and specifically request the relief to which the protestor deems itself entitled by application of such authorities to such grounds.

3. Any other information that the protester deems to be material to the protest.
  4. A Procurement Protest bond in the form of a certified check, cashier's check, or money order made payable to Lee County in an amount equal to five (5) percent of the protestor's Bid or ten thousand dollars (\$10,000.00), whichever is less, provided, however, if no value is attached then the bond will be \$10,000.00. The entire amount of the bond is forfeited if the County determines that the protest was without merit, was filed to cause harm or delay, or was filed for some other improper purpose.
  5. The protestor shall send a copy of the Notice of Intent to Protest and the formal written Procurement Protest to the Vendor(s) named on the Notice of Intended Decision, on the same date that the notice is filed with the County. Receipt of notification must be provided to the County upon request.
  6. Upon receipt of a timely filed and complete formal written Procurement Protest, the Procurement Management Director shall stay Award of the Competitive Procurement until the protest is resolved unless the Procurement Management Director provides a written determination that compelling circumstances exist which require that the Award be processed without further delay in order to protect the County's interest or for the purpose of avoiding an immediate and serious danger to the public health, safety or welfare.
  7. After receipt of the timely filed and complete formal written Procurement Protest, the Procurement Management Director, at his/her discretion, may meet with the protester to discuss the allegations and to attempt to resolve the matter. The Procurement Management Director shall issue his/her decision on the protest within fourteen (14) business days of the meeting, or if no meeting is requested, within fourteen (14) business days of receipt of the timely filed and complete written Procurement Protest. Such decision shall be e-mailed or sent by facsimile to the protester on the date of issuance.
- D. The protester may appeal the decision of the Procurement Management Director to the County Manager by filing a written appeal with the County Manager's office within three (3) business days of issuance of the Procurement Management Director's decision. The appeal must be in writing and must include a full explanation of the basis of disagreement with the decision rendered by the Procurement Management Director, as well as the relief sought. The County Manager shall issue his/her decision on the appeal within ten (10) business days of receipt of the appeal. The County Manager's decision shall be e-mailed or sent by facsimile to the protester on the date of issuance.
- E. The decision of the County Manager may be appealed to the Board by the filing of a written appeal with the Chair of the Board within three (3) business days of issuance of the County Manager's decision. The Board shall overturn the selection if the protester proves by clear and convincing evidence that the selection did not comply in material respects with the requirements contained in the Competitive Procurement documents, with this Procurement Ordinance, or with applicable law.

- F. Failure by a protestor to comply with the timelines and requirements set forth herein shall result in an immediate invalidation and termination of the protest and a waiver of the right to seek further redress or to appeal the alleged adverse action in a court of law.
- G. Nothing herein relinquishes the County's rights to waive Minor Irregularities. Further, nothing herein shall grant any rights to the unsuccessful Offeror. All decisions of the Board are final.

*[Section 6 remains unchanged]*

## **SECTION 7. BONDS.**

- A. The Procurement Management Department shall determine if a Bid Bond shall be required for any Competitive Procurement. All contracts for Construction or facility improvements governed by 2 CFR §200.3256 and this ordinance shall require a Bid Bond in accordance therewith for such projects exceeding the Simplified Acquisition Threshold in 2 CFR §200.88 or \$200,000, as applicable. If required, the Bid Bond will be five percent (5%) of the amount of the bid or Proposal. Unsuccessful Vendors are entitled to full return of their Bid Bond. Upon determination by the Board, the successful Vendor shall forfeit this Bid Bond, or a portion thereof, upon failure to enter into a Contract or act on the Purchase Order issued within ten (10) working days of presentation of a Contract or Purchase Order by the County.
- B. The Procurement Management Department shall determine if Payment Bonds and Performance Bonds are required. All Contracts for Construction or repairs of public buildings and public works projects shall require Payment and Performance Bonds in accordance with Section 255.05, Florida Statutes. All Contracts for Construction or facility improvements governed by 2 CFR §200.3256 shall require Payment and Performance Bonds in accordance therewith for such projects exceeding the Simplified Acquisition Threshold in 2 CFR §200.88. Any required bond(s) shall be noted in the Competitive Procurement documents, if applicable.
  - 1. Payment and Performance Bonds shall be at least 100% of the Contract price.
    - a. All change orders equal to 10% or greater shall require a Bond rider in the amount of the increase.
  - 2. All required bonds shall be from a surety company authorized to do business in the State of Florida to guarantee the full and faithful performance of the Contractual obligations and the payment of labor and material expended pursuant to the Contract whenever and in such amounts as is deemed necessary by the Procurement Management Department. Alternative surety devices, such as letters of credit or cash, may be authorized by the Procurement Management Department.
  - 3. The Vendor is required to record the Payment and Performance Bonds and riders with the Lee County Clerk of Court and pay all associated costs.

*[Sections 8 and 9 remain unchanged]*

## SECTION 10. GRANTS.

- A. Expenditures from funds Awarded to the County through a grant or government loan may require special processing because of specific legal terms and conditions placed by the funding agency. Grants often have certain purchasing requirements that are different or additional to the County's Procurement Ordinance and they require special purchasing procedures. It is the responsibility of the using Department to identify any special purchasing requirements or provisions, notify the Procurement Management Department of them, and to ensure that all requirements are followed.
- B. For federal and State grant funded projects the County shall follow the Procurement process required by the funding agency and grant agreement. Unless otherwise specified in the grant, all grant funded Purchases shall follow the County's Procurement Ordinance.
- C. The provisions of Title 2 of the Code of Federal Regulations (CFR) Part 200 and Chapter 73C-23, Florida Administrative Code (F.A.C.), as amended from time to time, are hereby incorporated herein by reference and shall be applicable to Procurements funded pursuant to a grant agreement that is governed by those provisions. When procuring property and services under a Federal award, the County will follow the procurement standards as outlined in the 2 CFR Part 200.318 through 2 CFR Part 200.327 and its Appendix II provisions, as applicable and unless waived by the awarding agency. Such standards are outlined in Exhibit 1 of this Ordinance and are current as the published date listed thereon. Amendments made by the federal government to the regulations and standards of the 2 CFR Part 200.318 through 2 CFR Part 200.327 and its Appendix II provisions shall be automatically incorporated herein.
- D. Purchases utilizing Federal Transit Administration (FTA) and/or other federal funds must comply with all requirements of Title 2 of the Code of Federal Regulations (CFR) and FTA Circular C 4220.1F, as amended from time to time, and the resulting Contract shall include all federal Contract clauses, as applicable.
- E. As provided by 2 CFR Part 200.320, as amended from time to time, the County may self-certify on an annual basis a micro-purchasing threshold up to \$50,000. If the federal government amends the self-certification threshold for micro-purchases for non-federal entities, the threshold listed in this section shall be automatically updated.
- F. Purchasing under federal grants shall be conducted in accordance with the federal regulations mandated by the granting agency. These provisions may include, but are not limited to, the following:
  - 1. 2 CFR Part 200
  - 2. 2 CFR Part 1201
  - 3. 23 CFR Part 172
  - 4. 23 CFR Part 635
  - 5. 24 CFR Part 75 Section 3

6. 24 CFR Part 570
7. 48 CFR Part 36
8. Title 1 of the Housing and Community Development HCD Act
9. Section 508 of the Rehabilitation Act
10. Brooks Act
11. Florida State statutes, as applicable.

*[Sections 11 thru 13 remain unchanged]*

## **SECTION TWO: AMENDED EXHIBIT 1**

Upon adoption of this Ordinance, Exhibit 1 of Lee County Ordinance 18-22, as amended by Ordinance 22-06, is hereby amended as shown below, with strikethrough identifying deleted text and underline identifying new text:

### **Exhibit 1**

#### **~~Federal Procurement Standards under 2 CFR Part 200 and Appendix II~~**

#### **FEDERAL PROCUREMENT SUPPLEMENTAL CLAUSES TO INCLUDE APPENDIX II**

**The following clauses shall apply to any Purchase Orders/Contracts issued under declaration of emergency and/or where federal funds apply. All clauses shall apply unless stated below, due to threshold.**

#### **NOTICE TO CONSULTANT/CONTRACTOR/VENDOR REGARDING FEDERAL FUNDING**

When property or services are procured using funds derived from a Federal grant or Agreement whether direct to the County or "pass-through" from another entity, the County is required to and will follow the Federal procurement standards in the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", 2 C.F.R. Part 200, Sections 200.317 through 200.327.

CONTRACTOR, further referred to as CONSULTANT/CONTRACTOR/VENDOR within this section, shall work with the County under this Agreement to assure that it will comply with the following statutes and regulations to the extent applicable:

- (1) 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Appendix II
- (2) The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- (3) Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law

103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264

(4) 31 CFR Part 25 Rules and Procedures for Funds Transfers

Contract Cost and Price: For every procurement in excess of the Simplified Acquisition Threshold, including contract modifications, the County shall perform a cost or price analysis in connection with every procurement subject to Federal procurement guidelines, which shall include an independent estimate of cost prior to issuing bids or proposals. For proposals where price is not considered in the award, profit shall be negotiated as a separate element of the price. In determining whether profit is fair and reasonable, the County shall consider the complexity of work, the risk to be borne by the CONSULTANT/CONTRACTOR/VENDOR, the CONSULTANTS/CONTRACTORS/VENDORS investment, the amount of subcontracting necessary, the quality of the CONSULTANTS/CONTRACTORS/VENDORS record and past performance, and industry profit rates for the surrounding geographical area. "Cost Plus Percentage" methods for determining profit may not be used.

## **FEDERAL CLAUSES**

### **1. EQUAL EMPLOYMENT OPPORTUNITY:**

1.1. During the performance of this contract, the ~~contractor~~ CONSULTANT/CONTRACTOR/VENDOR agrees as follows:

1.1.1. The CONSULTANT/CONTRACTOR/VENDOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONSULTANT/CONTRACTOR/VENDOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT/CONTRACTOR/VENDOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

1.1.2. The CONSULTANT/CONTRACTOR/VENDOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT/CONTRACTOR/VENDOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

1.1.3. The CONSULTANT/CONTRACTOR/VENDOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such

information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT/CONTRACTOR/VENDOR's legal duty to furnish information.

- 1.1.4. The CONSULTANT/CONTRACTOR/VENDOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the CONSULTANT/CONTRACTOR/VENDOR's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 1.1.5. The CONSULTANT/CONTRACTOR/VENDOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 1.1.6. The CONSULTANT/CONTRACTOR/VENDOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 1.1.7. In the event of the CONSULTANT/CONTRACTOR/VENDOR's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the CONSULTANT/CONTRACTOR/VENDOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 1.1.8. The CONSULTANT/CONTRACTOR/VENDOR will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-CONSULTANT/CONTRACTOR/VENDOR. The CONSULTANT/CONTRACTOR/VENDOR will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the CONSULTANT/CONTRACTOR/VENDOR becomes involved in, or is threatened with, litigation with a sub-CONSULTANT/CONTRACTOR/VENDOR as a result of such direction, the CONSULTANT/CONTRACTOR/VENDOR may request the United States to enter into such litigation to protect the interests of the United States.



**2. MAINTENANCE OF RECORDS:**

2.1. The CONSULTANT/CONTRACTOR/VENDOR will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this agreement. Said records and documentation will be retained

by the CONSULTANT/CONTRACTOR/VENDOR for a minimum of five (5) years from the date of termination of this agreement, or for such period is required by law.

2.2. CONSULTANT/CONTRACTOR/VENDOR shall provide, when requested, access by the County, Federal granting agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the CONSULTANT/CONTRACTOR/VENDOR which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

2.3. CONSULTANT/CONTRACTOR/VENDOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

2.4. CONSULTANT/CONTRACTOR/VENDOR agrees to provide the GRANT AGENCY Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.

2.5. CONSULTANT/CONTRACTOR/VENDOR shall retain all records associated with this solicitation and any agreements that are created in response to the solicitation for a period of no less than five (5) years after final payments and all other pending matters are closed.

2.6. The County and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the County deems necessary during the period of this agreement, and during the period as set forth in the paragraphs above; provided, however, such activities shall be conducted only during normal business hours of the CONSULTANT/CONTRACTOR/VENDOR and at the expense of the County.

**3. DHS SEAL, LOGO, AND FLAGS:**

3.1. The CONSULTANT/CONTRACTOR/VENDOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific GRANT AGENCY pre-approval. The CONSULTANT/CONTRACTOR/VENDOR shall include this provision in any subcontracts.

**4. LOCAL VENDOR PREFERENCE EXCLUSION:**

4.1. Local Vendor Preference Ordinance has been waived for this service/purchase request and any and all references contained herein are non-applicable to this request and subsequent contract and/or purchase order(s).

**5. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, and EXECUTIVE ORDERS:**

5.1. This is an acknowledgment that GRANT AGENCY financial assistance ~~will be used only to fund services requested.~~ to fund all or a portion of the contract. The CONSULTANT/CONTRACTOR/VENDOR will comply with all applicable federal law, regulations, executive orders, GRANT AGENCY policies, procedures, and directives.

**6. NO OBLIGATION BY THE FEDERAL GOVERNMENT:**

6.1. The Federal Government is not a party to this solicitation and/or contract and is not subject to any obligations or liabilities to the non-Federal entity,

CONSULTANT/CONTRACTOR/VENDOR, or any other party pertaining to any matter resulting from the Solicitation.

**7. FRAUD and FALSE OR FRAUDULENT OR RELATED ACTS:**

7.1. The CONSULTANT/CONTRACTOR/VENDOR acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT/CONTRACTOR/VENDORS actions pertaining to this solicitation and/or contract.

**8. SUBCONTRACTS:**

8.1. The selected firm must require compliance with all federal requirements of all sub-CONSULTANT/CONTRACTOR/VENDORS performing work for Prime CONSULTANT/CONTRACTOR/VENDOR under this Agreement, by including these federal requirements in all contracts with sub-CONSULTANT/CONTRACTOR/VENDORS.

**9. CONFLICT OF INTEREST:**

9.1. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officers, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from CONSULTANT/CONTRACTOR/VENDORS or parties to subcontracts.

**10. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (E-VERIFY):**

10.1. Statutes and Executive Orders require employers to abide by the Immigration laws of the United States and to employ only individuals who are eligible to work in the United States. The Employment Eligibility Verification System (E-Verify) operated by the U.S. Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) provides an internet-based means of verifying employment eligibility of workers in the United States; it is not a substitute for any other employment eligibility verification requirements.

10.2. Sub-CONSULTANT/CONTRACTOR/VENDOR requirement: Vendors shall require all subcontracted vendors to flow down the requirement to use E-Verify to sub-CONSULTANT/CONTRACTOR/VENDORS.

10.3. It shall be the vendor's responsibility to familiarize themselves with all rules and regulations governing this program.

10.4. For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the following website: <http://www.dhs.gov/E-Verify>.

**11. ENERGY POLICY AND CONSERVATION ACT:**

11.1. CONSULTANT/CONTRACTOR/VENDOR must follow any mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

**12. SMALL AND MINORITY BUSINESS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS:**

12.1. If subcontracts are to be let, the prime CONSULTANT/CONTRACTOR/VENDOR is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

12.1.1 Place qualified small and minority businesses and women's business enterprises on solicitation lists.

12.1.2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.

12.1.3 Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

12.1.4 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.

12.1.5 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

12.1.6 Requiring the prime CONSULTANT/CONTRACTOR/VENDOR, if subcontracts are to be let, to take the five previous affirmative steps.

**13. DOMESTIC PREFERENCES FOR PROCUREMENT (2 C.F.R. § 200.322)**

13.1. As appropriate and to the greatest extent consistent with law, ~~state and non-state entities should~~ the CONSULTANT/CONTRACTOR/VENDOR should, to the greatest extent practicable ~~under its GRANT AGENCY award~~, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States (including but not limited to iron, aluminum, steel, cement and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. 2 C.F.R. § 200.322 also provides specific definitions for "Produced in the United States" and "manufactured products" that states should review.

13.1.1. Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

13.1.2. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-

based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**14. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS OR SERVICES (2 C.F.R. § 200.216):**

~~14.1 2 C.F.R. § 200.216 prohibits state and non-state entities from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system as identified in Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-332 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. See Prohibitions on Expending GRANT AGENCY Award Funds for Covered Telecommunications Equipment or Services Interim Policy for additional information.~~

14.1 The CONSULTANT/CONTRACTOR/VENDOR shall comply with 2 C.F.R. § 200.216, Prohibition on Contracting for Covered Telecommunications Equipment or Services:

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the CONSULTANT/CONTRACTOR/VENDOR and its sub-CONSULTANT/CONTRACTOR/VENDOR may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered

telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit CONSULTANT/CONTRACTOR/VENDORS from providing—

- (i) A service that connects to the facilities of a third party, such as backhaul, roaming, or interconnection arrangements; or
- (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

- (i) Covered telecommunications equipment or services that:
  - i. Are not used as a substantial or essential component of any system; and
  - ii. Are not used as critical technology of any system.
- (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the CONSULTANT/CONTRACTOR/VENDOR identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the CONSULTANT/CONTRACTOR/VENDOR is notified of such by a sub-CONSULTANT/CONTRACTOR/VENDOR at any tier or by any other source, the CONSULTANT/CONTRACTOR/VENDOR shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The CONSULTANT/CONTRACTOR/VENDOR shall report the following information pursuant to paragraph (d)(1) of this clause:

- (i) Within one business day from the date of such identification or notification:  
The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The CONSULTANT/CONTRACTOR/VENDOR shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.”

**OVER \$10K ADD THE FOLLOWING TO THE ABOVE**

**15. TERMINATION FOR CAUSE AND/OR CONVENIENCE (for projects greater than \$10,000):**

15.1. The County, by written notice to the CONSULTANT/CONTRACTOR/VENDOR, may terminate this Agreement with or without cause (~~for convenience~~), in whole or in part, when the County determines in its sole discretion that it is in the County's best interest to do so. In the event of termination, the CONSULTANT/CONTRACTOR/VENDOR will not incur any new obligations for the terminated portion of the Agreement after the CONSULTANT/CONTRACTOR/VENDOR has received notification of termination.

15.2. If the Agreement is terminated before performance is completed, the CONSULTANT/CONTRACTOR/VENDOR shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount that is the same percentage of the Agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the County and shall be turned over promptly by the CONSULTANT/CONTRACTOR/VENDOR.

**~~OVER \$25K ADD THE FOLLOWING TO THE ABOVE~~**

**16. CHANGES:**

16.1 Changes to any federal grant or federally funded cooperative agreement shall be in writing, executed by change order and the costs of any change, modification, change order or constructive change must be allowable, allocable, and within the original scope of the federal grant or federal cooperative agreement. Changes should be reasonable and necessary for the completion of the original project scope. Any changes must be permissible under state, local and federal laws. Any change recommended and accepted by both parties, in writing, will not be considered a contract breach. Modifications to alter the method, price, or schedule of the work for any reason shall be completed following the terms and provisions of the associated contract documents. No changes to the contract documents or the performance provided shall be made unless the same are in writing and signed by both the CONSULTANT/CONTRACTOR/VENDOR and the County.

**17. LICENSE AND DELIVERY OF WORKS SUBJECT TO COPYRIGHT AND DATA RIGHTS:**

17.1. The CONSULTANT/CONTRACTOR/VENDOR grants to the County, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the CONSULTANT/CONTRACTOR/VENDOR will identify such data and grant to the County or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the CONSULTANT/CONTRACTOR/VENDOR will deliver to the County data first

produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the County.”

**18. TIME & MATERIAL, TIME & EQUIPMENT, FIRM FIXED PRICE LUMP SUM CONTRACTS:**

18.1. The following applies to purchases made or reimbursed with Federal funds as per 2 CFR 200.318(j) and other Federal Regulations. For firm fixed price, lump sum, Time & Material (T&M) and/or Time & Equipment (T&E) procurements, a Purchase Order represents a CONSULTANT/CONTRACTOR/VENDOR's Notice to Proceed (NTP). Line-item Extended Price(s) shall be considered Not to Exceed (NTE) ceiling value(s). Additionally, the Total Order value for a Purchase Order represents a NTE ceiling value. If the CONSULTANT/CONTRACTOR/VENDOR anticipates exceeding either of these NTE values, they should contact the Lee County Procurement Department for a change order. If a CONSULTANT/CONTRACTOR/VENDOR exceeds a Line Item or Total Order NTE value, it does so at its own risk.

**19. SUSPENSION AND DEBARMENT (for projects greater than \$25,000):**

19.1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONSULTANT/CONTRACTOR/VENDOR is required to verify that none of the CONSULTANT/CONTRACTOR/VENDOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. §180.935).

19.2. The CONSULTANT/CONTRACTOR/VENDOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

19.3. This certification is a material representation of fact relied upon by the awarded CONSULTANT/CONTRACTOR/VENDOR. If it is later determined that the CONSULTANT/CONTRACTOR/VENDOR did not comply with 2 C.F.R. pt.180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Lee County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

19.4. The CONSULTANT/CONTRACTOR/VENDOR agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**20. RECOVERED MATERIALS (for projects greater than \$10,000):**

20.1. In the performance of this contract, the CONSULTANT/CONTRACTOR/VENDOR shall make maximum use of products containing recovered material that are EPA-designated items unless the product cannot be acquired:

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

20.2. Information about this requirement is available EPA'S Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/> The list of EPA- designate items is available at <http://www.epa.gov/cpg/products/htm>

20.3. The CONSULTANT/CONTRACTOR/VENDOR also agrees to comply with all other applicable requirements of Section 6002 or Solid Waste Disposal Act.

**21. REMEDIES (for projects greater than Simplified Acquisition Threshold - \$250,000):**

21.1. In the event the CONSULTANT/CONTRACTOR/VENDOR fails to satisfactorily perform or has failed to adhere to the terms and conditions under this Agreement, the County may, upon fifteen (15) calendar days written notice to the CONSULTANT/CONTRACTOR/VENDOR and upon the CONSULTANT/CONTRACTOR/VENDOR's failure to cure within those fifteen (15) calendar days, exercise any one or more of the following remedies, either concurrently or consecutively:

21.1.1. Withhold or suspend payment of all or any part of a request for payment.

21.1.2. Require that the CONSULTANT/CONTRACTOR/VENDOR refund to the County any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.

21.1.3. Exercise any corrective or remedial actions, to include but not be limited to:

21.1.4. Requesting additional information from the CONSULTANT/CONTRACTOR/VENDOR to determine the reasons for or the extent of non-compliance or lack of performance;

21.1.5. Issuing a written warning to advise that more serious measures may be taken if the situation is not corrected;

21.1.6. Advising the CONSULTANT/CONTRACTOR/VENDOR to suspend, discontinue or refrain from incurring costs for any activities in question; or

21.1.7. Requiring the CONSULTANT/CONTRACTOR/VENDOR to reimburse the County for the amount of costs incurred for any items determined to be ineligible.

**22. OTHER REMEDIES AND RIGHTS:**

22.1. Pursuing any of the above remedies will not keep the County from pursuing any other rights or remedies, which may be otherwise available under law or in equity. If the County waives any right or remedy in this Agreement or fails to insist on strict performance by the CONSULTANT/CONTRACTOR/VENDOR, it will not affect, extend or waive any other right or remedy of the County, or affect the later exercise of the same right or remedy by the County for any other default by the CONSULTANT/CONTRACTOR/VENDOR.

22.2. Unless otherwise provided by the Contract, all claims, ~~counter-claims~~ counterclaims, disputes and other matters in question between the County and the



CONSULTANT/CONTRACTOR/VENDOR arising out of or relating to the Agreement between the parties, or the breach of it, that cannot be resolved by and between the parties after conferring in good faith, will be decided by a court of competent jurisdiction pursuant to Florida law. If such dispute is in state court, venue shall be in the Twentieth Judicial Circuit Court in and for Lee County, Florida. If in federal court, venue shall be in the U.S. District Court for the Middle District of Florida, Ft. Myers Division.

**23. CONTRACT WORK HOURS & SAFETY STANDARDS (40 U.S.C. 3701-3708):: (for projects greater than \$100,000):**

23.1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

23.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

23.3. Withholding for unpaid wages and liquidated damages. The State of Florida Division of Emergency Management shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

23.4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**24. CLEAN AIR ACT (for projects greater than \$150,000):**

24.1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

24.2. The contractor agrees to report each violation to the GRANT AGENCY and the Regional Office of the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

24.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

**25. FEDERAL WATER POLLUTION CONTROL ACT (for projects greater than \$150,000):**

25.1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

25.2. The contractor agrees to report each violation to the GRANT AGENCY and the Regional Office of the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

25.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

**26. BYRD ANTI-LOBBYING AMENDMENT (for projects greater than \$100,000):**

26.1. CONSULTANT/CONTRACTOR/VENDORS who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

**27. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT:**

27.1. If the Federal award meets the definition of "funding agreement" under 37C.F.R. § 401.2(a) and Lee County enters into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the County must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the Federal Awarding Agency. See 2 C.F.R. Part 200, Appendix II(F).

**28. FLY AMERICA REQUIREMENTS:**

28.1. The CONSULTANT/CONTRACTOR/VENDOR agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**29. AMERICANS WITH DISABILITIES ACT (ADA):**

29.1. All design and construction must be accessible to individuals with disabilities pursuant to Titles II and III of the Americans with Disabilities Act.

**30. CARGO PREFERENCE:**

- 30.1. The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.
- 30.2. Use of United States – Flag Vessels:
- 30.3. The CONSULTANT/CONTRACTOR/VENDOR agrees to use privately owned United States- Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States- Flag commercial vessels.
- 30.4. Furnish within twenty (20) business days following the date of loading for shipments originating within the United States or within thirty (30) business days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding 6 paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to LCBOCC (through the Contractor in the case of a subcontractor's bill-of-lading.)
- 30.5. Include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**31. SEISMIC SAFETY REQUIREMENTS FOR THE CONSTRUCTION OF NEW BUILDINGS OR ADDITION TO EXISTING BUILDINGS:**

31.1. CONSULTANT/CONTRACTOR/VENDOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The CONSULTANT/CONTRACTOR/VENDOR also agrees to ensure that all Work performed under the Contract including Work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

### **32. ENERGY CONSERVATION:**

- 32.1. CONSULTANT/CONTRACTOR/VENDOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the Florida energy conservation plan issued in compliance with the Energy Policy and Conservation Act, as amended, 42 USC § 6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with Federal funds required under Federal regulations, "Requirements for Energy Assessment," 49 CFR part 622, subpart C.

### **CONSTRUCTION ONLY, if Applicable**

### **33. DAVIS-BACON ACT:**

- 33.1. All prime construction contracts in excess of \$2,000 awarded by non- Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II(D). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

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The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.

#### 33.2. Minimum wages

- i. All laborers and mechanics employed or working upon the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis - Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part

5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be Posted at all times by the CONTRACTOR and its sub- CONTRACTORS at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii.

(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 C.F.R. 5.2(n) (4), such a classification prevails in the area in which the work is performed.

(B) If the CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting

Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (ii) (B) or (C) of this section, shall be paid to all workers performing Work in the classification under the Contract from the first day on which Work is performed in the classification.

1.1. Withholding - LCBOCC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the CONTRACTOR under the Contract or any other Federal contract with the same prime CONTRACTOR, or any other federally- assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime CONTRACTOR, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the CONTRACTOR or any sub-CONTRACTOR the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, LCBOCC may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

1.2. Payrolls and basic records

i. Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTORS employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- ii.
  - (A) The CONTRACTOR shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to LCBOCC for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 C.F.R. part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime CONTRACTOR is responsible for the submission of copies of payrolls by all sub- CONTRACTORS.
  - (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the CONTRACTOR or sub- CONTRACTOR or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
    - 1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5 and that such information is correct and complete;
    - 2. That each laborer or mechanic (including each helper, apprentice, and trainee employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;
    - 3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of Work performed, as specified in the applicable wage determination incorporated into the Contract.
  - (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (c) (i) (B) of this section.
  - (D) The falsification of any of the above certifications may subject the CONTRACTOR or sub- CONTRACTOR to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- iii. The CONTRACTOR or sub- CONTRACTOR shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the CONTRACTOR or sub- CONTRACTOR fails to submit the required records or to make them available, the Federal agency may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

### 1.3. Apprentices and trainees

- i. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the Work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the CONTRACTOR as to the entire Work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. Where a CONTRACTOR is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the CONTRACTOR's or sub- CONTRACTOR's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the CONTRACTOR will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.
- ii. Trainees - Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour



Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any trainee performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the CONTRACTOR will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

- iii. Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.
- 1.4. Compliance with Copeland Act requirements. The CONTRACTOR shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in the Contract.
- 1.5. Subcontracts. The CONTRACTOR or sub- CONTRACTOR shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the sub-CONTRACTORS to include these clauses in any lower-tier subcontracts. The prime CONTRACTOR shall be responsible for the compliance by any sub- CONTRACTOR or lower tier sub-CONTRACTOR with all the Contract clauses in 29 C.F.R. 5.5.
- 1.6. Contract termination: debarment. A breach of the Contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the Contract, and for debarment as a CONTRACTOR and a sub- CONTRACTOR as provided in 29 C.F.R. 5.12.
- 1.7. Compliance with Davis - Bacon and Related Act requirements. All rulings and interpretations of the Davis - Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in the Contract.
- 1.8. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general disputes clause of the Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the CONTRACTOR (or any of its sub- CONTRACTORS) and the Contracting agency, the U.S. Department of Labor, or the employees or their representatives.

1.9. Certification of eligibility

- i. By entering into the Contract, the CONTRACTOR certifies that neither it (nor he or she) nor any person or firm who has an interest in the CONTRACTOR's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).
- ii. No part of the Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).
- iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**34. COPELAND ANTI-KICKBACK ACT:**

34.1. Recipient and subrecipient contracts must include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

34.2. This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. It DOES NOT apply to the FEMA Public Assistance Program.

34.3. Compliance

34.3.1. CONSULTANT/CONTRACTOR/VENDOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3, which are incorporated by reference into the Contract.

34.3.2. Subcontracts. The CONSULTANT/CONTRACTOR/VENDOR or subcontractor shall insert in any subcontracts the clause above and such other clauses as may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONSULTANT/CONTRACTOR/VENDOR shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

34.3.3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**SECTION THREE: CONFLICTS OF LAW**

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of other lawfully adopted ordinances or statutes, the most restrictive requirements will apply.

**SECTION FOUR: SEVERABILITY**

If any provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, it is the Board’s intention that such portion will become a separate provision and will not affect the remaining provisions of the ordinance. The Board further declares that this ordinance would have been adopted if such unconstitutional provision was not included.

**SECTION FIVE: CODIFICATION AND SCRIVENER’S ERRORS**

The Board intends that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word “ordinance” can be changed to “section”, “article” or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager or his designee, without the need for a public hearing.

**SECTION SIX: MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING**

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

**SECTION SEVEN: EFFECTIVE DATE**

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

Commissioner Pendergrass made a motion to adopt the foregoing ordinance, seconded by Commissioner Greenwell. The vote was as follows:

Kevin Ruane	Aye
Cecil L Pendergrass	Aye
Raymond Sandelli	Aye
Brian Hamman	Aye
Michael Greenwell	Aye

DULY PASSED AND ADOPTED this 5<sup>th</sup> day of September 2023.

ATTEST:  
KEVIN C. KARNES  
CLERK OF CIRCUIT COURT

BY:   
Deputy Clerk

CHRIS JAGODZINSKI  
DEPUTY CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY:   
Brian Hamman, Chair

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

  
Office of the County Attorney





FLORIDA DEPARTMENT *of* STATE

**RON DESANTIS**  
Governor

**CORD BYRD**  
Secretary of State

September 11, 2023

Honorable Kevin Karnes  
Clerk of the Circuit Courts  
Lee County  
Post Office Box 2469  
Fort Myers, Florida 33902-2469

Attn: Chris Jagodzinski

Dear Kevin Karnes:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Lee County Ordinance No. 23-21, which was filed in this office on September 8, 2023.

Sincerely,

Anya Owens  
Administrative Code and Register Director

ACO/wlh

**RECEIVED**

*By Chris Jagodzinski at 10:13 am, Sep 11, 2023*