

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20070575

1. ACTION REQUESTED/PURPOSE: Approve the utilization of the State of Florida Contract No. RFP 06/07-06, MERCHANT SERVICES (Acceptance of Credit Cards, Charge Cards, Debit Cards, and Other Electronic Payments) for Visa and MasterCard, at the rates specified in the State of Florida Pricing Schedule, the Bank of America Merchant Pricing Schedule, and the Master Card and Visa Interchange Program Schedules. The term of the State Contract is in effect from January 1, 2007 through December 31, 2010. Current fees are projected to reach \$500,000/year County-wide. Further authorize Chair to execute the Participation Agreement with Bank of America.

2. FUNDING SOURCE: County Wide funding sources

3. WHAT ACTION ACCOMPLISHES: Allows County departments to utilize Merchant Services at a substantial savings over the current provider, due to the negotiated pricing based on the State's considerable sales volume.

4. MANAGEMENT RECOMMENDATION: Approve

5. Departmental Category: C6B		6. Meeting Date: APR 24 2007
7. Agenda: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative Appeals <input type="checkbox"/> Public Walk-On	8. Requirement/Purpose: (specify) Statute _____ Ordinance _____ <input checked="" type="checkbox"/> Admin. Code AC-4-4 Other _____	9. Request Initiated: Commissioner _____ Department Independent Division Internal Services, Fiscal By: <i>Peter Cloutier</i> Peter Cloutier, Mgr

10. Background: For the past two and half years County departments have been utilizing the State of Florida Contract with Bank of America for Merchant Services (acceptance of credit cards, charge cards, debt cards and other electronic payments).

The State of Florida has solicited a new contract with Bank of America under RFP 06/07-06. We are therefore requesting Board approval to utilize the State of Florida contract with Bank of America for continued Merchant Services for County Departments.

Discover and American Express transactions can be accepted, authorized and processed by the Bank of America but the discount rate is not part of the State Contract.

Funding for these services will be available from the budgets of various countywide departments

- Attachments: 1) Copy of State Contract Agreement with Bank of America
2) Participation Agreement for Execution.

11. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
	<i>Joe 4/15</i>	N/A		<i>Adella</i>	Analyst	Risk	Grants	Mgr.	
				<i>Pass</i>	<i>4/19/07</i>	<i>1/19/07</i>	<i>4/16/07</i>	<i>4/16/07</i>	<i>[Signature]</i>

12. Commission Action:

- Approved
- Deferred
- Denied
- Other

REC'D
by CO. ATTY.
4/16/07
3:50 PM
CO. ATTY.
FORWARDED TO:
[Signature]
4-16-07

RECEIVED BY
COUNTY ADMIN
4/16/07
440
COUNTY ADMIN
FORWARDED TO:

ELECTRONIC PAYMENTS RECEIPT SYSTEM PROVIDER CONTRACT

THIS CONTRACT ("Contract") is entered into by and between the State of Florida, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0300 its successor, and Bank of America, N.A., a nationally-chartered banking association and BA Merchant Services LLC, an Ohio limited liability corporation, effective January 1, 2007.

WITNESSETH THAT:

WHEREAS, the Department has determined that the Agencies are in need of certain services as described herein; and

WHEREAS, the Provider, as an independent contractor of the Department, has the expertise and ability to faithfully perform such services.

NOW THEREFORE, in consideration of the services to be performed and payments to be made, together with the mutual covenants and conditions hereinafter set forth, the parties agree as follows:

1. Definitions

Agency - Any official, officer, commission, board, authority, council, committee, or department of the executive branch of State government. Also includes, but is not limited to, state attorneys, public defenders, the capital collateral regional counsels, the Justice Administrative Commission, the Florida Housing Finance Corporation, the Florida Public Service Commission and the judicial branch.

CFO - Chief Financial Officer of Florida

Department - Department of Financial Services

F.A.C. - Florida Administrative Code

F.S. - Florida Statutes

Local Government - Municipality, special district, or board of county commissioners or other governing body of a county, however styled, including that of a consolidated or metropolitan government, also any clerk of the circuit court, sheriff, property appraiser, tax collector, or supervisor of elections

Participant - Any Agency or Local Government that signs a Participation Agreement

Participation Agreement - Agreement between the Provider and an Agency or unit of Local Government

Provider - Bank of America, N.A., a nationally-chartered banking association and BA Merchant Services LLC, an Ohio limited liability corporation

RFP – Request for Proposal

State – State of Florida

2. Services. The Provider agrees to render the services requested in RFP 06/07-06 and proposed by the Provider in their response dated September 5, 2006 to the RFP and to be known as the Electronic Payments Receipt System.
3. Delivery Schedule. The services specified in Paragraph 2 above shall be delivered or otherwise rendered on behalf of the Participants in accordance with the RFP#06/07-06 and as modified by the Provider's September 5, 2006 response to the RFP.

4. Implementation and Agency Participation

(a) The Provider agrees to accept the Department's Contract as the basis for providing services to Participants. Establishing service and participating in the Electronic Payment Receipts System is accomplished by executing a Participation Agreement, the Treasury Services Terms and Conditions, a Customer-Initiated Payment Service (CIP) Addendum, and/or an Automated Clearing House (ACH) Service Addendum, as each may be applicable, between the Provider and the individual Participants. These forms will be obtained from the Provider. Additionally, Agencies will be required to complete a User Profile Form, Cost/Benefit Summary, and the Request for Approval forms obtained from the Department.

(b) The Participation Agreement sets forth the terms and conditions of Participant's involvement in the Contract. The Participation Agreement shall include all relevant information and requirements of the merchant services made available by the Provider.

(c) The Department will coordinate any necessary communication with the State Technology Office/Department of Management Services for necessary approvals for the initiation of any new Internet services by an Agency for the collection of funds. After approval requirements are met the Agency will work directly with the Provider to establish services.

5. Payment.

(a) Subject to the terms and conditions established by this Contract and the billing procedures established by the RFP, the Participant agrees to pay the Provider for services as established by the Participation Agreement.

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

If a payment is not available within 40 days, a separate interest penalty, computed at the rate determined by the Chief Financial Officer pursuant to Section 215.422, F.S., will be due and payable, in addition to the invoice amount, to the vendor. To obtain the applicable interest rate, please refer to <http://www.dbf.state.fl.us/banking/interest.html>. Interest penalties of less than one (1) dollar will not be enforced unless the vendor requests payment. Invoices which have to be returned to a vendor because of vendor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the agency.

A Vendor Ombudsman has been established with the Department. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from an agency. The Vendor Ombudsman may be reached at (850) 413-5516.

(c) Taxes. The Agencies are exempted from payment of Florida state sales and use taxes and Federal Excise Tax. The Provider, however, shall not be exempted from paying Florida state sales and use taxes to the appropriate governmental agencies or for payment by the Provider to suppliers for taxes on materials used to fulfill its contractual obligations under the contract. The Provider shall not use the Department's exemption number in securing such materials. The Provider shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Contract.

(d) Expenses. Travel and per diem will not be reimbursed by the Department.

(e) Payment Processing. All charges for services rendered or for reimbursement of expenses authorized by the Contract in accordance with Paragraphs 5 and 6 shall be submitted to the Participant in sufficient detail for a proper pre-audit and post-audit to be performed. All payments for professional services and authorized expenses will be paid to the Provider according to the billing procedures established in the RFP and payment terms as established in the Participation Agreement.

(f) Contingency. If the terms of this Contract extend beyond the current fiscal year, the State's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.

6. Termination.

(a) The Department may cancel this Contract at any time for any reason. Provider may terminate this Contract upon a 120 calendar days prior written notice to the Department. If the Department cancels the Contract the Provider shall be paid only the amount due for services which have been received and accepted by the Participant and services due within the time period stated in paragraph two (2) above. The Provider shall be entitled to no damages beyond what is provided in this paragraph.

(b) Notwithstanding subsection 6(a), Provider may terminate the Contract or any or all Services effective immediately, and Provider will send Department written notice of the termination, if any of the following occurs: (i) Department breaches any of the terms and conditions in the Treasury Services Terms and Conditions or any other agreement with Provider; (ii) Department fails generally to pay its debts as they become due; and (iii) as required by applicable federal law or card organization operating regulations.

(c) Provider may terminate this Contract upon thirty (30) days prior written notice upon the occurrence of the following: (i) the Department is unable to perform fully its obligations under the card organizations operating procedures, and (ii) the Department breach this Contract and fail to cure such breach within thirty (30) days after notice of the breach has been given.

(d) If the Contract or a Service is terminated for any reason, Department shall (i) immediately stop using any Materials relating to the terminated Service; (ii) erase or delete any Provider-provided software relating to the terminated Service to the extent stored in Department's computers; and (iii) at the option of Provider, either return to Provider or destroy all Materials relating to the terminated Service and certify to Provider that it has done so. Department's obligations under this subsection 6(c) shall survive termination of the Agreement.

(e) This Contract shall terminate upon the Provider's satisfactory completion of the services described in Paragraphs 2 and 3 and upon satisfactory performance evaluations of the Provider by the Department and the Participants. The Department may unilaterally terminate this Contract in the event that the Department requests in writing that the Provider allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F.S., which are made or received by the Provider in conjunction with this Contract, and the Provider refuses to allow such access. Provider shall comply with the record keeping standards of the Rules 1B-24 and 1B-26, F.A.C. If, in the judgment of the Department, the Provider for any reason fails to fulfill in a timely manner all obligations under this Contract, the Department shall have the right to terminate this Contract by giving at least five days written notice by registered mail to the Provider of such termination, including the effective date of termination. The Department shall not be deemed to assume any liability for the acts, omissions to act or negligence of the Provider, its agents, servants, and employees, nor shall the Provider disclaim its own negligence to the Department or any third party.

(f) Termination of the Agreement or a Service shall not affect Department's or Participant's payment obligations with respect to services performed by Provider prior to

termination. Also, termination of the Agreement or a Service does not release the parties from any of their respective obligations which arose or became effective before such termination.

(g) If at any time the Contract is cancelled, terminated or expires, and a contract is subsequently executed with an entity other than the Provider, the Provider shall be obligated to assist in the smooth transition of contract services to the subsequent entity.

7. Term and Renewal. This Contract shall begin January 1, 2007 and expire December 31, 2010. This Contract may be renewed, for a maximum of two years. The renewal price, or method for determining a renewal price, is set forth in the Contract price, attached hereto. No other costs for the renewal may be charged. Any renewal is subject to the same terms and conditions as the original Contract and shall be contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds.

8. Transition. During the term of this Contract, in order to allow each Participant an opportunity to orderly cease acceptance of cards or any necessary approvals of their authorizing body the following shall apply:

- (i) All previously executed Participation Agreements shall remain in effect for ninety (90) days after expiration or termination, but in no event beyond April 1, 2007.
- (ii) Every Participation Agreement that is executed after January 1, 2007 shall continue in effect for ninety (90) days after the termination of this Contract.

Notwithstanding the above, all Participants are required to execute a Participation Agreement with each subsequent Contract. In the event that a Participant fails to execute a new Participation Agreement, the prior Participation Agreement shall terminate at the end of the ninety (90) day period.

9. Contract Modification. This Contract may be amended only by a written agreement between both parties subject to the provisions of Chapter 287, F.S.

10. Miscellaneous. This instrument and any referenced or attached addendum, including but not limited to the Treasury Services Terms and Conditions incorporated herein, embodies the entire agreement of the parties. There are no other provisions, terms, conditions, or obligations. This Contract supersedes all previous oral or written communications, representations or agreements on this subject. Any conflict between this Contract and any referenced or attached addendum the terms and conditions of this Contract shall take precedence and govern. This Contract shall be governed by and construed in accordance with the laws of the State. In all cases, venue shall be in Leon County, Florida. Provider is an independent contractor, and is not an employee or agent of the Department. All services contracted for are to be performed solely by the Provider and may not be subcontracted for or assigned without the prior written consent of the Department.

11. Statutory Notices. The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this Contract. An entity or affiliate who has been placed on the public entity crimes list or the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity pursuant to limitations under Chapter 287 F.S.

12. Compliance with Federal, State and Local Laws. Provider and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, worker's compensation, licenses and registration requirements.

13. MyFloridaMarketPlace. Pursuant to Rule 60A-1.030-.032, F.A.C., the Department of Management Services has instituted MyFloridaMarketPlace, a statewide eProcurement System. Unless exempted under Rule 60A-1.030-.032, F.A.C., each vendor doing business with the State shall submit reports and be assessed a Transaction Fee of one percent (1.0%), on its payments under this Contract, which the Provider shall pay to the State pursuant to Rule 60A-1.031(2), F.A.C. The Provider shall receive a credit for any Transaction Fee paid by the Provider for the purchase of any item(s) if such item(s) are returned to the Provider through no fault, act, or omission of the Provider.

14. Electronic Accessibility. When the Agency is to develop, procure, maintain, or use electronic and information technology, they shall ensure that the electronic and information technology allows employees and members of the public with disabilities to have access to and use of information and data that is comparable to the access to and use of information and data by employees who are not individuals with disabilities. These require, e.g., screen enlargement and voice output, or have built-in screen reader or, that the products support assistive technology; increase in volume and/or alter the tonal quality or increase the signal-to-noise ratio; if speech input one alternative input mode also; not require fine motor control or simultaneous actions. See 36 CFR Part 1194 based on Section 508 of the Rehabilitation Act Amendments, 29 USC Sec. 794.


15. Contract Administration.

(a) The Department contract manager is Terry Straub located at 1801 Hermitage Blvd., Suite 400, Tallahassee, FL 32308.

(b) The Provider contract manager is Keith Thompson located at 100 W Garden Street, Pensacola, FL 32502.


(c) All written and verbal approvals referenced in this Contract must be obtained from the parties' contract administrators or designees. Notices required to be in writing must be delivered or sent to the intended recipient by hand delivery, certified mail or receipted courier and shall be deemed received on the date received or the date of the certification or receipt.

IN WITNESS WHEREOF, the Department of Financial Services and Bank of America, N.A. and BA Merchant Services LLC, by their duly authorized representatives, have executed this Contract.



Provider Representative: Kristin Harrison
Title: Vice President

Date: 12/27/06



Department of Financial Services
Chief of Staff or Designee

Date: 12/29/06

**State of Florida
Consolidated Price Schedule**

**Electronic Payment
Receipt System**

Merchant Services Pricing

Transaction Fees (A-2)

Internet (IP) Authorization Fee (Visa/MasterCard only)	\$.03
POS (dial) Authorization Fee (Visa/MasterCard only)	\$.04
Merchant Discount Fee	No Charge
Visa/MasterCard Interchange Fees	Pass Through
Visa/MasterCard Dues and Assessments	Pass Through
PIN Debit Authorization Fee	\$.65
(PIN Debit is a solutions currently utilized by agencies that was not listed in Attachment A that we will continue to support. Should the State choose to continue to offer PIN Debit, we have offered to continue the service at the existing contract pricing)	

Telecommunication Fees (A-6)

Installation	No Charge
Circuit	No Charge
Router	No Charge
Network	No Charge
Support	No Charge
Back-up Circuit	No Charge

Reporting Fees (A-7)

Internet Reporting	\$4.95/month
(Includes daily, monthly, annual, and custom capabilities and all associated fees)	

Other Applicable Fees (A-8)

Chargebacks	\$7.50/occurance
Research/Retrieval	No Charge
Account Transfer Fee	No Charge
Monthly Statement Fee	No Charge

Equipment Fees (A-9)

Terminal/Printer Combo Rental Fee	\$20.00/month
Terminal/Printer Combo Purchase	\$275.00
Terminal Rental Fee	\$20.00/month
Terminal Purchase	\$275.00
Printer Rental Fee	\$15.00/month
Printer Purchase	\$260.00
PIN Pad Rental Fee	\$6.00/month
PIN Pad Purchase	\$80.00
Keyboard Swipe (wedge) Rental Fee	\$10.00/month
Keyboard Swipe (wedge) Purchase	\$95.00
Software Purchase	\$250.00
Terminal Relocation	No Charge
Terminal Download	No Charge

Integrated Payment Solution Pricing for Remote Payments Online and Velocity Payment Systems

(And Department of Revenue's legacy application with Customer Initiated Payments)

Implementation¹ (for new users, not migrating users) (A-3)

Gateway Mode	\$1000.00
One time Pay (IVR) Interface	\$1000.00
One Time Pay (Web) Interface	\$1000.00
Client Console Payment Entry (CSR) Interface	\$3,000.00
Enrolled (Web) Interface	\$1000.00
Enrolled (IVR) Interface	\$1000.00
Batch Implementation	\$1000.00
Client Service Interface (CSI)	\$1000.00

(CSI is a service currently utilized by agencies that was not listed in Attachment A that we will continue to support. Should the State like to continue to offer it, we have included the implementation cost for any new applications)

Maintenance (A-4)

Monthly Maintenance ²	\$225
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Web Transaction Pricing (A-1)

Tiered Pricing per application per month

Transaction pricing for transaction volume charges one of the following will apply per application:

For total monthly transaction volume less than 25,000 transactions per month:
Each transaction (0-25,000) will cost: \$.18

For total monthly transaction volume exceeding 25,000 and up to 50,000 transactions:
Each transaction (0-50,000) will cost: \$.12

For total monthly transaction volume exceeding 50,000 and up to 100,000 transactions:
Each transaction (0-100,000) will cost: \$.10

For total monthly transaction volume exceeding 100,000 transactions:
Each transaction will cost: \$.09

Merchant and/or ACH fees apply.
ACH fees can be found in the State of FL Banking Services Contract

¹ Each interface the client utilizes will incur a separate implementation fee.

² Fee will be charged at a client level.

Optional Services

MAM File Support³ \$275/month

IVR and Voice Recognition Transaction Pricing (A-5)

Tiered Pricing per application per month

Transaction pricing for transaction volume charges one of the following will apply per application:

For total monthly transaction volume less than 50,000 transactions per month:

Each transaction (0-50,000) will cost: \$.20

For total monthly transaction volume exceeding 50,000 transactions:

Each transaction will cost: \$.15

Merchant and/or ACH fees apply.

ACH fees can be found in the State of FL Banking Services Contract

TEL (CSR Model) Customer Notifications – NACHA Compliance

- Confirmation Letter \$.75/letter
- Confirmation Postcard \$.50/postcard
- Confirmation Email \$.02/email

IVR – telephone charges per minute \$0.06 per minute

IVR – transfer connects from IVR to entity owned vendor or agency customer service \$.50/transfer

IVR (One-Time Pay) – recording/authorization \$.60/gig/month

Negative Database Search \$.02/item

Web Email Customer Notifications – NACHA Compliance \$.02/email

Reporting

Standard Online Reporting Included

Daily Remittance Reporting Included

Fixed File

CSV File

Other reporting option

EDI 820

EDI maintenance and processing fees apply

Other

Additional division set-up inside of an application \$550

Batch Enrollment \$1000

Add ACH to an existing credit card application \$550

Add credit card to an existing ACH application \$550

Change of ACH Company ID \$550

Additional URL at time of implementation \$1000

³ Fee will be charged at a client level.

Customization

Professional Service Fees (customized requests)

\$175/hour

**PARTICIPATION AGREEMENT
BETWEEN
BA MERCHANT SERVICES and BANK OF AMERICA, N.A.
AND
ENTITY**

This Participation Agreement is entered into between BA Merchant Services LLC, an Ohio limited liability corporation and Bank of America, N.A. (together "Contractor") and Lee County Board of County Agency or Unit of Local Government as defined in the Electronic Payments Receipt System Provider Commissioners Contract effective January 1, 2007 ("Contract") and (hereinafter known as the "Entity").

I. PARTICIPATION TERMS AND CONDITIONS

- A. By signing this Participation Agreement, the Entity and the Contractor agree to be bound by the terms of this Participation Agreement and the Electronic Payments Receipt System Provider Contract between the Contractor and the State of Florida (the "Contract") in the performance of their obligations. The terms of the Contract between the State of Florida (the "State") and the Contractor, including the Card Organizations operating regulations, take precedence over this Participation Agreement.
- B. By signing this Participation Agreement, the Entity agrees to be bound by the terms of the Merchant Card Services Agreement Terms and Conditions dated 1/2003 and as modified from time to time ("Terms and Conditions"). Entity is referred to as "Merchant" in the Terms and Conditions. The standard form Terms and Conditions booklet is modified as provided in Section IV below.
- C. The Entity will retain copies of Sales Slips, Credit Slips and other related documents for no less than three (3) years from the transaction date.

II. FEES TO BE PAID TO THE CONTRACTOR

- A. The Entity agrees to pay the Contractor a discount rate or transaction fee based on the fee schedule in Attachment 1 of the Contract.
- B. Such fees will be debited monthly from the Entity's Deposit Account or billed to the Entity via an invoice process.

III. EFFECTIVE DATE AND TERMINATION

- A. This Participation Agreement will become effective on the date it is signed by both parties.
- B. This Participation Agreement remains in full force and effect until terminated as provided in this section or until the Contract is terminated.
- C. Either party may terminate this Participation Agreement at any time by giving the other thirty (30) days prior written notice.
- D. In the event of non-payment of an invoice for forty-five (45) days or more, Contractor may cease processing after fifteen (15) days prior written notice to Participant.
- E. Notwithstanding any foregoing subsection, Provider may terminate this Participation Agreement effective immediately, followed by written notice, as required by applicable federal law or card organization operating regulations.

IV. MERCHANT SERVICES TERMS AND CONDITIONS

- A. Section 2.01(B) of the Terms and Conditions is hereby removed and replaced in its entirety with the following:

Merchant will provide BA with updated business and financial information concerning Merchant, including evidence of required licenses and other information and documents BA may reasonably request from time to time. All material marked "confidential" which BA receives from Merchant will be used only by BA or Card Organizations in performing services under this Agreement or related services and reporting. At any reasonable time, BA or any Card Organization may audit Merchant's records relating to this Agreement.

- B. Section 14 of the Terms and Conditions is hereby deleted.
- C. Section 18.01 of the Terms and Conditions is hereby removed and replaced in its entirety with the following:

SECTION 18.01 FLORIDA LAW APPLIES.

Florida law, as applied to agreements made and performed entirely in Florida without reference to conflict of laws provisions, governs this Agreement.

- E. The heading and all the provisions constituting Section 24 "Continuing Guarantee" are hereby deleted in their entirety.

V. NOTICES

- A. Any notice required or permitted to be given under this Participation Agreement by one party to the other shall be in writing and shall be given and deemed to have been given if hand-delivered, delivered by telephonic facsimile transmission equipment and confirmed by telephone with an original mailed or hand-delivered thereafter, or mailed by certified or registered mail with postage prepaid to the party or their successor at the address specified as follows:

The Entity:

Lee County Board of County Commissioners
P O Box 398
Fort Myers FL 33902-0398
Attn: Contracts Management

The Contractor:

BA Merchant Services, LLC
1231 Durret Lane
Louisville, Kentucky 40213
Attention: Contract Management
Facsimile Number: (502) 315-2271

- B. All such notices shall be deemed given when received, as evidenced by the signed acknowledgment of receipt of the person to whom such notice or communication shall have been delivered by hand, the document transmission summary generated by the telephonic facsimile transmission equipment, or the acknowledgment of receipt returned to sender by the United States Post Office, if such receipt is requested.

- C. The absence of the forms of documentary evidence of date of delivery, however, shall not be interpreted as invalidating the form of notice utilized.
- D. Either party may change the address to which notices are to be delivered by giving to the other party not less than ten Business Days prior written notice thereof.

VI. MISCELLANEOUS PROVISIONS

- A. This Participation Agreement, incorporating the terms of the Contract and the Terms and Conditions, contains the entire understanding of the parties and supersedes any and all previous discussions, proposals, or agreements, if any, between the parties with respect to the subject matter hereof.
- B. This Participation Agreement may not be amended except by an instrument in writing signed by an authorized representative of each of the parties.
- C. This Participation Agreement is binding on the parties and their successors and assigns.

Bank of America, N.A.

ENTITY: LEE COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____

 Printed Name

By: _____

 Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

BA Merchant Services, LLC

By: _____

 Printed Name

By: _____

 Printed Name

Title: _____

Title: _____

Date: _____

Date: _____