

[Solicitation Number]
[Project / Contract Name]
[Vendor/Contractor Name]

E1 Contract # _____

LEE COUNTY CONSTRUCTION **CONTRACT**
AGREEMENT FORM

Commented [B11]: Please leave the highlighting in until Contracts has completed review. When you receive verification that you can move forward, remove the highlighting before sending to the Vendor for execution.

AGREEMENT

THIS AGREEMENT (“Agreement”), effective the date the Lee County Board of County Commissioners awarded the Solicitation to the Contractor, is made and entered into by both parties, by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "OWNER" or the "COUNTY" and **INSERT NAME**, a Florida corporation, whose address is **INSERT VENDOR ADDRESS**, and whose Federal tax identification number is **INSERT VENDOR FEID**, hereinafter referred to as “CONTRACTOR”.

Commented [B12]: Please verify that this Vendor is a corporation and not an LLC. If it's an LLC/company, change this to "company."

In consideration of the mutual covenants herein set forth, the COUNTY and the CONTRACTOR do hereby agree as follows:

ARTICLE 1. WORK

The CONTRACTOR shall perform all the Work required by the Contract Documents (the “Work”).

Scope of Work:

In full accordance with the drawings and as further elaborated in the specifications of Lee County Invitation to Bid No. **[SOLICITATION #]** (the “Solicitation”), a copy of which is on file with the Lee County Department of Procurement Management and is deemed incorporated into this Agreement, the CONTRACTOR shall **INSERT SCOPE OF WORK**.

PROJECT NAME: **INSERT PROJECT TITLE**

Commented [GD3]: If federal funds are being used, add in the following language here before the 'PROJECT NAME' section: "Additionally, CONTRACTOR shall provide such services in compliance with all Federal terms, conditions, provisions, certifications, affidavits, and alike, as set forth in the Exhibit C, Project Funding Package, attached hereto and incorporated herein, which shall be inclusive of the original Solicitation with CONTRACTOR's executed proposal documents, grant funding provision, and addenda."

LOCATION: Lee County, Florida

ARTICLE 2. AMOUNT OF CONTRACT

2.1 The COUNTY shall pay the CONTRACTOR in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the sum of: **INSERT WRITTEN DOLLAR AMOUNT OF THE CONTRACT (\$X.00)**.

2.2 All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of nonappropriation of funds by the County for the services provided under this Agreement, the County will terminate

the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the CONTRACTOR on thirty (30) calendar days' prior written notice, but failure to give such notice shall be of no effect, and the County shall not be obligated under this Agreement beyond the date of termination.

2.3 In the event a Change Order is issued under this Contract, which includes changes in price resulting from taxes and/or tariffs, those taxes and/or tariffs shall not include a markup.

ARTICLE 3. PROGRESS PAYMENTS

Based upon Applications for payment submitted to the OWNER'S Representative by the CONTRACTOR, and Certificates for Payment issued by the OWNER'S Representative, the COUNTY shall make progress payments on account of the Contract Price to the CONTRACTOR as provided in the Contract Documents as follows:

3.1 Not later than fifteen (15) calendar days following the approval of an Application for payment, up to ninety-five percent (95%) of the portion of the Contract Price properly allocated to the aggregate of labor, materials, and equipment costs collectively incorporated in the Work and up to ninety-five percent (95%) of the portion of the Contract Price properly allocated to materials and equipment suitably stored at the site or some other location agreed upon in writing, for the period covered by the application for payment, less the aggregate of previous payments made by the COUNTY. In the event day fifteen (15) falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline shall fall to the next Monday or non-Lee County recognized holiday.

3.1.1 The amount of retainage withheld from each subsequent progress payment made to the CONTRACTOR may not exceed 5%.

3.2 Upon final completion of the work and acceptance of the project, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Price, less such amounts as the COUNTY shall determine for all incomplete Work, unsettled claims, or unused units as provided in the Contract Documents.

ARTICLE 4. CONTRACT DOCUMENTS

This Contract executed this date by the Lee County Board of County Commissioners and the CONTRACTOR. WITNESSETH that the parties hereto do mutually agree as follows:

4.1 The CONTRACTOR shall furnish all labor, equipment, and materials and perform the Work above described for the amount stated above in strict accordance with the General Conditions, Supplementary Information, Plans and Specifications, and other Contract Documents, all of which are made a part hereof as if attached and enumerated as follows:

4.1.1 Lee County Invitation to Bid/Project Manual titled: **[INSERT SOLICITATION**

[SOLICITATION NUMBER]

[TITLE] dated [INSERT DATE]

4.1.2 Addendum Number 1 dated [INSERT DATE]

4.1.3 CONTRACTOR's Bid Proposal dated [INSERT DATE OF PROPOSAL]

4.1.4 [INSERT NAME OF CONSTRUCTION PLANS] dated [INSERT DATE]

4.2 The COUNTY shall pay the CONTRACTOR in accordance with the Exhibit A, Price Proposal, attached hereto and incorporated herein.

4.3 Public Payment and Performance Bond

4.4 Certificate of Insurance

4.5 Notice of Award

4.6 Documentation submitted by the CONTRACTOR prior to the Notice of Award: None.

4.7 The following, which may be delivered or issued after the effective date of the Agreement and are not attached hereto: All written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

4.8 All Federal terms, conditions, provisions, certifications, affidavits, and alike, as set forth in the Exhibit C, Project Funding Package, attached hereto and incorporated herein.

Commented [IB4]: If there are no addenda, delete this. If there is more than one addendum, copy this language into 4.1.3, 4.1.4, etc. for all subsequent addenda.

Commented [GD5]: Remove this paragraph if the project is NOT federally funded.

ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

5.1 Work to be started on the date specified in the Official Notice to Proceed.

5.2 Substantial completion shall be achieved not later than the number of days specified in the Special Conditions and/or notice to proceed.

5.3 Final completion shall be achieved not later than the number of days specified in the Special Conditions and/or notice to proceed.

Liquidated Damages for Delay:

The COUNTY and CONTRACTOR recognize that time is of the essence of this Agreement and that the COUNTY will suffer financial loss if the work is not completed within the times specified in 5.2 and 5.3 above, plus any extensions thereof allowed by Change Order. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the COUNTY if the work is not completed on time. Accordingly, instead of requiring any such proof, COUNTY and CONTRACTOR agree that as Liquidated Damages for CONTRACTOR's delay (but not as a penalty), the sum of \$_____ per calendar day shall be deductible from monies due to the CONTRACTOR or paid by the CONTRACTOR to the COUNTY for each calendar day that expires after the time specified for Substantial Completion

[SOLICITATION NUMBER]

and the project fails to reach Substantial Completion.
Actual Damages for Breach Other than Delay:

The CONTRACTOR shall also be liable for any Actual Damages sustained by the COUNTY due to the CONTRACTOR'S breach of this Agreement not otherwise addressed by liquidated damages. Actual Damages may include but are not limited to: costs related to supervision, inspection, rentals, testing, consulting fees, or replacement parts.

The County Manager, or designee, shall have the right to calculate and assess all appropriate damages due from the final payment request as well as retainage. However, prior to deducting damages, the COUNTY shall give the CONTRACTOR seven (7) calendar days' notice prior to submitting the adjusted amount due to the Clerk for payment. In the event of a dispute, the County Manager, or his or her designee, may negotiate the Liquidated Damages sum owed to the COUNTY by the CONTRACTOR.

Excusable Delays:

Pursuant to the procedures establish in Section 30. Change in Contract Time of the General Conditions section of Solicitation # [SOLICITATION #], which has been incorporated herein, The CONTRACTOR may be entitled to an extension of contract time when a delay or hindrance is caused by an act of God, or any act or omission on the part of the COUNTY, provided the CONTRACTOR gives notice to the COUNTY within fifteen calendar days of the occurrence of the event giving rise to the claim and having stated the general nature of the claim. The CONTRACTOR'S sole remedy shall be an extension of Contract Time.

Furthermore, if two or more separate events causing a delay occur simultaneously, the CONTRACTOR may only submit for an extension of a single day for each day that the work is delayed. The CONTRACTOR shall not be entitled to double recovery of time for simultaneously occurring events.

ARTICLE 6. DISPUTE RESOLUTION

6.1 In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.

6.2 In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.

6.3 Any dispute, action, or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.

6.4 This Agreement and the rights and obligations of the parties shall be governed by the laws

of the State of Florida without regard to its conflict of laws principles.

6.5 Unless otherwise agreed in writing, the Contractor will be required to continue all obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual periods of mediation or judicial proceedings.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 Final payments, constituting the entire unpaid balance of the Contract Price shall be paid by the COUNTY to the CONTRACTOR when the work has been completed, the Contract fully performed, and a final Certificate for Payment, form No. CMO:013, has been approved by the COUNTY.

7.2 Terms used in the Agreement which are defined in the General Conditions of the Contract shall have the meaning designated in those conditions.

7.3 The COUNTY and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

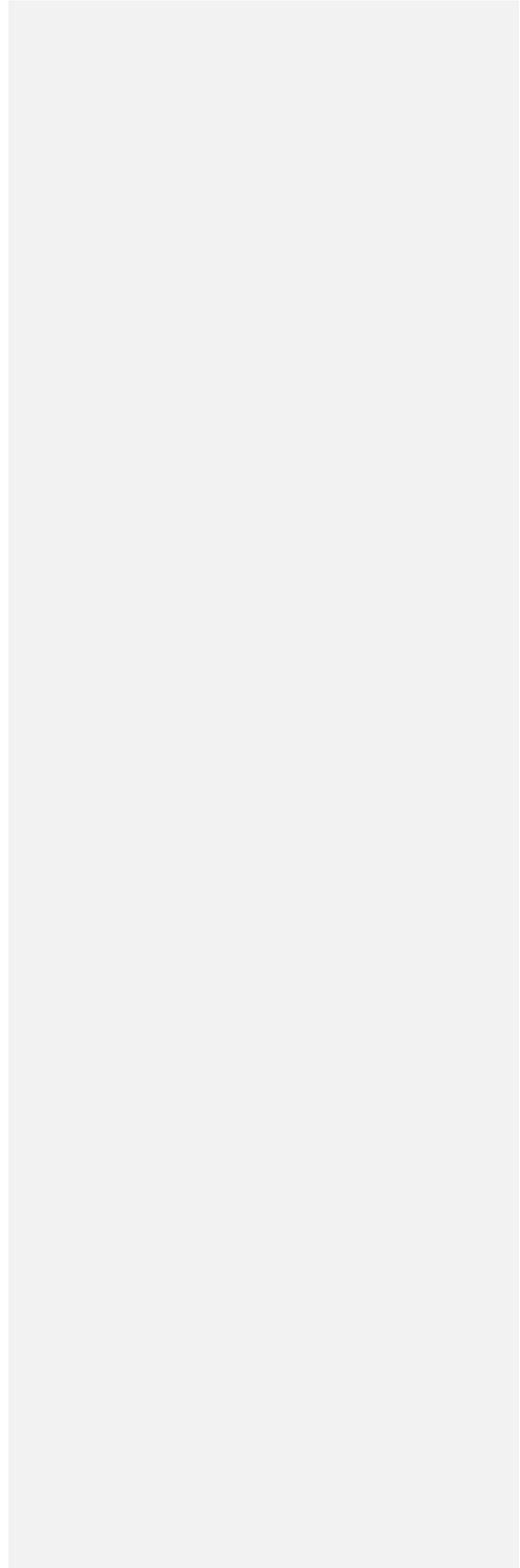
7.4 The CONTRACTOR shall not assign or transfer any of its rights, benefits, or obligations, except for transfer that results from transfer or consolidation with a third party, without the prior written approval of the COUNTY. The CONTRACTOR shall have the right to employ other persons and/or firms to serve as sub-contractors in connection with the requirements of the Contract Documents.

7.5 The CONTRACTOR agrees through the signing of this agreement by an authorized party or agent that he shall hold harmless and defend the County of Lee and its agents and employees from all suits and action, including attorney's fees, and all cost of litigation and judgments of every name and description arising out of and incidental to the performance of this Contract Document or work performed thereunder, whether or not due to or caused by negligence of the COUNTY, excluding only the sole negligence of the COUNTY. This provision shall also pertain to any claims brought against the COUNTY by any employee of the CONTRACTOR, or sub-contractor(s), or anyone directly or indirectly employed by any of them. The CONTRACTOR'S obligation under this provision shall not be limited in any way to the agreed upon Contract Price as shown in this agreement or the CONTRACTOR'S limit of or lack of sufficient insurance protection.

7.6 Each individual signing this Agreement directly and expressly warrants that he/she has been given and has received and accepted authority to sign and execute the Agreement on behalf of the party for whom it is indicated he/she has signed, and further has been expressly given and received and accepted authority to enter into a binding agreement on behalf of such party with respect to the matters contained herein and as stated herein.

[Remainder of this page left intentionally blank.]

Commented [DG6]: Delete if not needed.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

[CONTRACTOR NAME]

Signed By: _____

Signed By: _____

Print Name: _____

Print Name: _____

Title: _____

Date: _____

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

Signed By: _____

Print Name: _____

Title: _____

Date: _____

ATTEST:
CLERK OF THE CIRCUIT COURT

BY: _____

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: _____
OFFICE OF THE COUNTY ATTORNEY

[SOLICITATION NUMBER]

EXHIBIT A
PRICE PROPOSAL

Commented [B7]: Please insert a snip of the CONTRACTOR'S Price Proposal here.