

FIFTH AMENDMENT OF THE AGREEMENT FOR
CUSTODIAL SERVICES FOR LEE COUNTY SOUTH ZONE

THIS FIFTH AMENDMENT OF THE AGREEMENT FOR CUSTODIAL SERVICES FOR LEE COUNTY SOUTH ZONE, made and entered into by and between the Lee County Board of County Commissioners, a political subdivision of the State of Florida ("County") and American Facility Services, Inc. ("Vendor"), collectively, the "Parties."

WHEREAS, the County entered into an Agreement for the purchase of custodial services for Lee County South Zone through Solicitation No. RFP180122MRH with Vendor on the 8th day of November, 2018 ("Agreement"); and,

WHEREAS, it was discovered after the execution of the Agreement that it would be in the best interest of the County to supplement the Agreement between the parties with provisions related to the Federal Emergency Management Agency (FEMA) from C.F.R. 200 Part II; and,

WHEREAS, the Parties desire to modify the Agreement pursuant to Article XIV. MISCELLANEOUS of the Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS CONTAINED HEREIN, IT IS AGREED AS FOLLOWS:

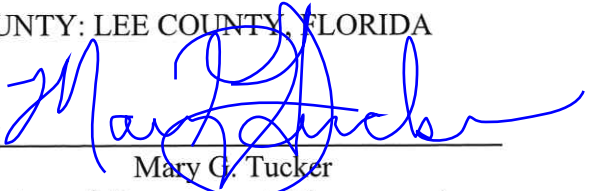
1. The provisions set forth in Exhibit "A" hereto, which is entitled "Federal Emergency Management Agency (FEMA) - Additional Terms for Lee County Contracts" are hereby added to the Agreement and the Agreement is amended accordingly.
2. This Amendment shall take effect *nunc pro tunc* upon full execution hereof and as of the date of the Agreement. All other terms and conditions of the Agreement, as it may have been amended, shall remain in effect and binding and the said Agreement and this Amendment shall be read in harmony and in *pari materia*.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF this Fifth Amendment of the Agreement has been signed and sealed,
in duplicate, by the respective Parties hereto.

DATED this 9 day of April, 2020 by the Lee County Board of County
Commissioners.

COUNTY: LEE COUNTY, FLORIDA

BY: 
Mary C. Tucker
Director of Procurement Management, on
behalf of the Board of County
Commissioners

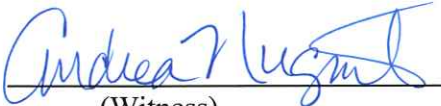
APPROVED as to Form for the Reliance of
Lee County Only

BY: Amanda L. Swindle
County Attorney's Office

DATED this 30th day of March, 2020 by American Facility Services, Inc.

ATTEST:

BY: 
Authorized Signature


(Witness)

Kevin McCann
Authorized Signature Printed Name

President
Authorized Signature Title

CORPORATE SEAL:

EXHIBIT A
Federal Emergency Management Agency (FEMA)
Additional Terms for Lee County Contracts

1. EQUAL EMPLOYMENT OPPORTUNITY:

1.1. During the performance of this contract, the contractor agrees as follows:

- A. The 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 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 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.
- B. The VENDOR will, in all solicitations or advertisements for employees placed by or on behalf of the 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.
- C. The 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 VENDOR's legal duty to furnish information.
- D. The 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 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.
- E. The 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.
- F. The 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.

- G. In the event of the 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 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.
- H. The 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-VENDOR. The 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 VENDOR becomes involved in, or is threatened with, litigation with a sub-VENDOR as a result of such direction, the 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 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 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. 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 VENDOR which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 2.3. 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. VENDOR agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.
- 2.5. 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 VENDOR and at the expense of the County.

3. DHS SEAL, LOGO, AND FLAGS

- 3.1. The VENDOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

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 FEMA financial assistance will be used only to fund the services requested. The VENDOR will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

6. NO OBLIGATION BY THE FEDERAL GOVERNMENT

- 6.1. The Federal Government is not a party to this solicitation and is not subject to any obligations or liabilities to the non- Federal entity, 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 VENDOR acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the VENDORS actions pertaining to this solicitation.

8. SUBCONTRACTS

- 8.1. The selected firm must require compliance with all federal requirements of all sub- VENDORS performing work for Prime VENDOR under this Agreement, by including these federal requirements in all contracts with sub-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 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-VENDOR requirement: Vendors shall require all subcontracted vendors to flow down the requirement to use E-Verify to sub-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. 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. Place qualified small and minority businesses and women's business enterprises on solicitation lists.
- 12.2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- 12.3. 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.
- 12.4. 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.
- 12.5. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- 12.6. Requiring the prime VENDOR, if subcontracts are to be let, to take the five previous affirmative steps.

13. TERMINATION FOR CAUSE AND/OR CONVENIENCE:

- 13.1. The County, by written notice to the 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 VENDOR will not incur any new obligations for the terminated portion of the Agreement after the VENDOR has received notification of termination.
- 13.2. If the Agreement is terminated before performance is completed, the 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 VENDOR.

14. SUSPENSION AND DEBARMENT

- 14.1. 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 VENDOR is required to verify that none of the 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).
- 14.2. The 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.

- 14.3. This certification is a material representation of fact relied upon by the awarded VENDOR. If it is later determined that the 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.
- 14.4. The 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.

15. RECOVERED MATERIALS

- 15.1. In the performance of this contract, the 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.
- 15.2. 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>

16. REMEDIES

- 16.1. In the event the 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 VENDOR and upon the VENDOR's failure to cure within those fifteen (15) calendar days, exercise any one or more of the following remedies, either concurrently or consecutively:
- 16.1.1. Withhold or suspend payment of all or any part of a request for payment.
 - 16.1.2. Require that the VENDOR refund to the County any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
 - 16.1.3. Exercise any corrective or remedial actions, to include but not be limited to:
 - 16.1.4. Requesting additional information from the VENDOR to determine the reasons for or the extent of non-compliance or lack of performance;
 - 16.1.5. Issuing a written warning to advise that more serious measures may be taken if the situation is not corrected;
 - 16.1.6. Advising the VENDOR to suspend, discontinue or refrain from incurring costs for any activities in question; or
 - 16.1.7. Requiring the VENDOR to reimburse the County for the amount of costs

incurred for any items determined to be ineligible.

17. OTHER REMEDIES AND RIGHTS:

- 17.1. 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 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 VENDOR.
- 17.2. Unless otherwise provided by the Contract, all claims, counter-claims, disputes and other matters in question between the County and the 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.

18. CONTRACT WORK HOURS & SAFETY STANDARDS (40 U.S.C. 3701-3708):

- 18.1. 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.
- 18.2. 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.
- 18.3. 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.
- 18.4. 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.

19. CLEAN AIR ACT

- 19.1. 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.
- 19.2. The contractor agrees to report each violation to the FEMA and the Regional Office of the Environmental Protection Agency and understands and agrees that the FEMA 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.
- 19.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

20. FEDERAL WATER POLLUTION CONTROL ACT

- 20.1. 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.
- 20.2. The contractor agrees to report each violation to the FEMA and the Regional Office of the Environmental Protection Agency and understands and agrees that the FEMA 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.
- 20.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

21. BYRD ANTI-LOBBYING AMENDMENT

- 21.1. 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.