



# Board of County Commissioners Meeting Agenda

**District #1**

John E. Manning

**District #2**Cecil L. Pendergrass  
Chair**District #3**Larry Kiker  
Vice Chair**District #4**

Tammy Hall

**District #5**

Frank Mann

Doug Meurer  
Interim County ManagerAndrea R. Fraser  
Interim County Attorney**March 12, 2013**

If you plan to address the Board, please complete a blue "Request for Comment" card (located on the table outside the Chamber entrance) or you can submit your comment electronically by clicking [here](#).

Completed cards should be returned to the Staff table at the right of the podium prior to the start of the meeting.

All back up for this agenda is available on the Internet at <http://www.lee-county.com>. Additional information is available in the

**Public Resources Office**, 1<sup>st</sup> Floor, Administration Building, 2115 Second St., Fort Myers, FL

**PLEASE NOTE:** The Board may take action in its capacity as the Port Authority or Government Leasing Corporation.

**COMMISSION CHAMBERS, 2120 MAIN STREET, FORT MYERS, FLORIDA****9:30 AM**

Invocation: Pastor Wes Olds, Grace United Methodist Church of Cape Coral

Pledge of Allegiance

Ceremonial Presentations

Recap

Public Comment on the Consent and Administrative Agenda

Consent Agenda

- Items to be pulled for discussion by the Board
- Motion to approve balance of items
- Consideration of items pulled for discussion

Administrative Agenda

Public Hearings

Walk-ons and Carry-overs

Commissioners' Items/Committee Appointments

County Manager Items

County Attorney Items

Public Presentation of Matters by Citizens

Adjourn

## **9:30 AM CEREMONIAL PRESENTATION**

1. Ceremonial presentation recognizing World Harmony Run. (#20130210-Commissioner Pendergrass)
2. Ceremonial presentation recognizing Girl Scout Week. (#20130211-Commissioner Hall)

## CONSENT AGENDA

1. COUNTY ADMINISTRATION
2. COMMUNITY DEVELOPMENT
3. CONSTRUCTION AND DESIGN
4. COUNTY COMMISSIONERS
5. COUNTY LANDS

A) **ACTION REQUESTED/PURPOSE:**

- A) Approve a Resolution conveying the properties and real estate interests acquired for the Imperial Parkway Project to the City of Bonita Springs;
- B) Authorize the Chair to execute the Resolution and County Deed;
- C) Authorize payment of recording fees; and
- D) Authorize the Division of County Lands to handle and accept all documentation necessary to complete the transaction. (#20130194-COUNTY LANDS)

**FUNDING SOURCE:**

Fund – Transportation Trust; Program – DOT Engineering; Project – Recording Fees.

**WHAT ACTION ACCOMPLISHES:**

Transfers the Imperial Parkway Right-of-Way to the City of Bonita Springs.

**MANAGEMENT RECOMMENDATION:**

Approve.

B) **ACTION REQUESTED/PURPOSE:**

- A) Accept Parcel 103-TCE (Access/Construction Easement Agreement) and Parcel 103-CCME (Perpetual Creek and Crossing Maintenance Easement), located at 19401 Meredith Road, for the Culvert Replacement Project No. 8596;
- B) Authorize the payment of necessary costs and fees to close;
- C) Authorize County Lands Staff to execute and accept all documentation necessary to complete this transaction. (#20130198-COUNTY LANDS)

**FUNDING SOURCE:**

Fund – Capital Improvement Fund; Program – Water Resources Projects; Project – Culvert Replacement.

**WHAT ACTION ACCOMPLISHES:**

Gives County right to enter property for the purpose of improving and maintaining flows in Popash Creek.

**MANAGEMENT RECOMMENDATION:**

Approve.

C) **ACTION REQUESTED/PURPOSE:**

- A) Accept Parcel 104-TCE (Access/Construction Easement Agreement) and Parcel 104-CCME (Perpetual Creek and Crossing Maintenance Easement), located at 19451 Meredith Road, for the Culvert Replacement Project No. 8596;
- B) Authorize the payment of necessary costs and fees to close;
- C) Authorize County Lands Staff to execute and accept all documentation necessary to complete this transaction. (#20130199-COUNTY LANDS)

**FUNDING SOURCE:**

Fund – Capital Improvement Fund; Program – Water Resources Projects; Project – Culvert Replacement

**WHAT ACTION ACCOMPLISHES:**

Gives County right to enter property for the purpose of improving and maintaining flows in Popash Creek.

**MANAGEMENT RECOMMENDATION:**

Approve.

6. **HUMAN SERVICES**

A) **ACTION REQUESTED/PURPOSE:**

- 1.) Approve and execute a contract to receive \$1,749,542 from the State of Florida, Department of Economic Opportunity (DEO), for the Low Income Home Energy Assistance Program (LIHEAP).
- 2.) Approve FY 2012-2013 budget amendment resolution for \$1,749,542 LIHEAP funds.
- 3.) Authorize the Department of Human Services to hire one additional grant funded position as needed and approved by County Administration. (#20130192-HUMAN SERVICES)

**FUNDING SOURCE:**

Fund-Federal Grant through General Fund; Program-Florida Department of Economic Opportunity; Project; LIHEAP.

**WHAT ACTION ACCOMPLISHES:**

Provides \$1,749,542 in grant funds for the Low Income Home Energy Assistance Program for payment of utilities to eligible low-income Lee County residents.

**MANAGEMENT RECOMMENDATION:**

Approve.

7. **INDEPENDENT**

8. **NATURAL RESOURCES/SOLID WASTE**

9. **PARKS AND RECREATION**

10. **PUBLIC SAFETY**

11. **PUBLIC WORKS ADMINISTRATION**

12. **TRANSPORTATION**

A) **ACTION REQUESTED/PURPOSE:**

- 1) Award Project CN-12-15 ADA TRANSITION PLAN to Atkins North America, Inc. (an International Consultant with a local office of 22 employees) in the amount of \$249,735.00.
- 2) Authorize the DOT Director to approve a 10% contingency in the amount of \$24,973.50, for a total approval amount of \$274,708.50.
- 3) Authorize Chair to execute Professional Service Agreement on behalf of the Board.  
(#20130191-TRANSPORTATION)

**FUNDING SOURCE:**

Fund – Transportation Capital Improvement; Program – Major Maintenance; Program – Master Signal (Intersections). The ranking of firms was approved September of 2012; funds were available in the FY 2011/12 CIP and have been carried over into the current FY 2012/13 CIP.

**WHAT ACTION ACCOMPLISHES:**

Provides a Consultant to develop an Americans with Disabilities Act (ADA) Transition Plan that focuses on Lee County maintained pedestrian and bicycle facilities in public rights-of-way on county maintained arterials and collectors with an emphasis on signalized intersections.

**MANAGEMENT RECOMMENDATION:**

Approve.

12. **TRANSPORTATION (Continued)**

B) **ACTION REQUESTED/PURPOSE:**

A) Award project B-130176 NEW PASS BRIDGE SEAWALL REPAIR (BRIDGE #120022) to the lowest responsive, responsible bidder meeting all bid requirements, Quality Industries USA, Inc. (a local vendor), in the amount of \$100,381.01 with a project completion of 120 calendar days.

B) Authorize Chair to execute agreement upon receipt.

C) Grant the Procurement Director the authority to act on behalf of the Board and proceed to the next qualified contractor in the event that the awarded contractor is unable to fully comply with the requirements of the solicitation or in the event of non-compliance. (#20130196-TRANSPORTATION)

**FUNDING SOURCE:**

Fund – Transportation Capital Improvement; Program – Major Maintenance; Project – Master Bridge.  
Funds are available in the FY 2012/13 Major Maintenance Program.

**WHAT ACTION ACCOMPLISHES:**

Provides a Contractor to repair the seawall at New Pass Bridge on Hickory Boulevard.

**MANAGEMENT RECOMMENDATION:**

Approve.

13. **UTILITIES**

14. **COUNTY ATTORNEY**

15. **HEARING EXAMINER**

16. **CONSTITUTIONAL OFFICERS**

A) **ACTION REQUESTED/PURPOSE:**

Request Board approves disbursements. The check and wire registers can now be viewed on the Clerk's website, [www.leeclerk.org](http://www.leeclerk.org) by accessing the BoCC Minutes and Documents link. (#20130206-FINANCE)

**FUNDING SOURCE:**

N/A.

**WHAT ACTION ACCOMPLISHES:**

Florida Statute Chapter 136.06(1) requires that all County disbursements be recorded in the Minutes of the Board.

**MANAGEMENT RECOMMENDATION:**

Compliance with the requirements of FS 136.06(1).

B) **ACTION REQUESTED/PURPOSE:**

Approve the Minutes for the following meetings of the Board of County Commissioners held during the week of February 25 thru March 1, 2013: February 26, 2013 (Regular). (#20130207-MINUTES)

**FUNDING SOURCE:**

N/A.

**WHAT ACTION ACCOMPLISHES:**

Approval of the Board Minutes, pursuant to Florida Statute 286.011.

**MANAGEMENT RECOMMENDATION:**

Approve.

17. **PORT AUTHORITY AND OTHER GOVERNING BOARDS**

## **ADMINISTRATIVE AGENDA**

**1. COUNTY ADMINISTRATION**

**A) ACTION REQUESTED/PURPOSE:**

Approve selection of underwriters Bank of America/Merrill Lynch and RBC Capital Markets for the Tourist Development Revenue Bonds, Series 2013 (Minnesota Twins). (#20130202-COUNTY MANAGER)

**FUNDING SOURCE:**

Fees Paid from Bond Proceeds – Issuance Costs.

**WHAT ACTION ACCOMPLISHES:**

Provides underwriter selection for the Tourist Development Revenue Bonds, Series 2013 (Minnesota Twins).

**MANAGEMENT RECOMMENDATION:**

Approval.

**2. COMMUNITY DEVELOPMENT**

**3. CONSTRUCTION AND DESIGN**

**4. COUNTY COMMISSIONERS**

**5. COUNTY LANDS**

**6. HUMAN SERVICES**

**7. INDEPENDENT**

**8. NATURAL RESOURCES/SOLID WASTE**

**9. PARKS AND RECREATION**

**10. PUBLIC SAFETY**

**11. PUBLIC WORKS ADMINISTRATION**

**12. TRANSPORTATION**

**13. UTILITIES**

**14. COUNTY ATTORNEY**

**15. HEARING EXAMINER**

**16. CONSTITUTIONAL OFFICERS**

**17. PORT AUTHORITY AND OTHER GOVERNING BOARDS**

**9:30 AM PUBLIC HEARING**

- 1. ACTION REQUESTED/PURPOSE:**  
Conduct public hearing to adopt an ordinance reducing the collection rate for Road, Parks and School Impact Fees for two years. (#20130216-COUNTY ATTORNEY)
- FUNDING SOURCE:**  
N/A.
- WHAT ACTION ACCOMPLISHES:**  
Allows public input on the proposed ordinance prior to Board vote on proposed legislation.
- MANAGEMENT RECOMMENDATION:**  
Seeking Board direction.

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

**Blue Sheet No. 20130210**

**1. ACTION REQUESTED/PURPOSE:**  
 Ceremonial presentation recognizing World Harmony Run.

**2. FUNDING SOURCE:**

**3. WHAT ACTION ACCOMPLISHES:**

**4. MANAGEMENT RECOMMENDATION:**

**5. Departmental Category: CP1**

**6. Meeting Date: 3/12/2013**

**7. Agenda:**

Ceremonial

**8. Requirement/Purpose: (specify)**

- Statute
- Ordinance
- Admin Code
- Other

**9. Request Initiated**

**Commissioner:** Cecil L Pendergrass

**Department:** COUNTY COMMISSIONERS

**Division:** No Divisions

**By:**

**10. Background:**

**11. Required Review:**


**12. Commission Action:**





*The Board of County Commissioners*

**RESOLUTION**

**WHEREAS:** World Harmony Run is a global relay that seeks to encourage goodwill, harmony and friendship as a way of bringing people together; and

**WHEREAS:** Sri ChimmoY, the Founder, whose peace loving spirit is preserved and perpetuated in this global torch relay; and

**WHEREAS:** The World Harmony Run, formerly the Sri ChimmoY Oneness-Home Peace Run, is celebrating 25 years of appreciation and celebrating diversity by passing the Torch, the run's symbol of harmony, from hand to hand through more than 100 nations around the globe; and

**WHEREAS:** More than 5 million people have participated in the run in cities and towns throughout North and South America, Asia, Africa, Australia, Europe and New Zealand. The World Harmony Run visits renowned heritage and cultural sites, many recognized by UNESCO, to encourage people to experience the values and culture of others; and

**WHEREAS:** The Run is a non-profit event organized and financed entirely by selfless volunteers who strive to encourage goodwill among people from all nations; and

**WHEREAS:** Lee County Board of County Commissioners would like to thank the international and national runners who will make their way through our city spreading hopes and dreams of a more harmonious world.

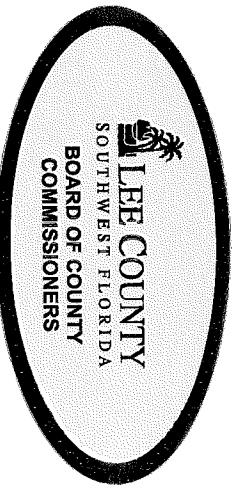
**NOW, THEREFORE, BE IT RESOLVED THAT** the Board of County Commissioners of Lee County, Florida does hereby proclaim the week of March 11 – 15, 2013 as:

**WORLD HARMONY RUN WEEK**

in Lee County.

Duly executed this day 12<sup>th</sup> of March 2013.

**BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA**



Chairman

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

**Blue Sheet No. 20130211**

**1. ACTION REQUESTED/PURPOSE:**  
 Ceremonial presentation recognizing Girl Scout Week.

**2. FUNDING SOURCE:**

**3. WHAT ACTION ACCOMPLISHES:**

**4. MANAGEMENT RECOMMENDATION:**

**5. Departmental Category: CP2**

**6. Meeting Date: 3/12/2013**

**7. Agenda:**  
 Ceremonial

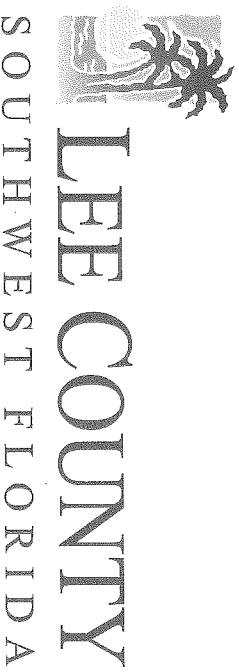
**8. Requirement/Purpose: (specify)**  
 Statute  
 Ordinance  
 Admin Code  
 Other

**9. Request Initiated**  
**Commissioner:** Tammy Hall  
**Department:** COUNTY COMMISSIONERS  
**Division:**  
**By:**

**10. Background:**

**11. Required Review:**


**12. Commission Action:**



*The Board of County Commissioners*

**RESOLUTION**

WHEREAS, March 12, 2013, marks the 101st anniversary of the Girl Scouts of the United States of America, which began in 1912 when Savannah, GA native Juliette “Daisy” Gordon Low gathered 18 girls to provide them the opportunity to develop physically, mentally, and spiritually; and

WHEREAS, the award winning Girl Scout Leadership Program helps girls discover themselves and their values, connect with others, and take action to make the world a better place; and

WHEREAS, core programs around Science, Technology, Engineering and Math (STEM), environmental stewardship, healthy living, financial literacy, and global citizenship help girls develop a solid foundation in leadership; and

WHEREAS, the Girl Scout Cookie program, the largest girl run business in the world, empowers girls through the development of five essential skills: goal setting, money management, people skills, decision making and business ethics; and

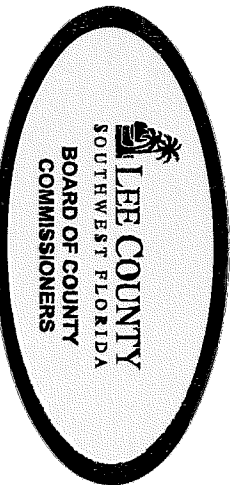
WHEREAS, through the dedication, time, and talent of volunteers of different backgrounds, abilities, and areas of expertise, the Girl Scout Program is delivered to nearly 10,000 girls in grades K-12 throughout 10 counties across southwest Florida served by the Girl Scouts of Gulfcoast Florida Council; and

WHEREAS, in Girl Scouts of Gulfcoast Florida, a girl belongs to a sisterhood of friends, dedicated to fun, discovery, exploration and taking action in her world, and where all girls are inspired and welcomed to make a difference and that together, girls can change the world. These are today’s Girl Scouts.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of County Commissioners of Lee County, Florida does hereby applaud the Girl Scouts of the United States of America, and our local council, Girl Scouts of Gulfcoast Florida, for their years of leadership and expertise as the voice for and of girls, and proudly proclaim this Girl Scout Week.

Duly executed this 12<sup>th</sup> day of March 2013.

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA



Chairman

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

**Blue Sheet No. 20130194**

**1. ACTION REQUESTED/PURPOSE:**

- A) Approve a Resolution conveying the properties and real estate interests acquired for the Imperial Parkway Project to the City of Bonita Springs;
- B) authorize the Chair to execute the Resolution and County Deed;
- C) authorize payment of recording fees; and
- D) authorize the Division of County Lands to handle and accept all documentation necessary to complete the transaction.

**2. FUNDING SOURCE:**

Fund – Transportation Trust; Program – DOT Engineering; Project – Recording Fees.

**3. WHAT ACTION ACCOMPLISHES:**

Transfers the Imperial Parkway Right-of-Way to the City of Bonita Springs.

**4. MANAGEMENT RECOMMENDATION:** Approve

**5. Departmental Category:** C5A

**6. Meeting Date:** 3/12/2013

**7. Agenda:**

Consent

**8. Requirement/Purpose: (specify)**

- Statute Ch. 125 F.S.
- Ordinance
- Admin Code
- Other

**9. Request Initiated**

**Commissioner:**

**Department:** COUNTY LANDS

**Division:** No Divisions

**By:** Karen Maguire

**10. Background:**

Lee County and the City of Bonita Springs entered into a Master Transportation System Agreement on September 19, 2000 (Blue Sheet 20000962), for financing, planning, design, construction, and operation of the road system within the Bonita Springs area. An Updated Master Transportation System Agreement between Lee County and Bonita Springs was approved on January 31, 2006 (Blue Sheet 20060028).

The County and the City entered into a Joint Supplemental Interlocal Agreement under its Master Transportation Agreement for the road identified as Imperial Four Lane – Bonita Beach Road to Terry Street on May 22, 2001 (Blue Sheet 20010526). An Amended Joint Supplemental Interlocal Agreement was entered into March 28, 2006 (Blue Sheet 20060260), and a Second Amendment to the Joint Supplemental Interlocal Agreement was entered into June 13, 2006 (Blue Sheet 20060717).

In accordance with the above interlocal agreements, City funds were used for the acquisition, and the County acquired the properties needed for the Imperial Parkway Project. Upon completion of the road project, the County transferred jurisdictional responsibility to the City. The Resolution and County Deed transfers ownership of the lands to the City of Bonita Springs.

Recording Costs: Approximately \$100.00

Account: PF5411117500

Attachments: Resolution, County Deed, and location map

**11. Required Review:**

<i>Karen Maguire</i>	<i>John Fredyma</i>	<i>Emma Wolf</i>	<i>David Harris</i>	<i>David Loveland</i>	<i>Peter Winton</i>
COUNTY LANDS	County Attorney	Budget Analyst	Budget Services	DOT/ADMINISTRATION	County Manager

**12. Commission Action:**



**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA, AUTHORIZING CONVEYANCE OF THE LAND  
AND REAL ESTATE INTERESTS ACQUIRED FOR THE IMPERIAL PARKWAY  
PROJECT TO THE CITY OF BONITA SPRINGS**

WHEREAS, Lee County (County) and the City of Bonita Springs (City) entered into a Master Transportation System Agreement on September 19, 2000, for financing, planning, design, construction, and operation of the road system within the Bonita Springs area. An Updated Master Transportation System Agreement between Lee County and Bonita Springs was approved on January 31, 2006; and

WHEREAS, the County and the City entered into a Joint Supplemental Interlocal Agreement under its Master Transportation Agreement for the road identified as Imperial Four Lane – Bonita Beach Road to Terry Street on May 22, 2001. An Amended Joint Supplemental Interlocal Agreement was entered into March 28, 2006, and a Second Amendment to the Joint Supplemental Interlocal Agreement was entered into June 13, 2006; and

WHEREAS In accordance with the above interlocal agreements, City funds were used for the acquisition, and the County acquired the properties needed for the Imperial Parkway Project. Upon completion of the road project, the County transferred jurisdictional responsibility to the City; and

WHEREAS, the County declares that the purpose of this Resolution is to convey to the City all the properties and real estate interests acquired, as further described on attached Exhibits "A", "B" and "C", for the Imperial Parkway Project in accordance with the above referenced interlocal agreements; and

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:**

The Board of County Commissioners authorizes the conveyance of the County's interest in the real property described on attached Exhibits "A", "B" and "C", to the City of Bonita Springs, a municipality of the State of Florida.

The Chairman of the Board of County Commissioners is authorized to execute the County Deed for and on behalf of Lee County for the conveyance of the County's interest in the real property described in attached Exhibits "A", "B" and "C", and to do those things necessary to complete the conveyance of the real property interest to the City.

The foregoing resolution was adopted by the Lee County Board of County Commissioners upon the motion of Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and, upon being put to a vote, the result was as follows:

JOHN E. MANNING	_____
CECIL L PENDERGRASS	_____
LARRY KIKER	_____
TAMMARA A. HALL	_____
FRANKLIN MANN	_____

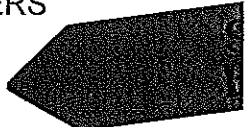
DULY PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:  
LINDA DOGGETT, CLERK

LEE COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chair



APPROVED AS TO FORM:

\_\_\_\_\_  
Office of County Attorney

## EXHIBIT A

All the properties acquired by Lee County as shown on the Right of Way Map, Phase Two, Imperial Street Improvements, from Bonita Beach Road to East Terry Street, Section 36, Township 47 South, Range 25 East, dated July 2006, and updated on July 2008, on file with the Lee County Department of Transportation, and further described as follows:

Parcel	Parcel Letter	Instrument No.	Official Record Book	Page
302			3688	5102
303			3549	4352
304			4774	254
305			3652	4391
306		2005000039103		
307			3479	4010
308			3620	4066
309			3720	2786
310			3701	3929
311			3701	3931
312			3701	3934
313		2005000115895		
314		2005000068754		
315		2006000308975 & 2006000246548		
316	A	2006000312594 & 2007000172812		
316		2005000027675		
317	A	2006000248359 & 2008000116173		
317	E	2007000078532 & 2008000312582		
317	W	2007000078532		
318		2006000248359 & 2008000116173		
318	A	2006000248359		
320			3520	1001
321		2006000338257		
322		SEE ATTACHED LEGAL DESCRIPTION		
323			3688	5112
324			3520	1000
325			3627	1121
326			4459	4848
327			4130	1504
328			4130	1504
329			3809	2121
330			3627	1120
331			4548	1288
332			3509	1461
333		2008000066685		



## EXHIBIT A

Parcel	Parcel Letter	Instrument No.	Official Record Book	Page
334			4504	3657
335		2008000066685		
336		2007000002805		
337		2006000273202		
338		SEE ATTACHED LEGAL DESCRIPTION		
339		2008000066685		
500	SE		4627	1920
501	SE		4627	1920
502	SE	2006000014740		
503	SE		4445	4698
510			4835	4866 & 4870
533	A & C	2006000178541		
533		2007000025622		
603	SE	2006000051126		
605	SE	2005000042254		
606	SE	2006000246548		
607	SE	2005000042284		
609	SE	2005000042274		
1002		2006000259220		
1004		2006000473574		
1005		2007000020969		
1006		SEE ATTACHED LEGAL DESCRIPTION		
1007		2006000285704		
1008		SEE ATTACHED LEGAL DESCRIPTION		
1009		2006000259226		
1011		2007000025622		
1012		2007000228384		
1013		2007000025622		
1014	SE	2006000352409		
1015		2006000403211 & 2006000258706		
1016	SE	2005000053190		
1017		2007000193995		
1018	SE	2005000055106		
1019		2006000258707 & 2007000315674		
1021		2006000253816		

## EXHIBIT A

Parcel 322

Lot 49, of that certain subdivision known as IMPERIAL OAKS, according to the map or plat thereof on file and recorded in the Office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 36, Pages 72 and 73,

LESS that property described as Parcel 322-A in County Deed recorded as Instrument No. 20080000724020, and more fully described as follows:

Parcel 322A

A parcel of land in Section 36, Township 47 South, Range 25 East, Bonita Springs, Lee County Florida, being a portion of Lot 49 of Imperial Oaks according to the plat thereof recorded in Plat Book 36 at Pages 72 and 73 of the public records of Lee County, Florida more particularly described as follows:

Commence at the northeast corner of Lot 49 of Imperial Oaks according to the plat thereof recorded in Plat Book 36 at Pages 72 and 73 of the public records of Lee County, Florida, thence S.43°40'09"W. along the southeasterly line of said Lot 49 for 53.78 feet to the point of beginning of the herein described parcel of land; thence continue S.43°40'09"W. along said southeasterly line for 99.05 feet; thence N.01°01'56"W. for 70.40 feet; N.88°58'04"E. for 69.67 feet to the point of beginning, containing 2,452 square feet more or less.

TOGETHER WITH that Perpetual Stormwater Drainage Easement to Lee County recorded as Instrument No. 2008000072421, in the Public Records of Lee County, Florida.

# EXHIBIT A

Parcel 338

A parcel of land in Section 36, Township 47 South, Range 25 East, Bonita Springs, Lee County, Florida, more particularly described as follows:

Commence at the southwest corner the northwest quarter of the northwest quarter of the northeast quarter of Section 36, Township 47 South, Range 25 East, thence N.01°02'44"W. along the west line of the northeast quarter of said Section 36 for 395.69 feet; thence N.89°08'46"E. for 12.09 feet to an intersection with the maintained right of way line of Imperial Street as shown on the Maintained Right of Way maps thereof on file with the Lee County Division of Transportation, and the point of beginning of the herein described parcel of land; thence along said maintained right of way line for the following described eight (8) courses; (1) N.01°25'33"W. for 26.60 feet; (2) thence N.02°26'56"W. for 36.58 feet; (3) thence N.01°12'00"W. for 24.30 feet; (4) thence N.01°00'27"W. for 37.87 feet; (5) thence N.03°39'35"W. for 22.25 feet; (6) thence N.04°20'31"W. for 31.59 feet; (7) thence N.12°32'24"E. for 32.58 feet; (8) thence S.88°57'16"W. for 10.93 feet to the easterly edge of pavement of Imperial Street; thence along the easterly edge of pavement of Imperial Street and along the southerly edge of a concrete sidewalk along the south side of East Terry Street; for the following described five (5) courses; (1) N.01°25'30"W. for 19.05 feet to the point of curvature of a circular curve concave to the southeast; (2) thence northerly and northeasterly along the arc of said curve having for its elements a radius of 30.00 feet and a central angle of 48°09'32" for 25.22 feet; (3) thence N.88°23'33"E. for 115.42 feet; (4) thence N.88°46'55"E. for 78.89 feet; (5) thence N.89°10'32"E. for 122.07 feet to an intersection with the east line of that certain parcel of land described in Official Record Book 2328 at Page 3980 of the Public Records of Lee County, Florida; thence S.01°01'28"E. along said east line for 88.15 feet; thence S.87°34'59"W. for 187.83 feet to the point of curvature of a circular curve concave to the north; thence westerly along the arc of said curve having for its elements a radius of 5826.58 feet and a central angle of 00°07'46" for 13.16 feet; to an intersection with a line parallel with and 130.00 feet easterly of as measured at right angles to the west line of the northeast quarter of the aforementioned Section 36; thence S.01°02'44"E. along said parallel line for 160.57 feet to an intersection with the south line of that certain parcel of land described in Official Record Book 2328 at Page 3980 of the Public Records of Lee County, Florida; thence S.89°08'46"W. along said south line for 117.91 feet to the point of beginning.

## EXHIBIT A

### Parcel 1006 (Revised 06-07-05)

A parcel of land in Section 25, Township 47 South, Range 25 East, Bonita Springs, Lee County, Florida, more particularly described as follows:

Commence at the southwest corner of the southeast quarter of Section 25, Township 47 South, Range 25 East, thence N.89°05'34"E. along the south line of said southeast quarter for 496.36 feet to an intersection with the east line of the east half of the of the southwest quarter of the southwest quarter of the southeast quarter of said section 25; thence N.01°04'57"W along said east line for 35.00 feet to the point of beginning of the herein described parcel of land; thence continue N.01°04'57"W along said east line for 35.37 feet; thence N.87°34'59"E. for 165.53 feet to an intersection with the west line of the southeast quarter of the southwest quarter of the southeast quarter of said section 25; thence S.01°05'12"E along said west line for 39.73 feet; thence S.89°05'34"W. for 165.48 feet to the point of beginning.

### Parcel 1008 (Revised 06-07-05)

A parcel of land in Section 25, Township 47 South, Range 25 East, Bonita Springs, Lee County, Florida, more particularly described as follows:

Commence at the southwest corner of the southeast quarter of Section 25, Township 47 South, Range 25 East, thence N.89°05'34"E. along the south line of said southeast quarter for 330.87 feet to an intersection with the west line of the east half of the of the southwest quarter of the southwest quarter of the southeast quarter of said section 25; thence N.01°04'43"W along said west line for 35.00 feet to the point of beginning of the herein described parcel of land; thence continue N.01°04'43"W along said west line for 31.01 feet; thence N.87°34'59"E. for 165.53 feet to an intersection with the east line of the east half of the southwest quarter of the southwest quarter of the southeast quarter of said section 25; thence S.01°04'57"E along said east line for 35.37 feet; thence S.89°05'34"W. for 165.48 feet to the point of beginning:

## EXHIBIT B

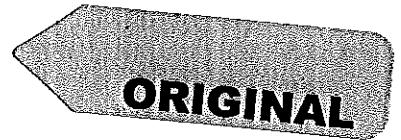
**TOGETHER with** Parcels 400 and 401 as shown on the Right of Way Map, Phase One, Livingston Road/Imperial Street, from the South line of Sec 1-48-25 to Bonita Beach Road, dated October 2001, on file with the Lee County Department of Transportation, and as further described as follows:

Parcel	Parcel Letter	Instrument No.	Official Record Book	Page
400			3892	2949
401			3892	2949
N/A			3892	2947

## **EXHIBIT C**

**TOGETHER** with the properties shown on the Maintained Right of Way Maps, Phase Two, Imperial Street, filed as Instrument No. 5588538, Road Plat Book R2, Pages 82 to 87, inclusive, Public Records of Lee County, Florida.

This Instrument Prepared by:  
DIVISION OF COUNTY LANDS  
Post Office Box 398  
Fort Myers, Florida 33902-0398



THIS SPACE FOR RECORDING

**COUNTY DEED  
(Statutory)**

**THIS DEED**, executed this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by **LEE COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida 33902-0398, COUNTY, to the **CITY OF BONITA SPRINGS**, a municipal corporation of the State of Florida, whose address is 9101 Bonita Beach Road, Bonita Springs, Florida 34135, Grantee.

**WITNESSETH:** The COUNTY, for and in consideration of the sum of Ten (\$10.00) Dollars to it in hand paid by the Grantee, receipt whereof is hereby acknowledged, has granted, bargained and sold to the Grantee, its heirs and assigns forever, the following described land, lying and being in Lee County, Florida:

All the properties acquired by Lee County as shown on the Right of Way Map, Phase Two, Imperial Street Improvements, from Bonita Beach Road to East Terry Street, Section 36, Township 47 South, Range 25 East, dated July 2006, and updated on July 2008, on file with the Lee County Department of Transportation, and further described on attached EXHIBIT "A" and made a part hereof.

**TOGETHER with** Parcels 400 and 401 as shown on the Right of Way Map, Phase One, Livingston Road/Imperial Street, from the South line of Sec 1-48-25 to Bonita Beach Road, dated October 2001, on file with the Lee County Department of Transportation, and as further described on attached EXHIBIT "B" and made a part hereof.

**TOGETHER with** the properties shown on the Maintained Right of Way Maps, Phase Two, Imperial Street, filed as Instrument No. 5588538, Road Plat Book R2, Pages 82 to 87, inclusive, Public Records of Lee County, Florida.

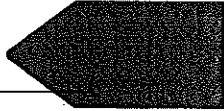
This grant conveys only the interest of the County and its Board of County Commissioners in the property herein described, and does not warrant the title or represent any state of facts concerning the title.

IN WITNESS WHEREOF the COUNTY has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair or Vice Chair of said Board, the day and year above.

(OFFICIAL SEAL)  
ATTEST:  
LINDA DOGGETT, CLERK

LEE COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_   
Chair or Vice Chair

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Office of County Attorney



## EXHIBIT "A"

Parcel	Parcel Letter	Instrument No.	Official Record Book	Page
302			3688	5102
303			3549	4352
304			4774	254
305			3652	4391
306		2005000039103		
307			3479	4010
308			3620	4066
309			3720	2786
310			3701	3929
311			3701	3931
312			3701	3934
313		2005000115895		
314		2005000068754		
315		2006000308975 & 2006000246548		
316	A	2006000312594 & 2007000172812		
316		2005000027675		
317	A	2006000248359 & 2008000116173		
317	E	2007000078532 & 2008000312582		
317	W	2007000078532		
318		2006000248359 & 2008000116173		
318	A	2006000248359		
320			3520	1001
321		2006000338257		
322		SEE ATTACHED LEGAL DESCRIPTION		
323			3688	5112
324			3520	1000
325			3627	1121
326			4459	4848
327			4130	1504
328			4130	1504
329			3809	2121
330			3627	1120
331			4548	1288
332			3509	1461
333		2008000066685		

## EXHIBIT "A"

Parcel	Parcel Letter	Instrument No.	Official Record Book	Page
334			4504	3657
335		2008000066685		
336		2007000002805		
337		2006000273202		
338		SEE ATTACHED LEGAL DESCRIPTION		
339		2008000066685		
500	SE		4627	1920
501	SE		4627	1920
502	SE	2006000014740		
503	SE		4445	4698
510			4835	4866 & 4870
533	A & C	2006000178541		
533		2007000025622		
603	SE	2006000051126		
605	SE	2005000042254		
606	SE	2006000246548		
607	SE	2005000042284		
609	SE	2005000042274		
1002		2006000259220		
1004		2006000473574		
1005		2007000020969		
1006		SEE ATTACHED LEGAL DESCRIPTION		
1007		2006000285704		
1008		SEE ATTACHED LEGAL DESCRIPTION		
1009		2006000259226		
1011		2007000025622		
1012		2007000228384		
1013		2007000025622		
1014	SE	2006000352409		
1015		2006000403211 & 2006000258706		
1016	SE	2005000053190		
1017		2007000193995		
1018	SE	2005000055106		
1019		2006000258707 & 2007000315674		
1021		2006000253816		

## EXHIBIT A

Parcel 322

Lot 49, of that certain subdivision known as IMPERIAL OAKS, according to the map or plat thereof on file and recorded in the Office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 36, Pages 72 and 73,

LESS that property described as Parcel 322-A in County Deed recorded as Instrument No. 20080000724020, and more fully described as follows:

Parcel 322A

A parcel of land in Section 36, Township 47 South, Range 25 East, Bonita Springs, Lee County Florida, being a portion of Lot 49 of Imperial Oaks according to the plat thereof recorded in Plat Book 36 at Pages 72 and 73 of the public records of Lee County, Florida more particularly described as follows:

Commence at the northeast corner of Lot 49 of Imperial Oaks according to the plat thereof recorded in Plat Book 36 at Pages 72 and 73 of the public records of Lee County, Florida, thence S.43°40'09"W. along the southeasterly line of said Lot 49 for 53.78 feet to the point of beginning of the herein described parcel of land; thence continue S.43°40'09"W. along said southeasterly line for 99.05 feet; thence N.01°01'56"W. for 70.40 feet; N.88°58'04"E. for 69.67 feet to the point of beginning, containing 2,452 square feet more or less.

TOGETHER WITH that Perpetual Stormwater Drainage Easement to Lee County recorded as Instrument No. 2008000072421, in the Public Records of Lee County, Florida.

# EXHIBIT A

Parcel 338

A parcel of land in Section 36, Township 47 South, Range 25 East, Bonita Springs, Lee County, Florida, more particularly described as follows:

Commence at the southwest corner the northwest quarter of the northwest quarter of the northeast quarter of Section 36, Township 47 South, Range 25 East, thence N.01°02'44"W. along the west line of the northeast quarter of said Section 36 for 395.69 feet; thence N.89°08'46"E. for 12.09 feet to an intersection with the maintained right of way line of Imperial Street as shown on the Maintained Right of Way maps thereof on file with the Lee County Division of Transportation, and the point of beginning of the herein described parcel of land; thence along said maintained right of way line for the following described eight (8) courses; (1) N.01°25'33"W. for 26.60 feet; (2) thence N.02°26'56"W. for 36.58 feet; (3) thence N.01°12'00"W. for 24.30 feet; (4) thence N.01°00'27"W. for 37.87 feet; (5) thence N.03°39'35"W. for 22.25 feet; (6) thence N.04°20'31"W. for 31.59 feet; (7) thence N.12°32'24"E. for 32.58 feet; (8) thence S.88°57'16"W. for 10.93 feet to the easterly edge of pavement of Imperial Street; thence along the easterly edge of pavement of Imperial Street and along the southerly edge of a concrete sidewalk along the south side of East Terry Street; for the following described five (5) courses; (1) N.01°25'30"W. for 19.05 feet to the point of curvature of a circular curve concave to the southeast; (2) thence northerly and northeasterly along the arc of said curve having for its elements a radius of 30.00 feet and a central angle of 48°09'32" for 25.22 feet; (3) thence N.88°23'33"E. for 115.42 feet; (4) thence N.88°46'55"E. for 78.89 feet; (5) thence N.89°10'32"E. for 122.07 feet to an intersection with the east line of that certain parcel of land described in Official Record Book 2328 at Page 3980 of the Public Records of Lee County, Florida; thence S.01°01'28"E. along said east line for 88.15 feet; thence S.87°34'59"W. for 187.83 feet to the point of curvature of a circular curve concave to the north; thence westerly along the arc of said curve having for its elements a radius of 5826.58 feet and a central angle of 00°07'46" for 13.16 feet; to an intersection with a line parallel with and 130.00 feet easterly of as measured at right angles to the west line of the northeast quarter of the aforementioned Section 36; thence S.01°02'44"E. along said parallel line for 160.57 feet to an intersection with the south line of that certain parcel of land described in Official Record Book 2328 at Page 3980 of the Public Records of Lee County, Florida; thence S.89°08'46"W. along said south line for 117.91 feet to the point of beginning.

## EXHIBIT A

### Parcel 1006 (Revised 06-07-05)

A parcel of land in Section 25, Township 47 South, Range 25 East, Bonita Springs, Lee County, Florida, more particularly described as follows:

Commence at the southwest corner of the southeast quarter of Section 25, Township 47 South, Range 25 East, thence N.89°05'34"E. along the south line of said southeast quarter for 496.36 feet to an intersection with the east line of the east half of the of the southwest quarter of the southwest quarter of the southeast quarter of said section 25; thence N.01°04'57"W along said east line for 35.00 feet to the point of beginning of the herein described parcel of land; thence continue N.01°04'57"W along said east line for 35.37 feet; thence N.87°34'59"E. for 165.53 feet to an intersection with the west line of the southeast quarter of the southwest quarter of the southeast quarter of said section 25; thence S.01°05'12"E along said west line for 39.73 feet; thence S.89°05'34"W. for 165.48 feet to the point of beginning.

### Parcel 1008 (Revised 06-07-05)

A parcel of land in Section 25, Township 47 South, Range 25 East, Bonita Springs, Lee County, Florida, more particularly described as follows:

Commence at the southwest corner of the southeast quarter of Section 25, Township 47 South, Range 25 East, thence N.89°05'34"E. along the south line of said southeast quarter for 330.87 feet to an intersection with the west line of the east half of the of the southwest quarter of the southwest quarter of the southeast quarter of said section 25; thence N.01°04'43"W along said west line for 35.00 feet to the point of beginning of the herein described parcel of land; thence continue N.01°04'43"W along said west line for 31.01 feet; thence N.87°34'59"E. for 165.53 feet to an intersection with the east line of the east half of the southwest quarter of the southwest quarter of the southeast quarter of said section 25; thence S.01°04'57"E along said east line for 35.37 feet; thence S.89°05'34"W. for 165.48 feet to the point of beginning.

## EXHIBIT "B"

Parcel	Parcel Letter	Instrument No.	Official Record Book	Page
400			3892	2949
401			3892	2949
N/A			3892	2947

# Imperial Parkway

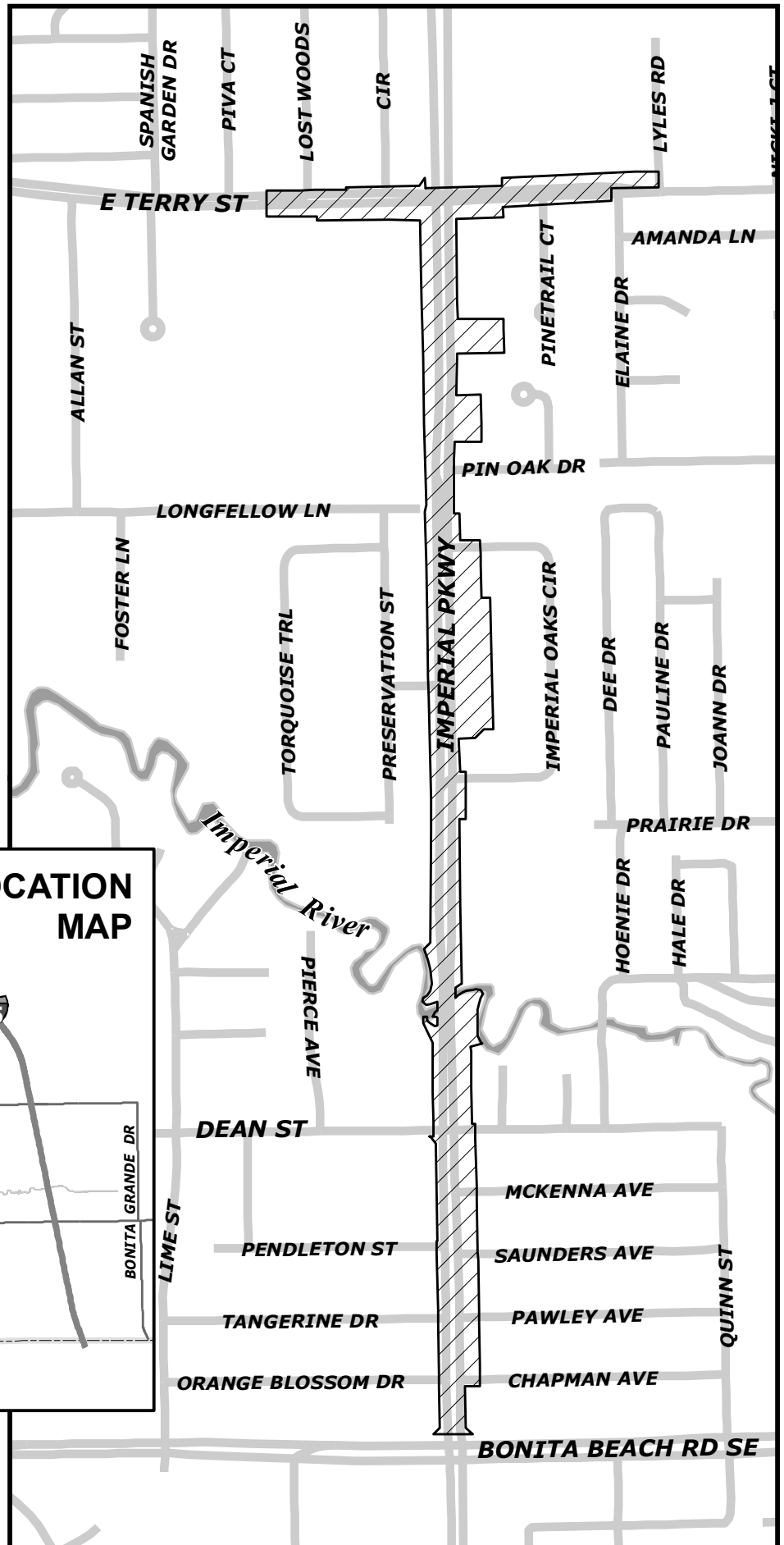
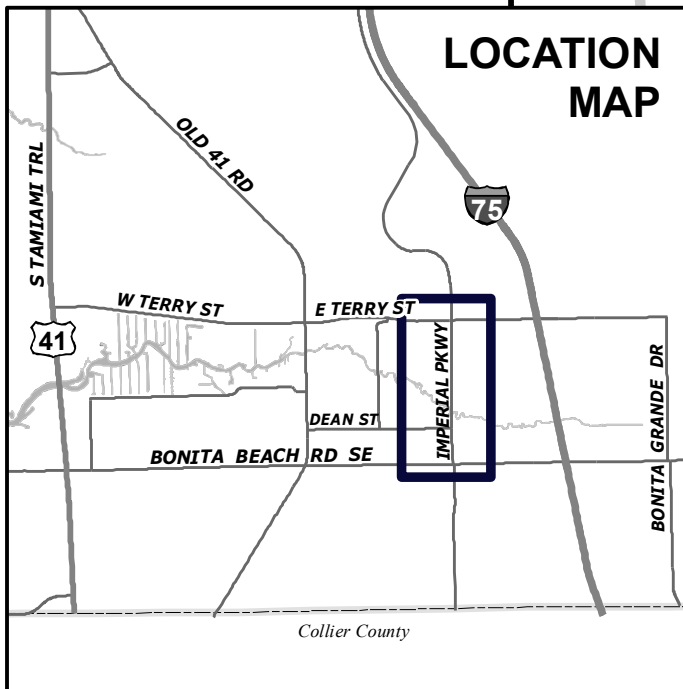
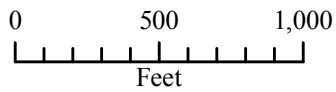
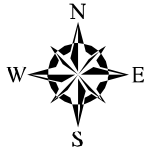
From E Terry Street to Bonita Beach Road



Right of Way



Road Centerline



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

**Blue Sheet No. 20130198**

**1. ACTION REQUESTED/PURPOSE:**

- A) Accept Parcel 103-TCE (Access/Construction Easement Agreement) and Parcel 103-CCME (Perpetual Creek and Crossing Maintenance Easement), located at 19401 Meredith Road, for the Culvert Replacement Project No. 8596;
- B) Authorize the payment of necessary costs and fees to close;
- C) Authorize County Lands Staff to execute and accept all documentation necessary to complete this transaction.

**2. FUNDING SOURCE:**

Fund – Capital Improvement Fund; Program – Water Resources Projects; Project – Culvert Replacement

**3. WHAT ACTION ACCOMPLISHES:**

Gives County right to enter property for the purpose of improving and maintaining flows in Popash Creek.

**4. MANAGEMENT RECOMMENDATION:** Approve

**5. Departmental Category:** C5B

**6. Meeting Date:** 3/12/2013

**7. Agenda:**

Consent

**8. Requirement/Purpose: (specify)**

- Statute Ch. 125 F.S.
- Ordinance
- Admin Code
- Other

**9. Request Initiated**

**Commissioner:**

**Department:** COUNTY LANDS

**Division:** No Divisions

**By:** Karen Maguire

**10. Background:**

The Division of Natural Resources has implemented the Culvert Replacement Project No. 8596, a capital improvement project for the management of stormwater flows within the creeks and waterways in unincorporated Lee County. The Division of Natural Resources engages in management activities that include clearing and removing dirt, rocks, debris, and vegetation within the creeks and waterways, repairing eroded creek banks, and replacing pipe/culvert crossings. A primary target area for this project is the Popash Creek watershed in North Fort Myers, where there is a risk of potential flooding that results from sheet flows originating in Charlotte County. The Natural Resources Division has identified Parcels 103-TCE and 103-CCME for acquisition, to provide for management of stormwater flows in Popash Creek and the replacement of a degraded and failing pipe crossing. (Companion blue sheet #20130199, pertains to the acquisition of adjacent easement rights along Popash Creek.) Interest to Acquire: Temporary construction easement, and perpetual creek and crossing maintenance easement over a portion of Popash Creek.

**Property Details:**

Owner: Perry Sizemore and Julie Sizemore, h/w  
 Address: 19401 Meredith Road, North Fort Myers, 33917  
 STRAP No.: 10-43-25-00-00013.0180

**Justification:** The property owner is donating the easements to Lee County to facilitate the control of flooding in the Popash Creek watershed.

**Costs to Close:** Recording costs are estimated to be less than \$100.

**Account:** Funds are available in account 20859630100

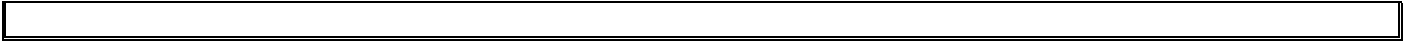
**Attachments:** Access/Construction Easement Agreement, Perpetual Creek and Crossing Maintenance Easement (copy), Title Information, 5-Year Sales History, Location Maps

**11. Required Review:**

<i>Karen Maguire</i>	<i>Roland Ottolini</i>	<i>Emma Wolf</i>	<i>David Harris</i>	<i>John Fredyma</i>	<i>Christine Brady</i>
COUNTY LANDS	NATURAL RESOURCES	Budget Analyst	Budget Services	County Attorney	County Manager

**12. Commission Action:**





This instrument prepared by  
Lee County - County Lands  
Post Office Box 398  
Fort Myers, Florida 33902-0398

**ORIGINAL**

Parcel No.: 103-TCE/Sizemore  
Project No.: 8596/Culvert Replacement (Popash Creek Improvements)  
STRAP No.: Part of 10-43-25-00-00013.0180

### ACCESS/CONSTRUCTION EASEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 21 day of JAN, 201~~2~~<sup>3</sup> between **Perry Sizemore and Julie Sizemore, husband and wife**, whose address is 925 W. County Road 300 S, North Vernon, Indiana 47265, hereinafter referred to as GRANTOR, and **LEE COUNTY, a political subdivision of the State of Florida**, whose address is Post Office Box 398, Fort Myers, Florida 33902, hereinafter referred to as LEE COUNTY.

### WITNESSETH:

THAT the GRANTOR is the owner of the lands described in Exhibit "A" and as such has the power to grant LEE COUNTY a temporary interest in such lands.

THAT the GRANTOR, for good and valuable consideration, receipt of which is hereby acknowledged, does hereby grant unto LEE COUNTY, permission to utilize the lands described in attached Exhibit "A" (hereinafter referred to as "Easement Area"), for the purpose of ingress and egress by workmen, machinery and vehicles engaged in the removal of the existing pipe crossing structure spanning Popash Creek, and the replacement of the pipe crossing structure at the same location within the Easement Area. LEE COUNTY has the additional right and authority to construct temporary fencing and to remove and dispose of dirt, pipes, debris, rocks and vegetation within the Easement Area, necessary to facilitate the replacement of a pipe crossing structure spanning Popash Creek.

The removal and replacement period is estimated at no more than 20 business days, commencing at least 10 days after receipt of written notification from the Lee County Division of Natural Resources to the GRANTOR and the property owner at 19451 Meredith Road. The written notifications will be sent by certified mail to:

Perry and Julie Sizemore  
925 W. County Road 300 S  
North Vernon, IN 47265

Martin and Betty Jane Hoade  
19451 Meredith Road  
North Fort Myers, FL 33917

Q.S. P.S.

MAY 31<sup>st</sup>, 2014

All rights granted to LEE COUNTY by this Agreement shall terminate on ~~December 31, 2013~~, or upon completion of the work contemplated by this Agreement, whichever occurs first, unless extended by a written agreement between the parties.

LEE COUNTY, at LEE COUNTY'S expense, will restore the Easement Area to a safe and aesthetic condition, as such existed prior to construction.

Parcel: 103-TCE/Sizemore  
Project: 8596/Culvert Replacement (Popash Creek Improvement)  
Page 2

LEE COUNTY will be responsible for the cost and permitting of any construction activities contemplated by this Agreement.

IN WITNESS WHEREOF, the GRANTOR has caused this document to be signed on the date and year first above written.

TWO SEPARATE WITNESSES:

Patty Shouse  
1st Witness Signature

PATTY SHOUSE  
Printed Name of 1st Witness

Matt Graham  
2nd Witness Signature

Matt Graham  
Printed Name of 2nd Witness

By: Perry Sizemore  
Perry Sizemore

STATE OF Indiana

COUNTY OF Barth

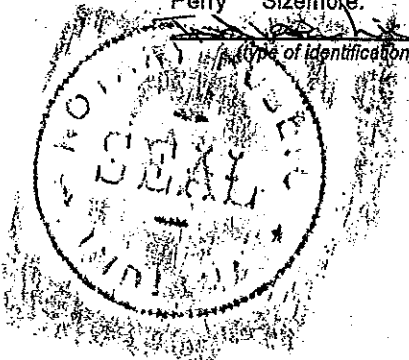
The foregoing Instrument was acknowledged before me this 21 day of Jan 2012, by Perry Sizemore. He is personally known to me or has produced Driver's License as identification.

(Type of identification)

(SEAL)

Ruth J Hardin  
(Signature of person taking acknowledgment)

Ruth J Hardin  
(Name typed, printed, or stamped)  
(Title or Rank)  
(Serial Number, if any)



Parcel: 103-TCE/Sizemore

Project: 8596/Culvert Replacement (Popash Creek Improvement)

Page 3

Patty Shouse  
1st Witness Signature

By: Julie Sizemore  
Julie Sizemore

PATRY SHOUSE  
Printed Name of 1st Witness

MATT GRAHAM  
2nd Witness Signature

Matt Graham  
Printed Name of 2nd Witness

STATE OF Indiana

COUNTY OF Barth

The foregoing instrument was acknowledged before me this 21 day of Jan 2012, by Julie Sizemore. She is personally known to me or has produced Indiana license as identification.

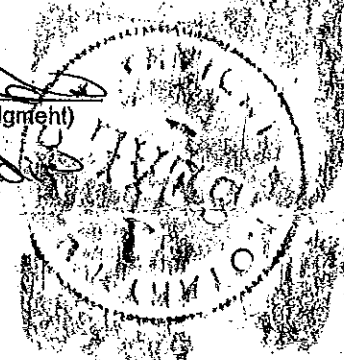
(Type of identification)



(SEAL)

Rethard J. Hard  
(Signature of person taking acknowledgment)

Rethard J. Hard  
(Name typed, printed, or stamped)  
(Title or Rank)  
(Serial Number, if any)



ACCEPTED ON BEHALF OF THE  
BOARD OF COUNTY COMMISSIONERS,  
LEE COUNTY, FLORIDA

ATTEST:  
Charlie Green, Clerk  
Linda Doggett

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chair or Vice-Chair

Date: \_\_\_\_\_

Approved As to Form:

\_\_\_\_\_  
Office of County Attorney

Project No.: 8596/Culvert Replacement (Popash Creek Improvements)  
Parcel No.: 103-TCE/Sizemore (Easement Area)  
STRAP No.: Part of 10-43-25-00-00013.0180

**EXHIBIT "A"**

The North 50' of the following described real property in Lee County, Florida:

*The South ½ of the Northeast ¼ of the Northwest ¼ of the Southwest ¼ of Section 10, Township 43 South, Range 25 East in Lee County, Florida. (Said property is also known as Lot 19, in TRIPLE R ACRES, an unrecorded subdivision).*

This Instrument Prepared by:  
DIVISION OF COUNTY LANDS  
P.O. Box 398  
Fort Myers, FL 33902-0398  
Parcel No.: 103-CCME/Sizemore  
Project: 8596/Culvert Replacement (Popash Creek Improvements)  
STRAP No.: Easement in part of 10-43-25-00-00013.0180

THIS SPACE FOR RECORDING

**PERPETUAL CREEK AND CROSSING MAINTENANCE EASEMENT**

This easement grant is made between **Perry Sizemore and Julie Sizemore, husband and wife**, Owner, whose address is 925 W. County Road 300 S, North Vernon, Indiana 47265, hereinafter referred to as Grantor, and **LEE COUNTY, a political subdivision of the State of Florida**, whose address is P.O. Box 398, Fort Myers, Florida 33902-0398 hereinafter referred to as Grantee, as follows:

**WITNESSETH:**

WHEREAS, the Grantor is the owner of property in Lee County, Florida, and more specifically described in attached Exhibit "A" (hereinafter "Property"); and

WHEREAS, a portion of Popash Creek, running north/south, bisects the Property; and

WHEREAS, the condition of the existing pipe crossing structure is degraded and failing, resulting in a reduction of water flow in Popash Creek and increasing the risk of flooding in the surrounding area; and

WHEREAS, Grantee desires to replace and maintain the pipe crossing structure located on the Property and to maintain Popash Creek, from top of bank to top of bank, in an effort to improve the management of stormwater flow and reduce the risk of flooding within the surrounding area; and

WHEREAS, in consideration of the Grantee's replacement and maintenance of pipe crossing structure on the Property, the Grantor is agreeable to granting easement rights to Grantee for access to and perpetual maintenance of the pipe crossing structure and Popash Creek, as it meanders and flows now and in the future.

NOW THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor grants to the Grantee, its successors, and assigns, a perpetual access and maintenance easement in, over and across that portion of Grantor's Property legally described in Exhibit "B" (Easement Area).

1. Grantee, its successors, and assigns, have the right to enter upon the Easement Area for creek/canal system maintenance activities, including cleaning, snagging, removal of debris, dirt, rocks and vegetation, and repairing bank erosion, with the additional right, to replace, and renew the pipe crossing structure over Popash Creek and to maintain and repair the pipe crossing structure in the future.

2. Grantee, its successors, and assigns, has the right to enter the Easement Area for the purpose of ingress and egress by workmen, machinery, and vehicles, as well as for the temporary placement of materials and equipment needed for maintenance activities.

3. Grantee will have a reasonable right of access across paved or unpaved surfaces on the Grantor's Property for the purpose of reaching the Easement Area. Damage, excluding the removal of vegetation, to Grantor's Property or permitted improvements thereon as a result of access to the Easement Area or the maintenance or repair activities within the Easement Area, will be restored by the Grantee to the condition in which it existed prior to the damage.

4. Title to the pipe crossing improvements constructed in the Easement Area will remain in the Grantee, its successors or assigns.

5. Grantor warrants that subject to existing public roadway or utility easements, Grantor is in lawful possession of the Easement Area, free and clear of all liens and encumbrances, except those recorded in the public records, and has the right and power to convey this Easement.

6. This Easement runs with the land and is binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, this instrument is executed this 21 day of Jan, 2012.

Patty Shouse  
1st WITNESS Signature

PATTY SHOUSE  
Printed Name of 1st Witness

MATT GRABER  
2nd WITNESS Signature

MATT GRABER  
Printed Name of 2nd Witness

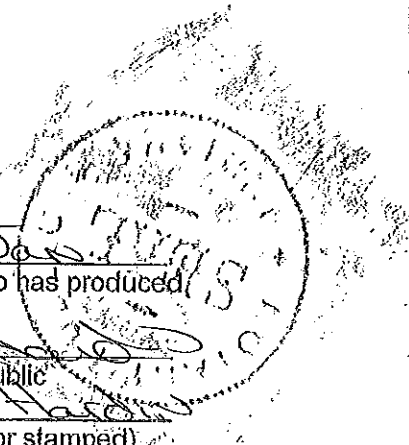
As to Grantor:  
Perry Sizemore  
Perry Sizemore (DATE)

STATE OF Indiana  
COUNTY OF Bartholomew

<sup>13</sup> The foregoing instrument was acknowledged before me this 21 day of Jan, 2012, by Perry Sizemore, a married person, who is personally known to me or who has produced Indiana license as identification.

SEAL

[Signature]  
Signature of Notary Public  
(Name typed, printed or stamped)  
(Title or Rank)  
(Serial Number, if any)



Patty Shouse  
1st WITNESS Signature

PATTY SHOUSE  
Printed Name of 1st Witness

[Signature]  
2nd WITNESS Signature

MATT COLEMAN  
Printed Name of 2nd Witness

As to Grantor:

Julie Sizemore  
Julie Sizemore, (DATE)

STATE OF Indiana  
COUNTY OF Daviess

The foregoing instrument was acknowledged before me this 21 day of Jan  
2012, by Julie Sizemore, a married person, who is personally known to me or who has produced  
Indiana license as identification.

SEAL

[Signature]  
Signature of Notary Public  
(Name typed, printed or stamped)  
(Title or Rank)  
(Serial Number, if any)

COPY



Project No.: 8596/Culvert Replacement (Popash Creek Improvements)  
Parcel No.: 103-CCME/Sizemore (Property)  
STRAP No.: 10-43-25-00-00013.0180

**EXHIBIT "A"**

The following described real property in Lee County, Florida:

*The South ½ of the Northeast ¼ of the Northwest ¼ of the Southwest ¼ of Section 10, Township 43 South, Range 25 East in Lee County, Florida. (Said property is also known as Lot 19, in TRIPLE R ACRES, an unrecorded subdivision).*

COPY

Project No.: 8596/Culvert Replacement (Popash Creek Improvements)  
Parcel No.: 103-CCME/Sizemore (Easement Area)  
STRAP No.: Part of 10-43-25-00-00013.0180

**EXHIBIT "B"**

That portion of Popash Creek, from top of bank to top of bank, as it meanders and flows now and in the future, over, upon, and across the following described real property in Lee County, Florida:

*The South ½ of the Northeast ¼ of the Northwest ¼ of the Southwest ¼ of Section 10, Township 43 South, Range 25 East in Lee County, Florida. (Said property is also known as Lot 19, in TRIPLE R ACRES, an unrecorded subdivision).*

COPY

**Division of County Lands**

**Updated In House Title Search**

Search No. 10-43-25-00-00013.0180

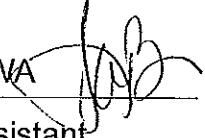
Date: January 28, 2013

Parcel: 103

Project: Popash Creek Culvert

Replacement #8596

To: J. Keith Gomez, SR/WA  
Property Acquisition Agent

From: Shelia A. Bedwell, SR/WA   
Property Acquisition Assistant

STRAP: 10-43-25-00-00013.0180

This search covers the period of time from January 1, 1973, at 8:00 a.m. to January 3, 2013, at 5:00 p.m.

**Subject Property:** Lot 19, Triple R Acres, an unrecorded subdivision, being the South Half (S ½) of the Northeast Quarter (NE ¼) of the Northwest Quarter (NW ¼) of the Southwest Quarter (SW ¼) of Section 10, Township 43 South, Range 25 East, Lee County, Florida, Less Road Right-of-Way.

Title to the subject property is vested in the following:

**Perry Sizemore and Julie Sizemore, Husband and Wife**

By that certain instrument dated December 16, 2008, recorded January 7, 2009, in Instrument Number 2009000003753, Public Records of Lee County, Florida.

**Subject to:**

1. Title to oil, gas and mineral rights and leases on subject property is specifically omitted from this report.
2. Lee County Ordinances relating to garbage and solid waste collection recorded in Official Record Book 2189, Pages 3281 and 3334, Public Records of Lee County, Florida.
3. Agreement recorded in Official Record Book 2566, Page 3727, Public Records of Lee County, Florida.
4. Road Maintenance Agreement recorded in Official Record Book 2988, Page 1812, Public Records of Lee County, Florida.

**Tax Status:** Taxes for 2012 were paid on November 8, 2012 in the amount of \$2,613.24.  
*(The end user of this report is responsible for verifying tax and/or assessment information.)*

**The Division of County Lands has made a diligent search of the Public Record. However, this report contains no guarantees nor warranty as to its accuracy.**

# 5-Year Sales History

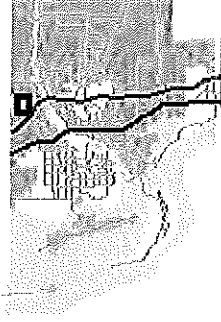
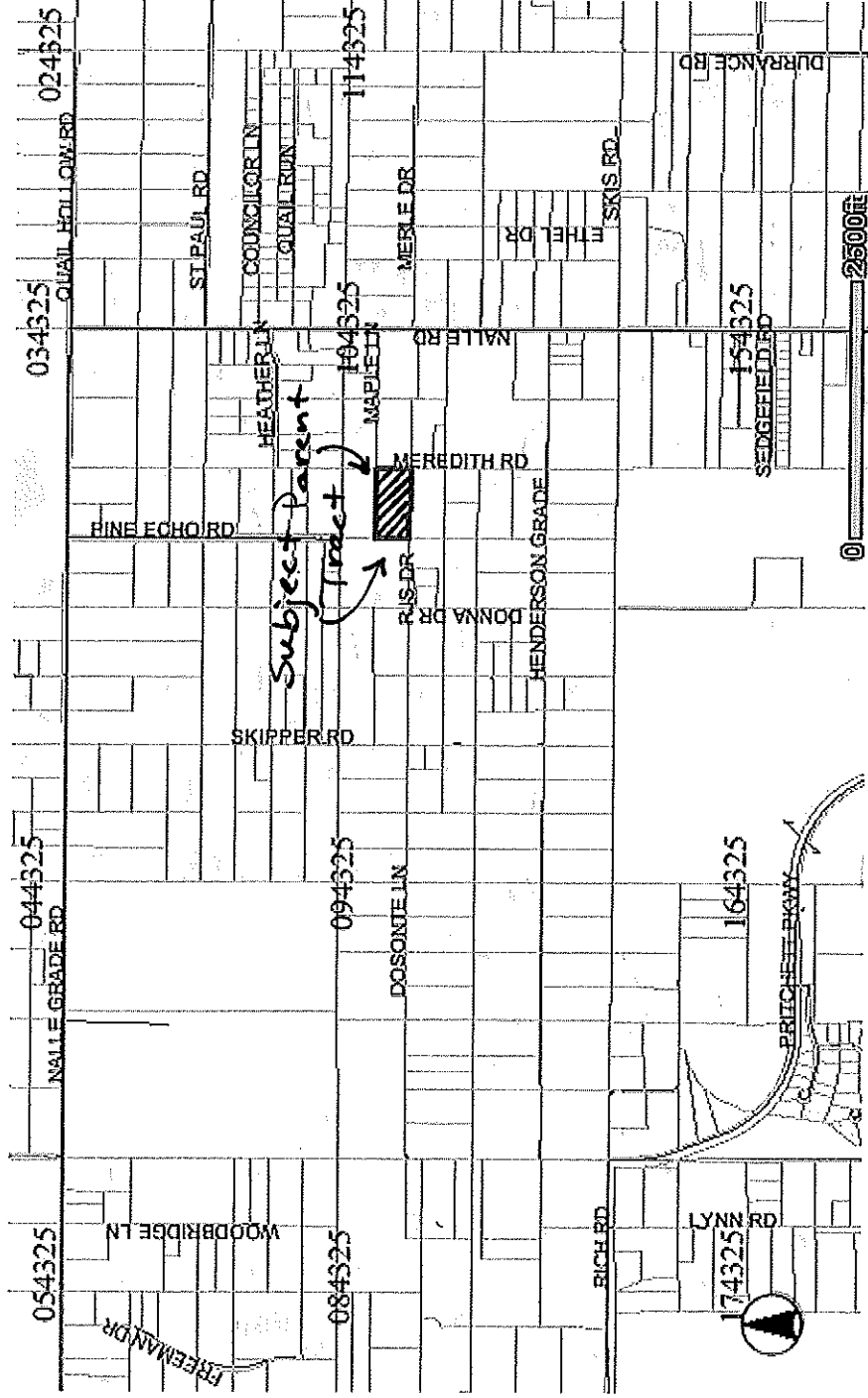
Parcel No. 103-CCME, 103-TCE (Sizemore/Sizemore, h/w)

Culvert Replacement Project No. 8596

Grantor	Grantee	Price	Date	Arms Length Y/N
US Bank National Association, Trustee	Perry Sizemore, Julie Sizemore, h/w	\$138,000	12-16-08	Y*

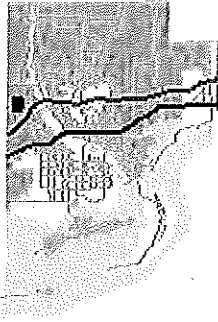
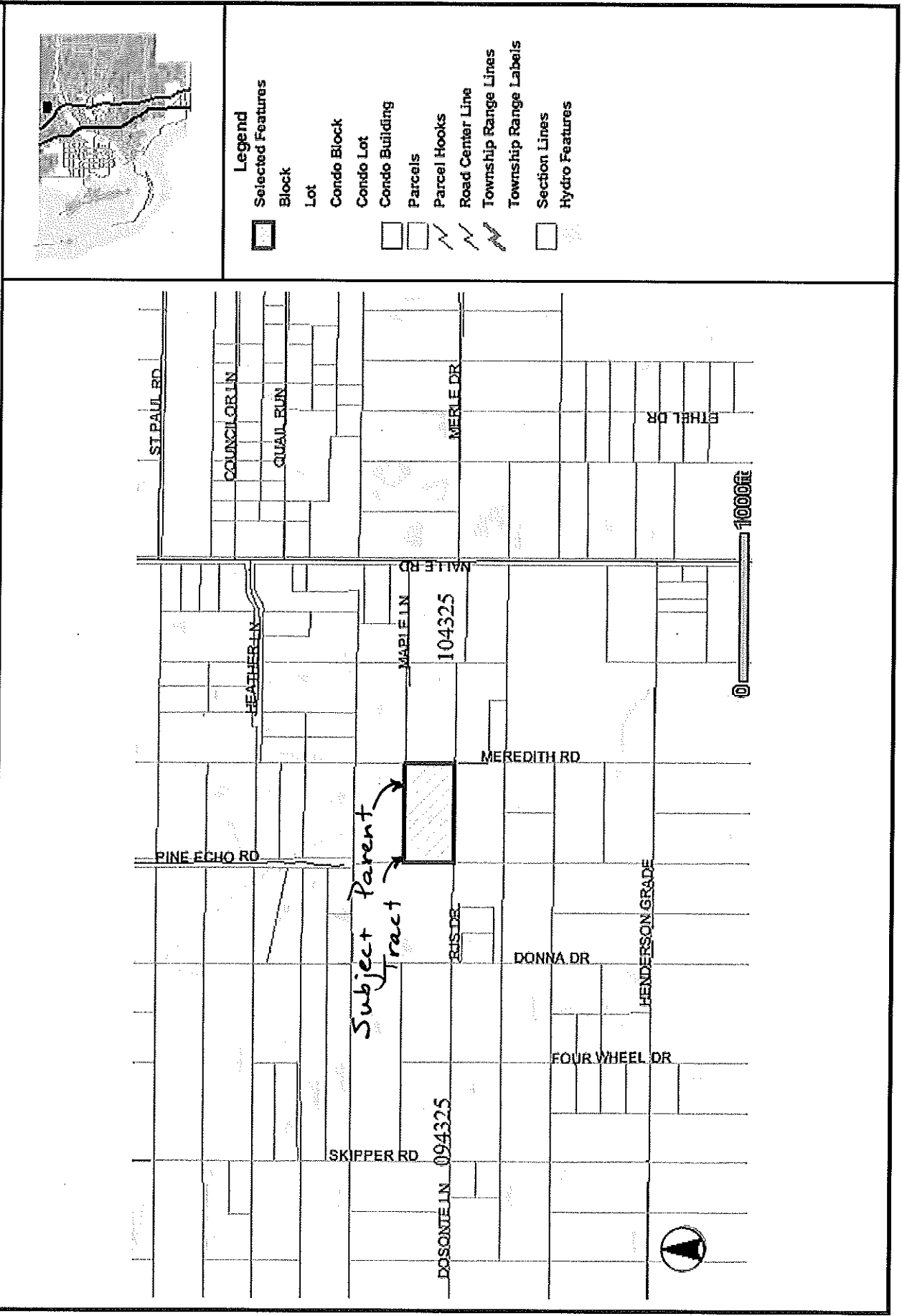
\*The referenced transaction represents the purchase of the parent tract.

### Culvert Replacements Project No. 8596, Parcel 103-TCE/CCME



- Legend**
- Selected Features
  - Condo Building
  - Parcels
  - Parcel Hooks
  - Road Center Line
  - Township Range Lines
  - Township Range Labels
  - Section Lines
  - Hydro Features

Culvert Replacements Project No. 8596, Parcel 103-TCE/CCME



- Legend**
- Selected Features
  - Block
  - Lot
  - Condo Block
  - Condo Lot
  - Condo Building
  - Parcels
  - Parcel Hooks
  - Road Center Line
  - Township Range Lines
  - Township Range Labels
  - Section Lines
  - Hydro Features

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

**Blue Sheet No. 20130199**

**1. ACTION REQUESTED/PURPOSE:**

- A) Accept Parcel 104-TCE (Access/Construction Easement Agreement) and Parcel 104-CCME (Perpetual Creek and Crossing Maintenance Easement), located at 19451 Meredith Road, for the Culvert Replacement Project No. 8596;
- B) Authorize the payment of necessary costs and fees to close;
- C) Authorize County Lands Staff to execute and accept all documentation necessary to complete this transaction.

**2. FUNDING SOURCE:**

Fund – Capital Improvement Fund; Program – Water Resources Projects; Project – Culvert Replacement

**3. WHAT ACTION ACCOMPLISHES:**

Gives County right to enter property for the purpose of improving and maintaining flows in Popash Creek.

**4. MANAGEMENT RECOMMENDATION:** Approve

**5. Departmental Category:** C5C

**6. Meeting Date:** 3/12/2013

**7. Agenda:**

Consent

**8. Requirement/Purpose: (specify)**

- Statute Ch. 125 F.S.
- Ordinance
- Admin Code
- Other

**9. Request Initiated**

**Commissioner:**

**Department:** COUNTY LANDS

**Division:** No Divisions

**By:** Karen Maguire

**10. Background:**

The Division of Natural Resources has implemented the Culvert Replacement Project No. 8596, a capital improvement project for the management of stormwater flows within the creeks and waterways in unincorporated Lee County. The Division of Natural Resources engages in management activities that include clearing and removing dirt, rocks, debris, and vegetation within the creeks and waterways, repairing eroded creek banks, and replacing pipe/culvert crossings. A primary target area for this project is the Popash Creek watershed in North Fort Myers, where there is a risk of potential flooding that results from sheet flows originating in Charlotte County. The Natural Resources Division has identified Parcels 104-TCE and 104-CCME for acquisition, to provide for management of stormwater flows in Popash Creek and the replacement of a degraded and failing pipe crossing. (Companion blue sheet #20130198, pertains to the acquisition of adjacent easement rights along Popash Creek.) Interest to Acquire: Temporary construction easement, and perpetual creek and crossing maintenance easement over a portion of Popash Creek.

**Property Details:**

Owner: Martin Hoade and Betty Jane Hoade, h/w  
 Address: 19451 Meredith Road, North Fort Myers, 33917  
 STRAP No.: 10-43-25-00-00013.0120

**Justification:** The property owner is donating the easements to Lee County to facilitate the control of flooding in the Popash Creek watershed.

**Costs to Close:** Recording costs are estimated to be less than \$100.

**Account:** Funds are available in account 20859630100

**5-Year Sales History:** None

**Attachments:** Access/Construction Easement Agreement, Perpetual Creek and Crossing Maintenance Easement

**11. Required Review:**

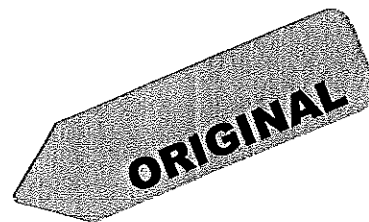
<i>Karen Maguire</i>	<i>Roland Ottolini</i>	<i>Emma Wolf</i>	<i>David Harris</i>	<i>John Fredyma</i>	<i>Christine Brady</i>
COUNTY LANDS	NATURAL RESOURCES	Budget Analyst	Budget Services	County Attorney	County Manager

**12. Commission Action:**

(copy), Title Information, Location Maps



This instrument prepared by  
Lee County - County Lands  
Post Office Box 398  
Fort Myers, Florida 33902-0398



Parcel No.: 104-TCE/Hoade  
Project No.: 8596/Culvert Replacement (Popash Creek Improvements)  
STRAP No.: Part of 10-43-25-00-00013.0120

### ACCESS/CONSTRUCTION EASEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 11 day of 2, 2013, between **MARTIN HOADE and BETTY JANE HOADE, husband and wife**, whose address is 19451 Meredith Road, North Fort Myers, FL 33917, hereinafter referred to as GRANTOR, and **LEE COUNTY, a political subdivision of the State of Florida**, whose address is Post Office Box 398, Fort Myers, Florida 33902, hereinafter referred to as LEE COUNTY.

### WITNESSETH:

THAT the GRANTOR is the owner of the lands described in Exhibit "A" and as such has the power to grant LEE COUNTY a temporary interest in such lands.

THAT the GRANTOR, for good and valuable consideration, receipt of which is hereby acknowledged, does hereby grant unto LEE COUNTY, permission to utilize the lands described in attached Exhibit "A" (hereinafter referred to as "Easement Area"), for the purpose of ingress and egress by workmen, machinery and vehicles engaged in the removal of the existing pipe crossing structure spanning Popash Creek, and the replacement of the pipe crossing structure at the same location within the Easement Area. LEE COUNTY has the additional right and authority to construct temporary fencing and to remove and dispose of dirt, pipes, debris, rocks and vegetation within the Easement Area, necessary to facilitate the replacement of a pipe crossing structure spanning Popash Creek.

The removal and replacement period is estimated at no more than 20 business days, commencing at least 10 days after receipt of written notification from the Lee County Division of Natural Resources to the GRANTOR and the property owner at 19401 Meredith Road. The written notifications will be sent by certified mail to:

Martin & Betty Jane Hoade  
19451 Meredith Road  
North Fort Myers, FL 33917

Perry & Julie Sizemore (Owner - 19401 Meredith Rd)  
925 W. County Road 300 S  
North Vernon, IN 47265

All rights granted to LEE COUNTY by this Agreement shall terminate on May 31, 2014, or upon completion of the work contemplated by this Agreement, whichever occurs first, unless extended by a written agreement between the parties.

LEE COUNTY, at LEE COUNTY'S expense, will restore the Easement Area to a safe and aesthetic condition, as such existed prior to construction.

LEE COUNTY will be responsible for the cost and permitting of any construction activities contemplated by this Agreement.

IN WITNESS WHEREOF, the GRANTOR has caused this document to be signed on the date and year first above written.

TWO SEPARATE WITNESSES:

Denise Berabe  
1st Witness Signature

By: [Signature]  
Martin Hoade

Denise Berabe  
Printed Name of 1st Witness

Niesha Rutledge  
2nd Witness Signature

Niesha Rutledge  
Printed Name of 2nd Witness

STATE OF Fla  
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of Feb, 2013, by Martin Hoade. He is personally known to me or has produced \_\_\_\_\_ as identification.

(SEAL)

Kimberly W Parker (Type of Identification)  
(Signature of Notary Public)  
Kimberly W Parker  
(Name typed, printed, or stamped)  
(Title or Rank)  
(Serial Number, if any)



Denise M Berube  
1st Witness Signature

By: Betty Jane Hoade  
Betty Jane Hoade

Denise M. Berube  
Printed Name of 1st Witness

Niesha Rutledge  
2nd Witness Signature

Niesha Rutledge  
Printed Name of 2nd Witness

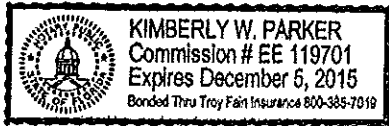
STATE OF Fla  
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 11 day of 2, 2013, by Betty Jane Hoade. She is personally known to me or has produced \_\_\_\_\_ identification.

(SEAL)

Kimberly W Parker (type of identification)  
(Signature of Notary Public)

Kimberly W Parker  
(Name typed, printed, or stamped)  
(Title or Rank)  
(Serial Number, if any)



ACCEPTED ON BEHALF OF THE  
BOARD OF COUNTY COMMISSIONERS,  
LEE COUNTY, FLORIDA

ATTEST:  
LINDA DOGGETT, CLERK

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
CHAIR or VICE CHAIR

Date: \_\_\_\_\_

Approved As to Form:

\_\_\_\_\_  
Office of County Attorney

Project No.: 8596/Culvert Replacement (Popash Creek Improvements)  
Parcel No.: 104-TCE/Hoade (Temporary Easement Area)  
STRAP No.: Part of 10-43-25-00-00013.0120

**EXHIBIT "A"**

The South 50' of the following described real property in Lee County, Florida:

*The North ½ of the Northeast ¼ of the Northwest ¼ of the Southwest ¼ of Section 10, Township 43 South, Range 25 East in Lee County, Florida. (Said property is also known as Lot 18, in TRIPLE R ACRES, an unrecorded subdivision).*

This Instrument Prepared by:  
DIVISION OF COUNTY LANDS  
P.O. Box 398  
Fort Myers, FL 33902-0398  
Parcel No.: 104-CCME/Hoade  
Project: 8596/Culvert Replacement (Popash Creek Improvements)  
STRAP No.: Easement in part of 10-43-25-00-00013.0120

ORIGINAL DOCUMENTS RETAINED IN  
COUNTY LANDS FILES FOR HANDLING  
UPON BOARD ACCEPTANCE.

THIS SPACE FOR RECORDING

**PERPETUAL CREEK AND CROSSING MAINTENANCE EASEMENT**

This easement grant is made between **MARTIN HOADE and BETTY JANE HOADE, husband and wife**, Owner, whose address is 19451 Meredith Road, North Fort Myers, Florida 33917, hereinafter referred to as Grantor, and **LEE COUNTY, a political subdivision of the State of Florida**, whose address is P.O. Box 398, Fort Myers, Florida 33902-0398 hereinafter referred to as Grantee, as follows:

**WITNESSETH:**

WHEREAS, the Grantor is the owner of property in Lee County, Florida, and more specifically described in attached Exhibit "A" (hereinafter "Property"); and

WHEREAS, a portion of Popash Creek running north/south, bisects the Property; and

WHEREAS, the condition of the existing pipe crossing structure is degraded and failing, resulting in a reduction of water flow in Popash Creek and increasing the risk of flooding in the surrounding area; and

WHEREAS, Grantee desires to replace and maintain the pipe crossing structure located on the Property and to maintain Popash Creek, from top of bank to top of bank, in an effort to improve the management of stormwater flow and reduce the risk of flooding within the surrounding area; and

WHEREAS, in consideration of the Grantee's replacement and maintenance of pipe crossing structure on the Property, the Grantor is agreeable to granting easement rights to Grantee for access to and perpetual maintenance of the pipe crossing structure and Popash Creek, as it meanders and flows now and in the future.

NOW THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor grants to the Grantee, its successors, and assigns, a perpetual access and maintenance easement in, over and across that portion of Grantor's Property legally described in Exhibit "B" (Easement Area).

1. Grantee, its successors, and assigns, have the right to enter upon the Easement Area for creek/canal system maintenance activities, including cleaning, snagging, removal of debris, dirt, rocks and vegetation, and repairing bank erosion, with the additional right, to replace, and renew the pipe crossing structure over Popash Creek and to maintain and repair the pipe crossing structure in the future.

2. Grantee, its successors, and assigns, has the right to enter the Easement Area for the purpose of ingress and egress by workmen, machinery, and vehicles, as well as for the temporary placement of materials and equipment needed for maintenance activities.

3. Grantee will have a reasonable right of access across paved or unpaved surfaces on the Grantor's Property for the purpose of reaching the Easement Area. Damage, excluding the removal of vegetation, to Grantor's Property or permitted improvements thereon as a result of access to the Easement Area or the maintenance or repair activities within the Easement Area, will be restored by the Grantee to the condition in which it existed prior to the damage.

4. Title to the pipe crossing improvements constructed in the Easement Area will remain in the Grantee, its successors or assigns.

5. Grantor warrants that subject to existing public roadway or utility easements, Grantor is in lawful possession of the Easement Area, free and clear of all liens and encumbrances, except those recorded in the public records, and has the right and power to convey this Easement.

6. This Easement runs with the land and is binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, this instrument is executed this 11 day of 2, 2013.

[Signature]  
1st WITNESS Signature

As to Grantor:  
[Signature] 2/11/2013  
Martin Hoade, (DATE)

Denise Berube  
Printed Name of 1st Witness

[Signature]  
2nd WITNESS Signature

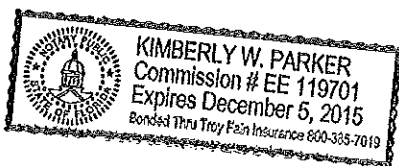
Niesha HutHedge  
Printed Name of 2nd Witness

STATE OF Fla  
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of Feb, 2013, by Martin Hoade, a married person, who is personally known to me or who has produced \_\_\_\_\_ as identification.

SEAL

[Signature]  
Signature of Notary Public  
Kimberly W Parker  
(Name typed, printed or stamped)  
(Title or Rank)  
(Serial Number, if any)



Dennis Berube  
1st WITNESS Signature

As to Grantor:  
Betty Jane Hoade 2-11-13  
Betty Jane Hoade, (DATE)

Dennis M. Berube  
Printed Name of 1st Witness

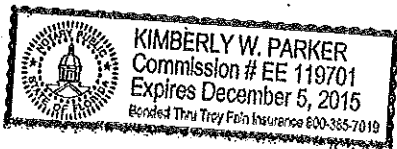
Niesha K. Hedge  
2nd WITNESS Signature

Niesha K. Hedge  
Printed Name of 2nd Witness

STATE OF Fla  
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of FEB, 2013, by Betty Jane Hoade, a married person, who is personally known to me or who has produced \_\_\_\_\_ as identification.

SEAL



Kimberly W Parker  
Signature of Notary Public  
Kimberly W Parker  
(Name typed, printed or stamped)  
(Title or Rank)  
(Serial Number, if any)

Project No.: 8596/Culvert Replacement (Popash Creek Improvements)  
Parcel No.: 104-CCME/Hoade (Owner's Property)  
STRAP No.: 10-43-25-00-00013.0120

**EXHIBIT "A"**

The following described real property in Lee County, Florida:

*The North ½ of the Northeast ¼ of the Northwest ¼ of the Southwest ¼ of Section 10, Township 43 South, Range 25 East in Lee County, Florida. (Said property is also known as Lot 18, in TRIPLE R ACRES, an unrecorded subdivision).*



Project No.: 8596/Culvert Replacement (Popash Creek Improvements)  
Parcel No.: 104-CCME/Hoade (Perpetual Easement Area)  
STRAP No.: Part of 10-43-25-00-00013.0120

**EXHIBIT "B"**

That portion of Popash Creek, from top of bank to top of bank, as it meanders and flows now and in the future, over, upon, and across the following described real property in Lee County, Florida:

*The North ½ of the Northeast ¼ of the Northwest ¼ of the Southwest ¼ of Section 10, Township 43 South, Range 25 East in Lee County, Florida. (Said property is also known as Lot 18, in TRIPLE R ACRES, an unrecorded subdivision).*

**Division of County Lands**

**Updated In House Title Search**

Search No. 10-43-25-00-00013.0120

Date: February 21, 2013

Parcel: 104

Project: Popash Creek Culvert

Replacement #8596

To: J. Keith Gomez, SRWA  
Property Acquisition Agent

From: Bill Abramovich *B.A.*  
Real Estate Title Examiner

STRAP: 10-43-25-00-00013.0120

This search covers the period of time from January 1, 1973, at 8:00 a.m. to February 7, 2013, at 5:00 p.m.

**Subject Property:** The North half (N ½) of the Northeast Quarter (NE ¼) of the Northwest Quarter (NW ¼) of the Southwest Quarter (SW ¼) of Section 10, Township 43 South, Range 25 East, Lee County, Florida. Also known as Lot 18, TRIPLE R ACRERS, unrecorded Subdivision. Subject to a road right of way over the East 30 feet, thereof.

Title to the subject property is vested in the following:

**Martin Hoade and Betty Jane Hoade, Husband and Wife**

By that certain instrument dated August 5, 2003, recorded August 8, 2003, in Official Record Book 4021, Page 627, Public Records of Lee County, Florida.

**Subject to:**

1. Title to oil, gas and mineral rights and leases on subject property is specifically omitted from this report.
2. Road Right of Way over the East 30 feet recited in Official Record Book 1066, Page 1206, Public Records of Lee County, Florida.
3. Mortgage executed by Betty Jane Hoade and Martin Hoade in favor of MERS as nominee for Countrywide Home Loans, Inc., dated August 5, 2003, recorded August 8, 2003, in Official Record Book 4021, Page 629, Public Records of Lee County, Florida.
4. Lee County Ordinances relating to garbage and solid waste collection recorded in Official Record Book 2189, Pages 3281 and 3334, Public Records of Lee County, Florida.
5. Road Maintenance Agreement recorded in Official Record Book 2988, Page 1812, Public Records of Lee County, Florida.

**Division of County Lands**

**Updated In House Title Search**

Search No. 10-43-25-00-00013.0120

Date: February 21, 2013

Parcel: 104

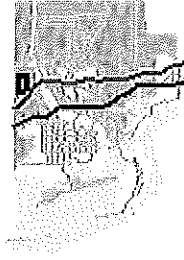
Project: Popash Creek Culvert

Replacement #8596

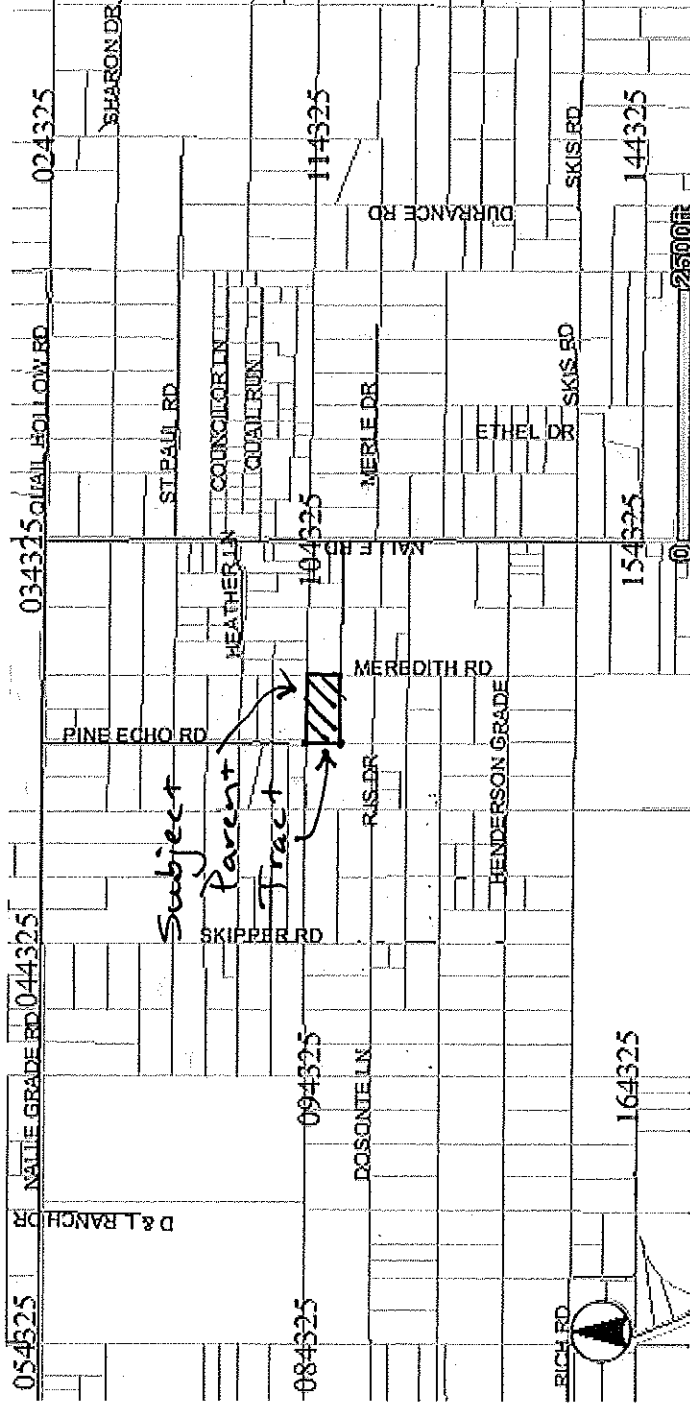
**Tax Status:** Taxes for 2012 have been paid on November 19, 2012 in the amount of \$1,534.94.  
*(The end user of this report is responsible for verifying tax and/or assessment information.)*

**The Division of County Lands has made a diligent search of the Public Record. However, this report contains no guarantees nor warranty as to its accuracy.**

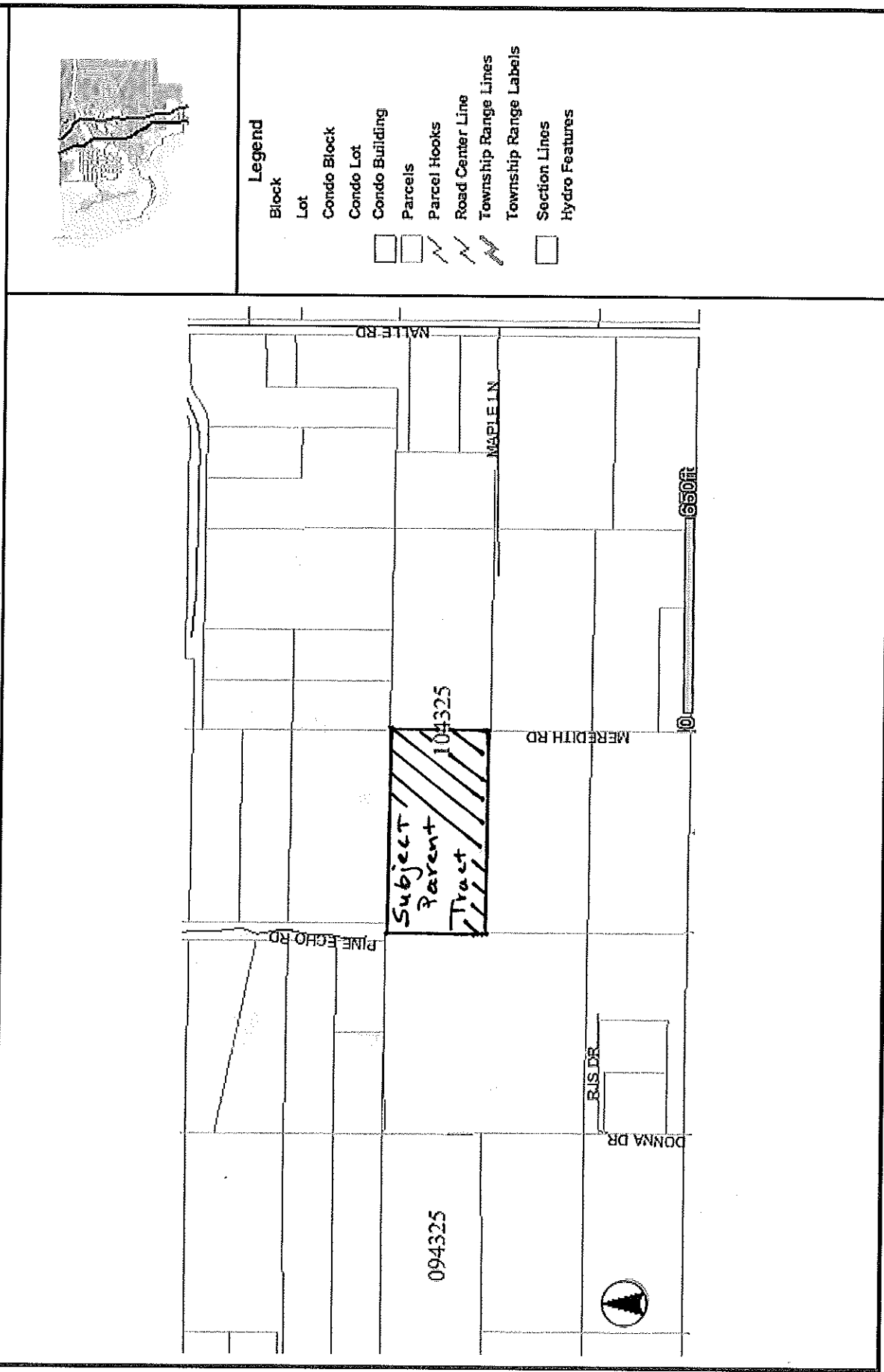
Culvert Replacements Project No. 8596, Parcel 104-TCE/CCME



- Legend**
- Condo Building
  - Parcels
  - Parcel Hooks
  - Road Center Line
  - Township Range Lines
  - Township Range Labels
  - Section Lines
  - Hydro Features



Culvert Replacements Project No. 8596, Parcel 104-TCE/CCME



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

**Blue Sheet No. 20130192**

**1. ACTION REQUESTED/PURPOSE:**

- 1.) Approve and execute a contract to receive \$1,749,542 from the State of Florida, Department of Economic Opportunity (DEO), for the Low Income Home Energy Assistance Program (LIHEAP).
- 2.) Approve FY 2012-2013 budget amendment resolution for \$1,749,542 LIHEAP funds.
- 3.) Authorize the Department of Human Services to hire one additional grant funded position as needed and approved by County Administration.

**2. FUNDING SOURCE:**

Fund-Federal Grant through General Fund; Program-Florida Department of Economic Opportunity; Project; LIHEAP

**3. WHAT ACTION ACCOMPLISHES:**

Provides \$1,749,542 in grant funds for the Low Income Home Energy Assistance Program for payment of utilities to eligible low-income Lee County residents.

**4. MANAGEMENT RECOMMENDATION:** Approve

**5. Departmental Category:** C6A

**6. Meeting Date:** 3/12/2013

**7. Agenda:**

Consent

**8. Requirement/Purpose:** *(specify)*

- Statute
- Ordinance
- Admin Code      AC 3-6
- Other

**9. Request Initiated**

**Commissioner:**  
**Department:** HUMAN SERVICES  
**Division:** No Divisions  
**By:** Ann Arnall

**10. Background:**

The State of Florida, Department of Economic Opportunity, has elected to renew a contract with Lee County Department of Human Services to administer the Low Income Home Energy Assistance Program (LIHEAP). The allocation for the FY 2013-2014 contract period is \$1,749,542.

This program will provide utility payments for approximately 5,474 low-income households with a utility obligation as well as those experiencing a home energy disconnection. Department staff will review applications to determine eligibility in accordance with state guidelines. Currently two grant funded positions are approved. We are requesting a third grant funded position to assist with applicant eligibility. The program is available to low-income residents of Lee County with priority given to the elderly, persons with disabilities and households with small children. This grant does not require matching funds.

Funds will be made available upon execution of contract between Lee County and DEO.

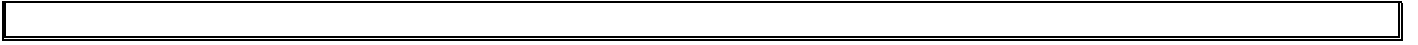
Funds will be available in the following business unit: 11104500100

Attachments: Contract  
 Budget Amendment Resolution  
 Grant At A Glance

**11. Required Review:**

<i>Ann Arnall</i>	<i>John Fredyma</i>	<i>Tricia Jackson</i>	<i>David Harris</i>	<i>Holly Schwartz</i>	
HUMAN SERVICES	County Attorney	Budget Analyst	Budget Services	County Manager	

**12. Commission Action:**



FORWARD WITH AGREEMENT AND BLUE SHEET

ALL INFORMATION IS REQUIRED - DO NOT LEAVE ANY BLANKS - USE N/A WHEN NOT APPLICABLE

GRANT AT A GLANCE

GRANT AWARD INFORMATION

- 1. County Grant ID (project #): 1045
- 2. Title of Grant: Low Income Home Energy Assistance Program (LIHEAP)
- 3. Amount of Award: \$ 1,749,542
- 4. Amount of Match Required: None
- 5. Type of Match: N/A  
(cash, in-kind etc)

6. SOURCE OF GRANT FUNDS & CATALOG NUMBER:

FEDERAL <input checked="" type="checkbox"/> CFDA # 93.568	STATE <input type="checkbox"/> CSFA #
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7. Agency Contract Number: 13EA-0F-09-46-01-015

8. Contract Period:	Begin Date: Date Signed	End Date: 03/31/2014
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9. Name of Subrecipient(s) None

10. Business Unit(s): 11104500100

11. Scope of Grant: Grant provides home energy assistance to qualifying low income households through vendor payments.
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12. Has this Grant been funded before?  YES  NO If YES When? April 1997-April 2013

13. Is Grant Funding Anticipated in Subsequent Years?  YES  NO

14. If Grant Funding Ends Will This Program Be Continued at County Expense?  YES  NO  
If YES What is the Lee County Budget Impact:

1st Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
4 <sup>th</sup> Year	5 <sup>th</sup> Year	

Check Box if Additional Information on Program and Budget Impact is provided in *Comment Section* on page 2

ADMINISTERING DEPARTMENT INFORMATION

- 1. Department: Lee County Department of Human Services
- 2. Contacts:

Program Mgr. Kim Hustad	Phone #: 239/533-7916
Fiscal Mgr. Barbara Hollis	Phone # 239/533-7923



**GRANTOR AGENCY INFORMATION**

(The agency you signed this agreement with)

- 1. Grantor Agency: Florida Department of Economic Opportunity
- 2. Program Title/Division: Community Assistance Section
- 3. Agency Contact: Paula Lemmo-Community Program Manager
- 4. Phone Number: 850-245-7105
- 5. Mailing Address: The Caldwell Building, 107 E. Madison Street  
Tallahassee, FL 32399-4120

**SOURCE OF FUNDS**

- 1. Original Funding Source: U.S. Department of Health and Human Services  
(name of agency where funding originated from)  
Pass Through Agency: Florida Department of Economic Opportunity  
(middleman if any? Example: federal \$\$ from US DOT given to STATE of FL DOT-- -then from STATE DOT to Lee County DOT --- STATE of FL DOT is the pass-through agency).
- 3. Additional Information for Other Agencies Involved:  
\_\_\_\_\_  
\_\_\_\_\_

3a. Is the County a Grantee or Subrecipient in #3 above: Grantee

**REPORTING REQUIREMENTS**

1. Does this grant require a separate subfund? YES  NO   
(Example: you need to return interest earnings)

Please Explain: \_\_\_\_\_

2. Is funding received in advance? YES  NO   
(If YES, please indicate conditions for returning residual proceeds, or interest and the address to return it to, if different from the Grantor Agency Information)

**ADDITIONAL COMMENTS INSTRUCTIONS :**

**STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY**

CFDA Number: 93.568

Contract Number: 13EA-0F-09-46-01-015

**FEDERALLY-FUNDED SUBGRANT AGREEMENT**

THIS AGREEMENT is entered into by the State of Florida, Department of Economic Opportunity, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Department"), and Lee County Board of County Commissioners, Post Office Box 398, Fort Myers, Florida 33902, (hereinafter referred to as the "Recipient").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein; and

B. The Department has received these grant funds from the State of Florida, and has the authority to subgrant these funds to the Recipient upon the terms and conditions below; and

C. The Department has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Department and the Recipient agree to the following:

(1) SCOPE OF WORK

The Recipient shall perform the work in accordance with the Scope of Work (Attachment A), and Budget Summary and Workplan (Attachment J), of this Agreement.

(2) INCORPORATION OF LAWS, RULES, REGULATIONS AND POLICIES

The Recipient and the Department shall be governed by applicable state and federal laws, rules and regulations, including those identified in Attachment B.

(3) PERIOD OF AGREEMENT

This Agreement shall begin upon execution by both parties or March 1, 2013, whichever is earlier, and shall end March 31, 2014, unless terminated earlier in accordance with the provisions of Paragraph (12) of this Agreement.

(4) MODIFICATION OF CONTRACT

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(5) RECORDKEEPING

(a) As applicable, Recipient's performance under this Agreement shall be subject to the federal "Common Rule: Uniform Administrative Requirements for State and Local Governments" (53 Federal Register 8034) or OMB Circular No. A-110 (now 2 CFR Part 215), "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," and either OMB Circular No. A-87 (now 2 CFR Part

225), "Cost Principles for State and Local Governments," OMB Circular No. A-21 (now 2 CFR Part 220), "Cost Principles for Educational Institutions," or OMB Circular No. A-122 (now 2 CFR Part 230), "Cost Principles for Nonprofit Organizations." If this Agreement is made with a commercial (for-profit) organization on a cost-reimbursement basis, the Recipient shall be subject to Federal Acquisition Regulations 31.2 and 931.2.

(b) The Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, and the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of five years from the date the audit report is issued, and shall allow the Department or its designee, the State Chief Financial Officer or the State Auditor General access to the records upon request. The Recipient shall ensure that audit working papers are available to them upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department. The five year period may be extended for the following exceptions:

1. If any litigation, claim or audit is started before the five year period expires, and extends beyond the five year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

2. Records for the disposition of non-expendable personal property valued at \$5,000 or more at the time it is acquired shall be retained for five years after final disposition.

3. Records relating to real property acquired shall be retained for five years after the closing on the transfer of title.

(c) The Recipient shall maintain all records for the Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work and all other applicable laws and regulations.

(d) The Recipient, its employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times to the Department, its employees, and agents. "Reasonable" shall ordinarily mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday. "Agents" shall include, but not be limited to, auditors retained by the Department.

#### (6) AUDIT REQUIREMENTS

(a) The Recipient agrees to maintain financial procedures and support documents, in accordance with generally accepted accounting principles, to account for the receipt and expenditure of funds under this Agreement.

(b) These records shall be available at reasonable times for inspection, review, or audit by state personnel and other personnel authorized by the Department. "Reasonable" shall ordinarily mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

(c) The Recipient shall provide the Department with the records, reports or financial statements upon request for the purposes of auditing and monitoring the funds awarded under this Agreement.

(d) If the Recipient is a state or local government or a non-profit organization as defined in OMB Circular A-133, and in the event that the Recipient expends \$500,000 or more in Federal awards in its fiscal year, the Recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133. EXHIBIT 1 to this Agreement shows the Federal resources awarded through the Department by this Agreement. In determining the Federal awards expended in its fiscal year, the Recipient shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133. An audit of the Recipient conducted by the Auditor General in accordance with the provisions of OMB Circular A-133 will meet the requirements of this paragraph.

In connection with the audit requirements addressed in this Paragraph 6 (d) above, the Recipient shall fulfill the requirements for auditee responsibilities as provided in Subpart C of OMB Circular A-133.

If the Recipient expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133 is not required. In the event that the Recipient expends less than \$500,000 in Federal awards in its fiscal year and chooses to have an audit conducted in accordance with the provisions of OMB Circular A-133, the cost of the audit must be paid from non-Federal funds.

(e) Send copies of reporting packages and any management letters issued by the auditor for audits conducted in accordance with OMB Circular A-133 and required by subparagraph (d) above, when required by Section .320 (d), OMB Circular A-133, by or on behalf of the Recipient to the Department of Economic Opportunity at the following address:

Department of Economic Opportunity  
Office of Audit Services  
107 East Madison Street  
MSC 130  
Tallahassee, Florida 32399-4120

(also send an electronic copy to Ms. Ginny Helwig at: [ginny.helwig@deo.myflorida.com](mailto:ginny.helwig@deo.myflorida.com))

Send the Single Audit reporting package and Form SF-SAC to the Federal Audit Clearinghouse by submission online at

<http://harvester.census.gov/fac/collect/ddeindex.html>

And to any other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133.

(f) Pursuant to Section .320 (f), OMB Circular A-133, the Recipient shall send a copy of the reporting package described in Section .320 (c), OMB Circular A-133, and any management letter issued by the auditor, to the Department at the following addresses:

Department of Economic Opportunity  
Office of the Inspector General  
107 East Madison Street  
MSC 130  
Tallahassee, Florida 32399-4120

And

Department of Economic Opportunity  
Division of Community Development  
Office of Housing and Community Development  
Community Assistance Section  
107 East Madison Street  
MSC 400  
Tallahassee, Florida 32399-4120

(g) By the date due, send any reports, management letter, or other information required to be submitted to the Department pursuant to this Agreement in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

(h) Recipients should state the date that the reporting package was delivered to the Recipient when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General,

(i) If the audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Recipient shall be held liable for reimbursement to the Department of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty calendar days after the Department has notified the Recipient of such non-compliance.

(j) The Recipient shall have all audits completed by an independent certified public accountant (IPA), either a certified public accountant or a public accountant licensed under Chapter 473, Fla. Stat. The IPA shall state that the audit complied with the applicable provisions noted above. The audit must be received by the Department no later than nine months from the end of the Recipient's fiscal year.

(7) REPORTS

(a) The Recipient shall provide the Department with monthly reports, quarterly reports, and a close-out report. These reports shall include the current status and progress by the Recipient and all subrecipients and subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Department.

(b) Monthly reports are due to the Department no later than the twenty-first day of each month following the end of the reporting month in which funds were expended. In the event the twenty-first day of the month falls on a weekend day or holiday, the monthly report shall be due no later than the next business day.

(c) Quarterly reports are due to the Department no later than twenty-one calendar days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31. In the event the twenty-first day of the month falls on a weekend day or holiday, the quarterly report shall be due no later than the next business day.

(c) The close-out report is due forty-five calendar days after termination of this Agreement or forty-five calendar days after completion of the activities contained in this Agreement, whichever first occurs. In the event the forty-fifth day falls on a weekend day or holiday, the close-out report shall be due no later than the next business day.

(d) If all required reports and copies are not sent to the Department or are not completed in a manner acceptable to the Department, the Department shall withhold further payments until they are completed or may take other action as stated in Paragraph (11) REMEDIES. "Acceptable to the Department" means that the work product was completed in accordance with the Budget and Scope of Work.

(e) The Recipient shall provide additional program updates or information that may be required by the Department.

(f) The Recipient shall provide additional reports and information identified in Attachment C.

(8) MONITORING

The Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that the Scope of Work and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement, and reported in the quarterly report.

In addition to reviews of audits conducted in accordance with Paragraph (6) above, monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits, and/or other procedures. The Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department. In the event that the Department determines that a limited scope audit of the Recipient is appropriate, the Recipient agrees to comply with any additional instructions provided by the Department to the Recipient regarding such audit. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Department will monitor the performance and financial management by the Recipient throughout the contract term to ensure timely completion of all tasks.

(9) LIABILITY

(a) Unless Recipient is a state agency or subdivision, as defined in Section 768.28, Fla. Stat., the Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement, and shall hold the Department harmless against all claims of whatever nature by third parties arising from the work performed under this Agreement. For purposes of this Agreement, Recipient agrees that it is not an employee or agent of the Department, but is an independent contractor.

(b) Any Recipient which is a state agency or subdivision, as defined in Section 768.28, Fla. Stat., agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Department, and agrees to be liable for any damages proximately caused by its acts or omissions to the extent set forth in Section 768.28, Fla. Stat. Nothing herein is intended to serve as a waiver of sovereign immunity by any Recipient to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(10) DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the Department to make further payment of funds shall, if the Department elects, terminate and the Department has the option to exercise any of its remedies set forth in Paragraph (11). However, the Department may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment:

(a) If any warranty or representation made by the Recipient in this Agreement or any previous agreement with the Department is or becomes false or misleading in any respect, or if the Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Department and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;

(b) If material adverse changes occur in the financial condition of the Recipient at any time during the term of this Agreement, and the Recipient fails to cure this adverse change within thirty calendar days from the date written notice is sent by the Department.

(c) If any reports required by this Agreement have not been submitted to the Department or have been submitted with incorrect, incomplete or insufficient information;

(d) If the Recipient has failed to perform and complete in timely fashion any of its obligations under this Agreement.

(11) REMEDIES

If an Event of Default occurs, and the Department provides written notice to the Recipient, the Department may exercise any one or more of the following remedies, either concurrently or consecutively:

(a) Terminate this Agreement if the Recipient has not cured the default within thirty calendar days of receipt of written notice of an Event of Default;

(b) Begin an appropriate legal or equitable action to enforce performance of this Agreement;

(c) Withhold or suspend payment of all or any part of a request for payment;

(d) Exercise any corrective or remedial actions, to include but not be limited to:

1. request additional information from the Recipient to determine the reasons for or the extent of non-compliance or lack of performance,
2. issue a written warning to advise that more serious measures may be taken if the situation is not corrected,
3. advise the Recipient to suspend, discontinue, or refrain from incurring costs for any activities in question, or
4. require the Recipient to reimburse the Department for the amount of costs incurred for any items determined to be ineligible;

(e) Exercise any other rights or remedies which may be otherwise available under law.

Pursuing any of the above remedies will not keep the Department from pursuing any other remedies in this Agreement or provided at law or in equity. If the Department waives any right or remedy in this Agreement or fails to insist on strict performance by the Recipient, it will not affect, extend or waive any other right or remedy of the Department, or affect the later exercise of the same right or remedy by the Department for any other default by the Recipient.

#### (12) TERMINATION

(a) The Department may terminate this Agreement for cause with thirty calendar days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform in a timely manner, failure to cure an Event of Default within thirty calendar days from receipt of the notice, or refusal by the Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under Chapter 119, Fla. Stat., as amended.

(b) The Department may terminate this Agreement for convenience or when it determines, in its sole discretion, that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Recipient with thirty calendar days prior written notice.

(c) The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment shall state the effective date of the termination and the procedures for proper closeout of the Agreement.

(d) If the Department issues a notice of Event of Default, the Recipient shall not incur new obligations during the thirty day cure period. If the Department determines that the Recipient has cured the Event of Default within the thirty day cure period, the Department will provide notice to the Recipient that it may resume incurring new obligations. Costs incurred for new obligations after receipt of the notice of Event of Default will be disallowed. The Recipient shall not be relieved of liability to the Department because of any breach of this Agreement by the Recipient. The Department may, to the extent authorized by law, withhold payments to the Recipient for the purpose of set-off until the exact amount of damages due the Department from the Recipient is determined.



(13) NOTICE AND CONTACT

(a) All notices provided under or pursuant to this Agreement shall be in writing delivered, by standard mail or electronic methods, to the representative identified below at the address and email set forth below and said notification attached to the original of this Agreement.

(b) The name and address of the Division contract manager for this Agreement is:

Paula Lemmo, Community Program Manager  
Department of Economic Opportunity  
Division of Community Development  
Office of Housing and Community Development  
Community Assistance Section  
107 East Madison Street  
MSC 400  
Tallahassee, Florida 32399-4120  
Email: paula.lemmo@deo.myflorida.com

(c) The name and address of the Representative of the Recipient responsible for the administration of this Agreement is stated in Attachment I, Recipient Information, of this Agreement.

(d) In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided as stated in (13)(a) above.

(14) SUBCONTRACTS

If the Recipient subcontracts any of the work required under this Agreement, a copy of the unsigned subcontract must be forwarded to the Department for review and approval before it is executed by the Recipient. The Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Department and Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed by law. The Recipient shall document in the quarterly report the subcontractor's progress in performing its work under this Agreement.

For each subcontract, the Recipient shall provide a written statement to the Department as to whether that subcontractor is a minority vendor, as defined in Section 288.703, Fla. Stat.

(15) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(16) ATTACHMENTS

(a) All attachments to this Agreement are incorporated as if set out fully.

(b) In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

(c) This Agreement has the following attachments (check all that are applicable):

- Exhibit 1 - Funding Sources
- Attachment A - Scope of Work
- Attachment B - Program Statutes and Regulations
- Attachment C - Reports
- Attachment D - Property Management and Procurement
- Attachment E - Statement of Assurances
- Attachment F - Special Conditions
- Attachment G - Warranties and Representations
- Attachment H - Certification Regarding Debarment
- Attachment I - Recipient Information
- Attachment J - Budget Summary and Workplan
- Attachment K - Budget Detail
- Attachment L - Multi-County Fund Distribution
- Attachment M - Justification of Advance Payment

(17) FUNDING/CONSIDERATION

(a) This is a cost-reimbursement Agreement. The Recipient shall be reimbursed for costs incurred in the satisfactory performance of work hereunder in an amount not to exceed \$1,749,542, subject to the availability of funds and appropriate budget authority. Until the Department provides further notice to the Recipient, however, the Recipient is only authorized to incur costs in an amount not to exceed \$682,321. As funds and budget authority are available, changes to the costs the Recipient may incur will be accomplished by notice from the Department to the Recipient by written notice to the Recipient's contact person identified in Attachment I, Recipient Information. The terms of the Agreement shall be considered to have been modified to allow the Recipient to incur additional costs upon the Recipient's receipt of the written notice from the Department.

(b) Any advance payment under this Agreement is subject to Section 216.181(16), Fla.Stat., and is contingent upon the Recipient's acceptance of the rights of the Department under Paragraph (12)(b) of this Agreement. The amount which may be advanced may not exceed the expected cash needs of the Recipient within the first two (2) months of the contract term. Any advance payment is also subject to federal OMB Circulars A-87 (now 2 CFR Part 225), A-110 (now 2 CFR Part 215), A-122 (now 2 CFR Part 230) and the Cash Management Improvement Act of 1990. If an advance payment is requested, the budget data on which the request is based and a justification statement shall be included in this Agreement as Attachment M. Attachment M will specify the amount of advance payment needed and provide an explanation of the necessity for and proposed use of these funds.

(c) After the initial advance, if any, payment shall be made on a reimbursement basis. The Recipient agrees to expend funds in accordance with the Scope of Work (Attachment A), and Administrative and Outreach Expense Budget Detail (Attachment K), of this Agreement.

If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer, or under Subparagraph (19)(h) of this Agreement, all obligations on the part of the Department to make any further payment of funds shall terminate, and the Recipient shall submit its closeout report within thirty calendar days of receiving notice from the Department.

(18) REPAYMENTS

All refunds or repayments to be made to the Department under this Agreement are to be made payable to the order of "Department of Economic Opportunity" and mailed directly to the Department at the following address:

Department of Economic Opportunity  
Division of Community Development  
Office of Housing and Community Development  
Community Assistance Section  
107 East Madison Street  
MSC 400  
Tallahassee, Florida 32399-4120

In accordance with Section 215.34(2), Fla. Stat., if a check or other draft is returned to the Department for collection, Recipient shall pay to the Department a service fee of Fifteen Dollars (\$15.00) or Five Percent (5%) of the face amount of the returned check or draft, whichever is greater.

(19) MANDATED CONDITIONS

(a) The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Recipient in this Agreement, in any later submission or response to a Department request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials are incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Department and with thirty calendar days written notice to the Recipient, cause the termination of this Agreement and the release of the Department from all of its obligations to the Recipient.

(b) This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

(c) Any power of approval or disapproval granted to the Department under the terms of this Agreement shall survive the term of this Agreement.

(d) This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(e) The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.) and the Florida Civil Rights and Fair Housing Acts (sections 760.01 – 760.37, Florida Statutes), which prohibit discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, state and local government services, and telecommunications.

(f) A person or organization who has been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

(g) Any Recipient which is not a local government or state agency, and which receives funds under this Agreement from the federal government, certifies, to the best of its knowledge and belief, that it and its principals:

1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;
2. have not, within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in Paragraph (19)(g)2. of this certification; and
4. have not within a 3-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

If the Recipient is unable to certify to any of the statements in this certification, then the Recipient shall attach an explanation to this Agreement.

In addition, the Recipient shall send to the Department (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" (Attachment H) for each intended subcontractor which Recipient plans to fund under this Agreement. Such form must be received by the Department before the Recipient enters into a contract with any subcontractor.

(h) The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with Chapter 216, Fla. Stat. or the Florida Constitution.

(i) All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

(j) Any bills for travel expenses shall be submitted in accordance with Section 112.061, Fla. Stat.

(k) The Department of Economic Opportunity reserves the right to unilaterally cancel this Agreement if the Recipient refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Fla. Stat., which the Recipient created or received under this Agreement.

(l) If the Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Department or be applied against the Department's obligation to pay the contract amount.

(m) The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Department.

(n) The Recipient is subject to Florida's Government in the Sunshine Law (Section 286.011, Fla. Stat.) with respect to the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board. All of these meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with Chapter 119, Fla. Stat.

(o) All unmanufactured and manufactured articles, materials, and supplies which are acquired for public use under this Agreement must have been produced in the United States as required under 41 U.S.C. 10a, unless it would not be in the public interest or unreasonable in cost.

#### (20) LOBBYING PROHIBITION

(a) No funds or other resources received from the Department under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

(b) The Recipient certifies, by the authorized representative's signature to this Agreement, that to the best of its knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal

loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying."

3. The Recipient shall require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(21) COPYRIGHT, PATENT AND TRADEMARK

**ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA. ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE RECIPIENT TO THE STATE OF FLORIDA.**

(a) If the Recipient has a pre-existing patent or copyright, the Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.

(b) If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Recipient shall refer the discovery or invention to the Department for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Recipient shall notify the Department. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Recipient to the State of Florida.

(c) Within thirty calendar days of execution of this Agreement, the Recipient shall disclose all intellectual properties relating to the performance of this Agreement which Recipient knows or should know could give rise to a patent or copyright. The Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists. The Department shall then, under Paragraph (b), have the right to all patents and copyrights which accrue during performance of the Agreement.

(22) LEGAL AUTHORIZATION

The Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Recipient also certifies that the undersigned person has the authority to legally execute and bind Recipient to the terms of this Agreement.

(23) ASSURANCES

The Recipient shall comply with any Statement of Assurances incorporated as Attachment E.

**STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
FEDERALLY FUNDED SUBGRANT AGREEMENT  
SIGNATURE PAGE**

IN WITNESS THEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month, and year set forth below.

**RECIPIENT**

**STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY**

**Lee County Board of County Commissioners**

By: \_\_\_\_\_

By: \_\_\_\_\_

Commissioner Cecil L Pendergrass

Ken Reecy, Assistance Director  
Division of Community Development

Date: March 3, 2013

Date: \_\_\_\_\_

596000702

Federal Identification Number

013461611

DUNS Number

\*Data Universal Numbering System



**EXHIBIT 1**  
**FUNDING SOURCES**

THE FOLLOWING FEDERAL RESOURCES ARE AWARDED TO THE RECIPIENT UNDER THIS AGREEMENT:

*Separately list the following information for each federal program from which the resources awarded to the Recipient originate:*

Federal Program

Federal Agency: U.S. Department of Health and Human Services

Catalog of Federal Domestic Assistance Title and Number:

Title: Low Income Home Energy Assistance Program

CFDA #: 93.568

Grantee: Lee County Board of County Commissioners

Award Amount: \$1,749,542

THE FOLLOWING COMPLIANCE REQUIREMENTS APPLY TO THE FEDERAL RESOURCES AWARDED UNDER THIS AGREEMENT:

<b>Compliance Requirement</b>	<b>Program</b>
<p>1. <i>First applicable compliance requirement (e.g. eligible activities, services or commodities):</i></p> <p>The Recipient will use the LIHEAP funds to provide energy payment assistance to low income consumers. These funds will be expended in accordance with the Scope of Work (Attachment A), Program Statutes and Regulations (Attachment B), Budget Summary and Workplan (Attachment J), applicable OMB Circulars and the FY 2013 LIHEAP State Plan.</p>	<p>Low Income Home Energy Assistance Program</p>
<p>2. <i>Second applicable compliance requirement (e.g. eligibility Requirements for recipients of the federal resources):</i></p> <p>The Recipient will comply with applicable OMB Circulars and eligibility requirements as set forth in U.S. Department of Health and Human Services regulations codified in: Title 45 of the Code of Federal Regulations, part 96 – Block Grants, and Title 31 of the Code of Federal Regulations, part 205 – Cash Management Improvement Act of 1990.</p>	<p>Low Income Home Energy Assistance Program</p>

*NOTE: For federal programs included in Exhibit 1, Section .400(d) of OMB Circular A-133 requires, and for state projects included in Exhibit 1, Section 215.97(5)(a), Florida Statutes, requires the information in Exhibit 1 to be provided to the Recipient.*

**FY 2013 LIHEAP AGREEMENT  
ATTACHMENT A  
SCOPE OF WORK**

The Recipient shall comply with the following requirements, and if applicable, shall ensure all subcontracts require compliance with the following requirements:

**A. Program Requirements**

- (1) Conduct outreach activities designed to ensure that eligible households, especially households with elderly or disabled individuals, young children and those with the highest percentage of their income required to pay for their home energy are made aware of the assistance available under this Agreement.
- (2) Make home visits to home-bound clients, especially the elderly or disabled, for completion of the program application or eligibility determination when other assistance is not adequate.
- (3) The Recipient shall make payments to vendors on behalf of eligible applicants with the "highest home energy needs and lowest household income," which will be determined by taking into account both the energy burden and the unique situation of such households that results from having members of vulnerable populations, including very young children, the disabled, and frail older individuals.
- (4) The Recipient shall enter into a Memorandum of Understanding (MOU) with all Weatherization Assistance Programs (WAP) in their service area. The MOU shall detail cooperative efforts and shall describe the actions that will be taken by both parties to assure coordination, partnership and referrals. The MOU shall be reviewed and renewed at least every five years. The Recipient, in coordination with the local WAP agency, shall develop a system by which LIHEAP applicants who have received more than three LIHEAP benefits in the last eighteen months and who are homeowners, are referred to the WAP provider. The Recipient shall maintain records sufficient to document referrals.
- (5) The Recipient shall enter into a Memorandum of Understanding (MOU) with service area Emergency Home Energy Assistance for the Elderly Program (EHEAP) providers. The MOU will ensure coordination of services, avoid duplication of assistance, and increase the quality of services provided to elderly applicants. The MOU shall be reviewed and renewed at least every five years. The MOU shall detail how LIHEAP and EHEAP records (for households with elderly members) will be checked to avoid duplicate crisis assistance payments during the same season. The Recipient shall maintain records sufficient to document coordination.
- (6) The Recipient shall maintain a written policy and implement procedures to secure applicants' social security numbers in order to protect their identity. At a minimum, this policy shall address the handling of both paper and electronic records and files.
- (7) Recipients serving multi-county areas shall provide the Department with a description of how direct client assistance funds will be allocated among the counties. The allocation methodology must be

based at least in part on the 150% of poverty population within each of the counties served. This information must be reported in Attachment L to this Agreement.

- (8) When LIHEAP funds are not available or are insufficient to meet the emergency home energy needs of an applicant, the Recipient shall assist the applicant to secure help through other community resources.
- (9) The Recipient shall agree to treat owners and renters equitably under the Agreement.
- (10) The Recipient shall develop and implement a written policy and procedure to assure that all energy assistance payments made to energy vendors comply with the requirements of Attachment A, Section D of this Agreement.
- (11) The Recipient shall define in a written policy what criteria and verification will be used to determine if a household has a "home energy crisis" and is eligible for crisis assistance. The policy must encourage households to seek assistance prior to incurring non-energy penalties such as disconnect/reconnect fees, additional deposit, interest or late payment penalties.
- (12) The Recipient shall not charge applicants a fee or accept donations from an applicant to provide LIHEAP benefits. This policy must be posted in a prominent place where it is visible to all applicants and include the following language: No money, cash or checks, shall be requested or received from customers in a LIHEAP office. If an employee asks for money, report this to the agency Executive Director or Department Head.
- (13) The Recipient shall be in a location and operate during hours available to clients.
- (14) The Recipient shall refund, with non-federal funds, to the Department, all funds incorrectly paid on behalf of clients that cannot be collected from the client.
- (15) The Recipient shall have appropriate staff attend training sessions scheduled by the Department to cover LIHEAP policies and procedures.
- (16) The Recipient shall furnish training for all staff members assigned responsibilities within the program.
- (17) The Recipient shall take applications when it has a signed Agreement and adequate funding, and continue taking applications until the Agreement expires or funds are exhausted, whichever comes first.
- (18) The Recipient shall have adequate procedures in place to ensure that LIHEAP funds are appropriately budgeted and expended to sufficiently allow for energy assistance benefits in both the heating and cooling seasons.
- (19) The Recipient shall comply with the Federal Financial Accountability and Transparency Act (FFATA). This includes securing a Dun and Bradstreet Numbering System (DUNS) number ([www.dnb.com](http://www.dnb.com)) and maintaining an active and current profile in the Central Contractor Registration (CCR) ([www.ccr.gov](http://www.ccr.gov)).

**B. Customer Services and Benefits**

- (1) Make LIHEAP home energy non-crisis assistance payments based on a state-provided payment matrix and worksheet. The payment amount is based on the household's income level as compared to the national poverty guidelines. This takes into account both gross income and family size.
- (2) The following maximum benefits will be available to eligible households:
  - (a) One non-crisis benefit per twelve month period;
  - (b) One summer season home energy crisis benefit between April 1 and September 30 each year; and
  - (c) One winter season home energy crisis benefit between October 1 and March 31 each year.
- (3) Based on local need for LIHEAP services and other non-LIHEAP energy assistance resources in their service area, the Recipient may limit crisis benefits to less than those stated in subsection (2) above.
- (4) Determine the correct amount of each crisis benefit based on the minimum necessary to resolve the crisis, but not more than the maximum set by the Department. The maximum crisis benefit for this contract period is \$600.00 per household per season as set forth in subsection (2) above.
- (5) When the applicant is not in a life threatening situation, take actions that will resolve the emergency within forty-eight hours of the application approval for a crisis benefit.
- (6) When the applicant is in a life threatening situation, take actions that will resolve the emergency situation within eighteen hours of the application approval for a crisis benefit.
- (7) Make home energy payments within thirty calendar days from the date the application is approved.
- (8) The Recipient shall, within fifteen working days of receiving the client's application, furnish in writing to all applicants a Notice of Approval which includes: the type and amount of assistance; the name of the energy vendor to be paid on their behalf; and the next date when the applicant will be eligible to apply for assistance.
- (9) Recipients shall have written applicant appeal procedures that provide an opportunity for a fair administrative hearing to individuals whose applications for assistance are denied or whose applications are not acted upon with reasonable promptness. "Reasonable promptness" shall be defined as within fifteen working days of receiving the client's application. Any applicant denied LIHEAP services must be provided a written notice of the denial. At a minimum, the written Notice of Denial and Appeals shall contain: the reason(s) for the denial; the appeal process; an explanation of under what circumstances the client may reapply; what information or documentation is needed for the person to reapply; the name and address to whom the re-application or appeal should be sent, and the phone number of the Recipient. Appeal provisions shall also be posted in a prominent place within the office where they are available to all applicants.
- (10) The recipient will compare LIHEAP records and Emergency Home Energy Assistance for the Elderly Program (EHEAP) records for households with elderly members to avoid duplicate crisis assistance payments during the same eligibility period.

- (11) The Recipient shall be responsible for maintaining and implementing written policies and procedures for determining the eligibility of the clients applying for the LIHEAP program. Client eligibility shall be based on the following factors:
- (a) The Recipient may only assist households who are or were residing in their LIHEAP service area at the time the home energy costs were incurred.
  - (b) The client must complete an application and return all required information and verification to the Recipient or subcontractor while funds remain available.
  - (c) The client must provide a fuel bill for home energy or provide other documentation verifying an obligation to pay for home energy costs.
  - (d) The client must have a total gross household income of not more than 150% of the current OMB federal poverty level for their household's size.
  - (e) For applicants receiving Supplemental Nutrition Assistance Program (SNAP) or Supplemental Security Income (SSI), program qualification approvals or notifications may be used to document household size and income. However, the household income eligibility and the benefit levels are the same as other applicants.
  - (f) To receive crisis assistance, the applicant must have a verifiable home energy crisis.
  - (g) If the applicant lives in government subsidized housing, the Recipient shall determine if all or part of the applicant's utility costs are paid directly or indirectly by the government and take the following actions:
    - 1. Applicants are not eligible for assistance if their home heating and cooling costs are totally included in their rent and they have no obligation to pay any portion of the costs.
    - 2. For Crisis Assistance Only: If the applicant receives an energy subsidy through Section 8 or a Public Housing Authority, then the Recipient must subtract the amount of the subsidy available to the applicant during the period covered by the utility bill from the allowable LIHEAP crisis benefit calculated for the household.
    - 3. The applicant is eligible for non-crisis, home energy assistance with no deductions at the same level as other applicants.
- (12) The applicant must not reside in a group living facility or a home where the cost of residency is at least partially paid through any foster care or residential program administered by the state.
- (13) The client must not be a student living in a dormitory.

**C. Customer Records**

The Recipient shall maintain a separate file for each LIHEAP applicant that includes at least the following information:

- (1) Applicant's name, address, sex, age;
- (2) Names, ages and current identification documentation (no more than one year expired) of all household members;

- (3) Social Security Numbers and documentation of that number for all household members (some exceptions may apply and will be outlined by the Department);
- (4) Income amount and method of verification for all household members;
- (5) Income documentation to support eligibility and is representative of the applicant's current economic situation;
- (6) Statement of self-declaration of income if applicable;
- (7) A signed statement of how basic living expenses, such as food, shelter and transportation, are being provided if the total household income is less than 50% of the current Federal Poverty Guidelines and no one in the household is receiving SNAP assistance.
- (8) Copies of approval or denial letters provided to the applicant;
- (9) Documentation of disability income or physician's statement if preference is given due to a disability.
- (10) Documentation of applicant's obligation to pay the energy bill for the residence in which they reside.
- (11) All LIHEAP assistance applications must be signed by the applicant and by the Recipient's representative and supervisory staff.

**D. Energy Vendor Relations**

The Recipient shall negotiate and maintain written agreements (the "Vendor Agreement"), with home energy suppliers which shall at a minimum include:

- (1) The beginning and ending date of the agreement.
- (2) The Vendor Agreement must include a process for identifying the Recipient's representatives authorized to resolve a crisis situation and make a payment commitment on behalf of the Recipient.
- (3) The Vendor Agreement must include a process for identifying the Vendor's representatives authorized to resolve a crisis.
- (4) A description of how energy payments will be made directly to the vendor on behalf of the LIHEAP eligible applicant. In cases where no vendor agreement exists, the payment shall be made to the applicant in the form of a two-party check made payable to the applicant and vendor. This procedure shall be used only in rare special circumstances, according to the Recipient's purchasing policies and only with written approval of the Recipient's management.
- (5) Assurances from the home energy supplier that no household receiving LIHEAP assistance will be treated adversely because of such assistance under applicable provisions of state law or public regulatory requirements.
- (6) Assurances from the home energy supplier that they will not discriminate, either in the cost of goods supplied or the services provided, against the eligible household on whose behalf payments are made.

- (7) An understanding that only energy related elements of a utility bill are to be paid. No water or sewage charges may be paid except if required by the energy vendor to resolving the crisis and no other resources to pay that portion of the bill can be secured by the applicant or Recipient.
- (8) A statement that the Recipient may not pay for charges that result from illegal activities such as a bad check or meter tampering. A statement that the vendor is aware that those charges are the responsibility of the applicant.
- (9) A statement that the vendor is aware that when the benefit amount does not pay for the complete charges owed by an applicant, that the applicant is responsible for the remaining amount owed.
- (10) Details on how the vendor will assist the Recipient in verifying the LIHEAP applicant's account information and in the case of crisis assistance make timely commitments to resolve the crisis. A process should be in place to verify the current amount owed and the amount necessary to resolve the crisis situation.
- (11) The Recipient's commitment to make payment to the vendor within thirty calendar days of the day of the Recipient's promise to pay.
- (12) Vendor agreements shall be reviewed by both parties at least every two years. The agreement should include a beginning and end date.
- (13) Vendor agreements shall be signed by a representative of both the Recipient and the vendor who has authority to bind the entity and enter into such commitments.
- (14) A description of when LIHEAP payments made to the vendor cannot be applied to the applicant's account, the funds will be returned to the Recipient or with the Recipient's approval applied to another eligible applicant's account.
- (15) The energy vendor must be in "active" status with the State of Florida: <http://sunbiz.org/search.html> and the vendor's name must be checked on EPLS: <https://www.epls.gov/>. The business name on the vendor agreement must match the legal business name on the State of Florida website. Municipal providers are excluded from this requirement.

**FY 2013 LIHEAP AGREEMENT  
ATTACHMENT B  
PROGRAM STATUTES AND REGULATIONS**

**A. INCORPORATION OF LAWS, RULES, REGULATIONS AND POLICIES**

The applicable documents governing service provision regulations are in the Common Rule, 45 CFR Parts 74 and 92, or OMB Circular No. A-110 (now 2 CFR Part 215), "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," and either OMB Circular No. A-87 (now 2 CFR Part 225), "Cost Principles for State and Local Governments," OMB Circular No. A-21 (now 2 CFR Part 220), "Cost Principles for Educational Institutions," or OMB Circular No. A-122 (now 2 CFR Part 230), "Cost Principles for Nonprofit Organizations," and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations." If this Agreement is made with a commercial (for-profit) organization on a cost-reimbursement basis, the Recipient shall be subject to Federal Acquisition Regulations 31.2 and 931.2. Low-Income Home Energy Assistance Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35), as amended. The following Federal Department of Health and Human Services regulations codified in Title 45 of the Code of Federal Regulations are also applicable under this Agreement.

1. Part 16 – Procedures of the Departmental Grant Appeals Board;
2. Part 30 - Claims Collection;
3. Part 80 - Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services (HHS), Effectuation of Title VI of the Civil Rights Act of 1964;
4. Part 81 - Practice and procedure for hearings under Part 80 of this Title;
5. Part 84 – Nondiscrimination on the basis of handicap in programs and activities receiving Federal financial assistance.
6. Part 86 - Nondiscrimination on the basis of sex in education programs and activities receiving Federal financial assistance.
7. Part 87 – Equal Treatment for Faith Based Organizations;
8. Part 91 - Nondiscrimination on the Basis of Age in HHS programs or activities receiving Federal Financial Assistance;
9. Part 93 - New restrictions on lobbying;
10. Part 96 - Block Grants;
11. Part 100 – Intergovernmental Review of Department of Health and Human Services Programs and activities;
12. Executive Order 12549, Debarment and Suspension from Eligibility for Financial Assistance (Non-procurement);



**B. PROJECTS OR PROGRAMS FUNDED IN WHOLE OR PART WITH FEDERAL MONEY**

The Recipient assures, as stated in Section 508 of Public Law 103-333, that all statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments and recipients of Federal research grants, shall clearly state:

- (1) the percentage of the total costs of the program or project which will be financed with Federal money,
- (2) the dollar amount of Federal funds for the project or program, and
- (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

**C. INTEREST FROM CASH ADVANCES**

Recipients shall invest cash advances in compliance with section .21 (h) (2) (i) of the Common Rule and section .22 of OMB Circular A-110 (now 2 CFR Part 215). Recipients shall maintain advances of Federal funds in interest-bearing accounts unless one of the following conditions applies:

**NON-PROFITS ONLY:**

1. The Recipient or subcontractor receives less than \$120,000 in total Federal awards per year.
2. The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on all Federal cash balances.
3. The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resource. Interest earned off cash advances shall be reflected on the monthly financial status report and the close-out report.

**LOCAL GOVERNMENTS ONLY:**

Except for interest earned on advance of funds exempt under the inter-governmental Cooperation Action (31 U.S.C 6501 et. seq.) and the Indian Self-Determination Act (23 U.S.C. 450), recipients and sub-recipients shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The recipient or sub-recipient may keep interest amounts up to \$100 per year for administrative expenses.

**D. PROGRAM INCOME**

The Recipient may reapply program income for eligible program projects or objectives. The amount of program income and its disposition must be reported to the Department at the time of submission of the final close-out report.

**E. MODIFICATIONS**

- (1) The Department shall not be obligated to reimburse the Recipient for outlays in excess of the funded amount of this Agreement unless and until the Department officially approves such expenditures by executing a written modification to the original Agreement.

- (2) The line item budget, as given in Attachment J of this Agreement and reported on the monthly financial status reports, may not be altered without a written budget modification submitted in accordance with the terms below:
- (a) The Recipient must use a Department approved Modification package.
  - (b) Only unobligated funds may be transferred from one line item to another line item.
  - (c) The Recipient may transfer unobligated budgeted line items within a budget category as long as the budget category subtotal remains the same. For the purpose of transferring funds, the following are considered budget categories: Administrative Expenses, Outreach Expenses and Direct Client Assistance.
  - (d) Each modified line item must meet all contractual minimum and maximum percentage budget requirements.
  - (e) All requests for modifications to increase or decrease any line item must be submitted to the Department for approval thirty calendar days prior to the anticipated implementation date. Failure to meet this time frame may result in reimbursement delays.
  - (f) A letter of explanation and a completed modification package (Budget Summary and Workplan, Administrative and Outreach Budget Detail (if applicable) and Multi-County Fund Distribution (if applicable) signed by the Recipient must be submitted to the Department and approved prior to the submission of a financial status report in which the changes are implemented.
  - (g) Upon approval, the Recipient's budget detail will be revised in the Department's electronic payment system.
  - (h) None of the budget transfers may violate this Agreement or OMB Circulars A-110 (now 2 CFR Part 215), A-87 (now 2 CFR Part 225), A-21 (now 2 CFR Part 220) and A-122 (now 2 CFR Part 230). The budget revision(s) will be reviewed by the Department for compliance with these circulars.

F. BONDING

- (1) Non-Profit Organizations: The Recipient agrees to purchase a blanket fidelity bond covering all officers, employees and agents of the Recipient holding a position of trust and authorized to handle funds received or disbursed under this Agreement. Individual bonds apart from the blanket bond are not acceptable. The amount of the bond must cover each officer, employee and agent up to an amount equal to at least one-half of the total LIHEAP agreement amount.
- (2) Local Governments: The Recipient agrees to purchase a fidelity bond in accordance with Section 113.07, Fla. Stat. The fidelity bond must cover all officers, employees and agents of the Recipient holding a position of trust and authorized to handle funds received or disbursed under this Agreement.

#### G. OTHER PROVISIONS

- (1) The Recipient must budget a minimum of twenty-five percent of the total Agreement funds for Home Energy Assistance.
- (2) The Recipient must budget a minimum of two percent of the total Agreement funds for Weather Related/Supply Shortage emergency assistance. These funds must be held in this budget line item category until December 15 of the program year for use in response to a possible disaster. These funds will only be used during state or federal emergencies declared by the President, the Governor or the Executive Director of the Department as he/she deems necessary. In the event of an emergency being officially declared, if the Recipient or the Department finds that two percent of the budget is not sufficient to meet the emergency, the Recipient may draw on other Agreement categories, up to fifty percent of the total Agreement budget, without additional written authorization. When funds are distributed for a weather-related/supply shortage emergency, the Department will provide binding directives as to the allowable expenditures of the funds. After December 15, if no emergency has been declared, the Recipient will allocate these funds to the crisis or home energy category of the program through a budget modification.. The Recipient will comply with these directives or agree that these funds will remain with the Department.
- (3) In addition to the record keeping and audit requirements contained in Sections (5) and (6) of this Agreement, the books, records, and documents required under this agreement must also be available for copying and mechanical reproduction on or off the premises of the Recipient.
- (4) If the U.S. Department of Health and Human Services initiates a hearing regarding the expenditure of funds provided under this Agreement, the Recipient shall cooperate with, and upon written request, participate with the Department in the hearing.
- (5) All records, including supporting documentation of all program costs, shall be sufficient to determine compliance with the requirements and objectives of the Scope of Work, Attachment A, and all other applicable laws and regulations.

**FY 2013 LIHEAP AGREEMENT  
ATTACHMENT C  
REPORTS**

1. Annual reports
  - (a) Close-out Report: The LIHEAP Close-Out Report is due forty-five calendar days after termination of the Agreement or forty-five calendar days after completion of the activities contained in the Agreement, whichever occurs first. If the forty-fifth day falls on a weekend day or holiday, the Close-Out Report shall be due no later than the next business day. The Recipient shall submit original signed documents to the Department that include, at a minimum, the Close-Out Cover Sheet, the LIHEAP Final Financial Status Report, property inventory and accrual report, report on interest bearing accounts, a refund check for any unspent funds, and a refund check for any interest earned on advances.
  - (b) IRS Form 990: An agency that is below the \$500,000 threshold for all Federal awards in its fiscal year and thus is exempt from the federal single audit act requirements, shall submit with its contract proposal a copy of their most recent IRS Form 990.
2. Quarterly Reports: For each county the Recipient serves, the LIHEAP Household Quarterly Program Report shall be provided to the Department no later than twenty-one calendar days following the end of the quarter. For the purposes of this Agreement, the ending dates of the quarters are June 30, September 30, December 31 and March 31. In the event the twenty-first day of the month falls on a weekend day or holiday, the Quarterly Report shall be due no later than the next business day.
3. Monthly reports: The LIHEAP Monthly Financial Status Report shall be provided to the Department no later than the twenty-first day of each month following the end of the reporting month in which funds were expended. The Monthly Financial Status Report shall be submitted in the Department's current electronic financial management system and a signed copy submitted via facsimile or electronic mail by the twenty-first day. In the event the twenty-first day of the month falls on a weekend day or holiday, the Monthly Financial Status Report shall be due no later than the next business day.
4. Monitoring Report Responses: The Recipient shall provide a written response to the Department for all monitoring report findings and/or concerns no later than thirty-five calendar days from the date of the original monitoring report. The Department shall notify the Recipient of the due date for any subsequent monitoring report responses as may be required. If the thirty-fifth day falls on a weekend day or holiday, the response shall be due no later than the next business day. The Recipient may request an extension in writing for the Department's review.
5. Cost Allocation Plans: 2 CFR Part 215, Subpart C, Section 215.21(6), requires that Recipients have written financial management system procedures for determining the reasonableness, allocability, and allowability of costs in accordance with the provisions of the applicable federal cost principles and terms and conditions of the award. To document this, Recipients must submit copies of their written Cost

Allocation Plans to the Department with their contract proposals. The Cost Allocation Plan must be approved by the agency's Board of Directors.

6. Other reports: Upon reasonable notice, the Recipient shall provide such additional program updates or information as may be required by the Department, including supporting or source documentation for any reports identified above in this section.

The reports shall be submitted to:

Ms. Jean Amison, Manager  
Florida Department of Economic Opportunity  
Division of Community Development  
Office of Housing and Community Development  
Community Assistance Section  
107 East Madison Street - MSC 400  
Tallahassee, FL 32399-4120  
Fax: (850) 488-2488

**FY 2013 LIHEAP AGREEMENT  
ATTACHMENT D  
PROPERTY MANAGEMENT AND PROCUREMENT**

- A. All property purchased under this Agreement shall be inventoried annually and an inventory report shall be made available to the Department upon request.
- B. All property purchased under this Agreement shall be listed on the property records of the Recipient. Said listing shall include a description of the property, model number, manufacturer's serial number, funding source, information needed to calculate the federal and/or state share, date of acquisition, unit cost, property inventory number and information on the location, use and condition, transfer, replacement or disposition of the property.
- C. Title (Ownership) to all nonexpendable property acquired with funds from this Agreement shall be vested in the Department upon completion or termination of the Agreement.
- D. The Recipient agrees to comply with Section 507 of Public Law 103-333. As stated in this section, it is the sense of Congress that, to the extent practicable, all equipment and products purchased with funds made available in this Act should be American made.

**FY 2013 LIHEAP AGREEMENT  
ATTACHMENT E  
STATEMENT OF ASSURANCES**

A. Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

B. Interest of Members, Officers, or Employees of Recipient, Members of Local Governing Body, or Other Public Officials.

No member, officer, or employee of the Recipient, or its delegates or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. The Recipient shall incorporate or cause to be incorporated in all such Agreements, a provision prohibiting such interest pursuant to the purposes of this subsection. No board member, officer or employee will be permitted to receive any remuneration or gift in any amount. Board members may receive travel expenses in accordance with s. 112.061, Florida Statutes.

C. Nepotism

The Recipient agrees to abide by the provisions of s. 112.3135, Fla. Stat., pertaining to nepotism in its performance under this Agreement

D. LIHEAP Assurances

The Recipient hereby assures and certifies as a condition of receipt of Low Income Home Energy Assistance Program funds, that it and its subcontractors will comply with the applicable requirements of federal and state laws, rules, regulations, and guidelines. As part of its acceptance and use of LIHEAP funds, the Recipient assures and certifies that:

- (1) The Recipient possesses the legal authority to administer the program as approved by the Recipient's governing body, including all assurances contained herein.
- (2) The Recipient possesses the sound controls and fund accounting procedures necessary to adequately safeguard the assets of the agency, check the accuracy and reliability of accounting data, promote operating efficiency and maintain compliance with prescribed management policies of the agency.
- (3) The Recipient shall permit and cooperate with Federal and State investigations designed to evaluate compliance with the law.

- (4) The Recipient shall give the Department, the Auditor General or any authorized representatives, complete access to examine all records, books, papers or documents related to all program operations of the grant, including those of any sub-contractor.
- (5) The Recipient shall comply with all of the provisions and practices outlined in the Department's most current monitoring manual.
- (6) The Recipient shall comply with non-discrimination provisions, in accordance with Florida Statutes; Section 677 of P.L. 97-35; Titles VI and VII of the Civil Rights Act of 1964; and 45 C.F.R. Parts 84, 86 and 90.
- (7) The Recipient shall comply with section 680 of Public Law 97-35, as amended, which prohibits use of LIHEAP funds for purchase or improvement of land, or the purchase, construction, or permanent improvement of any building or other facility.
- (8) The LIHEAP application and all its attachments, including budget data, are true and correct.
- (9) The Recipient shall prohibit any political activities in accordance with Section 678F(b) of 42 USC 9918, as amended.
- (10) Administration of this program has been approved by the Recipient's governing body by official action, and the officer who signs it is duly authorized to sign this Agreement.
- (11) The Recipient shall comply with Public Law 103-227, Part C, Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act). This Act requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through States or local governments. Federal programs include grants, cooperative agreements, loans or loan guarantees, and contracts. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug and alcohol treatment. The Recipient further agrees that the above language will be included in any subawards which contain provisions for children's services and that all subrecipients shall certify compliance accordingly. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to \$1,000 per day.
- (12) The Recipient shall have a published and publicized local outreach office number when the outreach office is open a minimum of 40 hours per week, or toll-free telephone number.
- (13) The Recipient certifies that it shall or shall continue to provide a drug-free workplace as set forth by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart F, Sections 76.630(c) and (d)(2).



**FY 2013 LIHEAP AGREEMENT**  
**ATTACHMENT G**  
**WARRANTIES AND REPRESENTATIONS**

**A. Financial Management**

Recipient warrants that its financial management system shall provide the following:

- (1) Accurate, current and complete disclosure of the financial results of this project or program.
- (2) Records that identify the source and use of funds for all activities. These records shall contain information pertaining to grant awards, authorizations, obligations, un-obligated balances, assets, outlays, income and interest.
- (3) Effective control over and accountability for all funds, property and other assets. Recipient shall safeguard all assets and assure that they are used solely for authorized purposes.
- (4) Comparison of expenditures with budget amounts for each Request for Payment. Whenever appropriate, financial information shall be related to performance and unit cost data.
- (5) Written procedures for determining whether costs are allowed and reasonable under the provisions of the applicable OMB cost principles and the terms and conditions of this Agreement.
- (6) Cost accounting records that are supported by backup documentation.

**B. Competition**

Recipient warrants the following:

- (1) All procurement transactions shall be done in a manner to provide open and free competition.
- (2) The Recipient shall be alert to conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure excellent contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements.
- (3) Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Recipient, considering the price, quality and other factors.
- (4) Solicitations shall clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the Recipient. Any and all bids or offers may be rejected when it is in the Recipient's interest to do so.

**C. Codes of Conduct**

Recipient warrants the following:

- (1) Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.
- (2) No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by public grant funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, 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, has a financial or other interest in the firm selected for an award.

- (3) The officers, employees, and agents of the Recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subcontracts.
- (4) The standards of conduct shall provide for disciplinary actions to be applied for violations of the standards by officers, employees, or agents of the Recipient.

D. Business Hours

The Recipient warrants that it shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, on (days) Monday through Friday, and from (times) 8:00 AM to 5:00 PM.

E. Licensing and Permitting

Recipient warrants that all subcontractors or employees hired by Recipient shall have and maintain all licenses and permits necessary to conduct the particular work for which they are hired by Recipient.

NA

FY 2013 LIHEAP AGREEMENT  
ATTACHMENT H  
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY  
AND VOLUNTARY EXCLUSION

- (1) The prospective subcontractor of the Recipient, (type here), certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Recipient's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

SUBCONTRACTOR:

\_\_\_\_\_  
(Type Name)

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Recipient's Name

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
DEO Contract Number

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Date

**FY 2013 LIHEAP AGREEMENT  
ATTACHMENT I  
RECIPIENT INFORMATION**

FEDERAL YEAR: 2013 CONTRACT PERIOD: Date of Signing through March 31, 2014

Instructions: Complete the blanks highlighted in yellow. For item II, put an "X" in whichever highlighted box applies to your agency.

I. DEO CONTRACT NUMBER: 13EA-0F-09-46-01-015 CONTRACT AMOUNT: 1,749,542.00  
TOTAL DIRECT CLIENT ASSISTANCE: 1,496,042.00

II. RECIPIENT CATEGORY:  Non-Profit  Local Government  State Agency

III. COUNTY(IES) TO BE SERVED WITH THESE FUNDS: Lee

**IV. GENERAL ADMINISTRATIVE INFORMATION**

a. Recipient: Lee County Board of County Commissioners-Human Services County Location: Lee

b. Executive Director or Chief Administrator: Ann Arnall, Director of the Department of Human Services

c. Address: 2440 Thompson Street City: Fort Myers, FL Zipcode: 33901  
Telephone: 239-533-7920 Fax: 239-533-7976  
Cell: \_\_\_\_\_ Email: ARNALLAM@LEEEOV.COM

d. Mailing Address: 2440 Thompson Street City: Fort Myers, FL Zipcode: 33901

e. Chief Elected Official (for local governments) or President/Chair of the Board (for non-profits):  
Name: Commissioner Cecil L Pendergrass Title: Board Chair  
Enter home or business address, telephone numbers and email other than the Recipient's  
Address: Box 298 City: Fort Myers, FL Zipcode: 33902-0398  
Telephone: 239-533-2227 Fax: 239-485-2021 Email: Dist2@leegov.com

f. Official to Receive State Warrant:  
Name: Barbara Hollis Title: Fiscal Manager  
Address: 2440 Thompson Street City: Fort Myers, FL Zipcode: 33901

g. Recipient Contacts  
1. Program: Name: Kim Hustad Title: Program Manager  
Address: 2440 Thompson Street City: Fort Myers, FL Zipcode: 33901  
Telephone: 239-533-7916 Fax: 239-533-7976  
Cell: 239-281-9740 Email: khustad@leegov.com

2. Fiscal: Name: Marla Harvey Title: Account Clerk Senior  
Address: 2440 Thompson Street City: Fort Myers, FL Zipcode: 33901  
Telephone: 239-533-7917 Fax: 239-533-7976  
Cell: \_\_\_\_\_ Email: \_\_\_\_\_

h. Person(s) authorized to sign reports: Barbara Hollis, Kim Hustad, Diana Childers

i. Agency's FEID Number: 596000702 j. Agency's DUNS Number: 13461611

V. AUDIT DUE DATE: Audit(s) are due by the end of the Ninth month following the end of the agency's fiscal year.  
Recipient Fiscal Year: October 1, 2012 thru September 30, 2013 Audit Due to DEO: June 30, 2014

**FY 2013 LIHEAP AGREEMENT  
ATTACHMENT J  
BUDGET SUMMARY AND WORKPLAN**

RECIPIENT: County Board of County Commissioners-Human Serv CONTRACT: 13EA-OF-09-46-01-015

Instructions: Enter the appropriate figures in the boxes highlighted in yellow. Use only whole dollar amounts; no cents.

**I. BUDGET SUMMARY**

LIHEAP FUNDS ONLY		BUDGETED AMOUNT
1	LIHEAP FUNDS	1,749,542.00
<b>ADMINISTRATIVE EXPENSES</b>		
2	Salaries including Fringe, Rent, Utilities, Travel, Other (Total cannot exceed 8.5% of Line 1) * <i>Maximum Administrative Expense: \$148,711.07</i>	52,500.00
<b>OUTREACH EXPENSES</b>		
3	Salaries including Fringe, Rent, Utilities, Travel, Other (Total cannot exceed 15% of the difference between Line 1 & Line 2 (Line 1 minus Line 2 times .15)) * <i>Maximum Outreach Expense: \$254,556.30</i>	201,000.00
<b>DIRECT CLIENT ASSISTANCE</b>		
4	Home Energy Assistance (Must be at least 25% of Line 1.) <i>25% Minimum Calculation: \$437,385.50</i>	730,521.00
5	Crisis Assistance	730,521.00
6	Weather Related / Supply Shortage / Disaster (Must be at least 2% of line 1.) <i>2% Minimum Calculation: \$34,990.84</i>	35,000.00
7	TOTAL DIRECT CLIENT ASSISTANCE (Lines 4 + 5 + 6)	1,496,042.00
8	GRAND TOTAL ALL EXPENSES (Lines 2 + 3 + 7)	1,749,542.00

**II. DIRECT CLIENT ASSISTANCE PLAN**

Type of Assistance	Estimated # of Benefits to be Provided	Estimated Cost Per Benefit	Estimated Expenditures ** (Est # x Est \$)
Summer Home Energy	1,461	250.00	365,250.00
Winter Home Energy	1,462	250.00	365,500.00
Summer Crisis	1,217	300.00	365,100.00
Winter Crisis	1,218	300.00	365,400.00
Weather Related/Supply Shortage	116	300.00	34,800.00
<b>TOTAL</b>	<b>5,474</b>	<b>1,400.00</b>	<b>1,496,050.00</b>

\* If less than 8.5% of Line 1 is budgeted for Administrative Expenses, the Recipient may increase the Outreach Expenses. The total Administrative Expenses plus the total Outreach Expenses may not exceed the sum of the original maximum allowed for each of these line items.

Total of Line 2 plus Line 3 may not exceed:	\$403,267.37	Line 2 + Line 3 =	\$253,500.00
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\*\* Estimated Expenditures given in the Assistance Plan must agree with the corresponding values on Lines 4-7.

FY 2013 LIHEAP AGREEMENT

ATTACHMENT K

ADMINISTRATIVE AND OUTREACH EXPENSE BUDGET DETAIL (Lines 2-3)

Recipient: ee County Board of County Commissioners-Human Service

Contract: 13EA-OF-09-46-01-015

Instructions: *On the form below, enter the detail of the figures listed on the Budget Summary. If more space is needed, copy this form copy this form to another tab and name the new tabs "Budget Detail 1", "Budget Detail 2", etc.*

Line Item Number	Expenditure Detail (Round up line items to dollars. Do not use cents and decimals in totals.)	LIHEAP FUNDS
	<b>ADMINISTRATIVE EXPENSES</b>	
2	ACCOUNT CLERK SENIOR 50% to LIHEAP, 23% to CSBG, 27% to County Ad Valorem 1040 hours x \$26.97 wage and fringe benefits	\$ 28,048.00
2	LIHEAP ADMINISTRATIVE SPECIALIST FOR SECOND PARTY REVIEW 20% to LIHEAP, 80% to County Ad Valorem 390 hours X \$31.87 wage and fringe benefits	\$ 12,452.00
2	LIHEAP ELIGIBILITY COORDINATOR 100% to LIHEAP WITH 20% to Admin and 86% to Intake Specialist below 488 x \$24.55 wage and fringe benefits	\$ 12,000.00
	<b>TOTAL ADMINISTRATIVE EXPENSES</b>	\$ 52,500.00
	<b>OUTREACH EXPENSES</b>	
3	LIHEAP Specialist 80% to LIHEAP Outreach and 14% in Admin. 1955 x \$24.55 wage and fringe	\$ 48,000.00
	3 LIHEAP Outreach/Intake Specialists 100% to LIHEAP Outreach and Intake	\$ 150,000.00
	Estimated local mileage for outreach 100 miles per month x .445	\$ 500.00
	Estimated supplies	\$ 2,500.00
	<b>Total Outreach</b>	\$ 201,000.00

**FY 2013 LIHEAP AGREEMENT**

**ATTACHMENT L  
MULTI-COUNTY FUND DISTRIBUTION**

Recipient: one County Board of County Commissioners-Human Services

Contract: 13EA-0F-09-46-01-015

Number of Counties to be Served with this agreement: one

If the Recipient will serve more than one county with this agreement, complete the form below. Describe how you will equitably allocate LIHEAP resources to each of the counties you serve. This plan must be in part based on the 150% poverty population of each county.

Instructions: Enter appropriate data only in the cells below that are highlighted in yellow. Percentages will automatically populate when the total direct client assistance amount and all three columns for each county are filled in.

Poverty Population Data Source: Provide the U. S. Census data source for the 150% of poverty population used including the year of the data. If any other data or factors are used in allocating the funds, describe and give the source.	
<b>Data Source and Description:</b>	

COUNTY	150% POVERTY POPULATION <sup>*1</sup>	COUNTY'S % OF POVERTY POPULATION IN SERVICE AREA	TOTAL DIRECT CLIENT ASSISTANCE	% OF AGENCY'S DIRECT CLIENT ASSISTANCE DOLLARS ALLOCATED TO THIS COUNTY
			\$0.00	
			COUNTY ALLOCATION	
<b>Total Budgeted Direct Client Assistance*</b>	<b>0</b>	<b>0%</b>	<b>0.00</b>	<b>0.0%</b>

\* Allocation must be equal to Attachment J, Budget Summary and Workplan, Line 7.

**FY 2013 LIHEAP AGREEMENT**

**ATTACHMENT M  
JUSTIFICATION OF ADVANCE PAYMENT**

RECIPIENT: Lee County Board of County Commissioners-Human Services

CONTRACT NUMBER: 13EA-0F-09-46-01-015

Any advance payment under this Agreement is subject to s. 216.181 (16)(a)(b), Florida Statutes and Section (17)(b) of this Agreement. *The Recipient shall invest cash advances in compliance with section .21 (h) (2) (i) of the Common Rule, section .22 of OMB Circular A-110 as revised and Attachment B, subsection C of this Agreement.* Check the applicable box below (check only one).

**NO ADVANCE REQUESTED**

No advance payment is being requested. Payment will be made solely on a reimbursement basis. No additional information is required.

**ADVANCE REQUESTED**

Advance payment of                      is requested. Balance of payments will be made on a reimbursement basis. These funds are needed to pay staff, award benefits to clients, duplicate forms and purchase start-up supplies and equipment. We would not be able to operate the program without this advance.

**ADVANCE REQUEST WORKSHEET**

If an advance is requested, complete the following worksheet by filling in the cells highlighted in yellow.

DESCRIPTION		(A) FFY 2010	(B) FFY 2011	(C) FFY 2012	(D) Total
1	TOTAL CONTRACT ALLOCATION (Includes any base increases and carryforward dollars)	0.00	0.00	0.00	0.00
2	FIRST TWO MONTHS OF CONTRACT EXPENDITURES <sup>1</sup>	0.00	0.00	0.00	0.00
3	AVERAGE PERCENT EXPENDED IN FIRST TWO MONTHS (Divide line 2 by line 1)	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!

<sup>1</sup> The expenses for the first two months in which expenditures were reported need to be provided for the years you received a LIHEAP contract. If you do not have this information, call your contract manager and they will assist you.

The Recipient may request an amount up to the historical percent of expenditures for the first 2 months of the agreement OR 17% of the award, whichever is less.\*

**HISTORICAL PERCENT FOR FIRST 2 MONTHS:**

$$\frac{\#DIV/0!}{\text{Cell D3}} \times \$ \frac{1,749,542.00}{\text{LIHEAP Award}} = \frac{\#DIV/0!}{\text{Historical Advance}}$$

**17% CALCULATION:**

$$\frac{1,749,542.00}{\text{LIHEAP Award}} \times \frac{0.17}{\text{Percent of Award}} = \frac{297,422.14}{\text{Maximum Advance}}$$



# RESOLUTION #

Amending the General Fund #00100 Budget to incorporate the unanticipated receipts into Estimated Revenues and Appropriations for the fiscal year 2012-2013.

**WHEREAS**, in compliance with the Florida Statutes 129.06(2), it is the desire of the Board of County Commissioners of Lee County, Florida, to amend the General Fund #00100 budget for \$1,749,542 of the unanticipated revenue from the Low Income Home Energy Assistance Program (LIHEAP) grant proceeds and an appropriation of a like amount for salaries, office supplies, travel, and indigent rent and utilities and;

**WHEREAS**, the General Fund #00100 budget shall be amended to include the following amounts which were previously not included.

<b>ESTIMATED REVENUES</b>		
Prior Total:		\$466,224,420
Additions		
11104500100.331621.9004	LIHEAP	\$1,749,542
Amended Total Estimated Revenues		\$467,973,962

<b>APPROPRIATIONS</b>		
Prior Total:		\$466,224,420
Additions		
11104500100.501210.141	Salaries – Full Time Regular	\$28,048
11104500100.501210.142	Salaries – Full Time Regular	\$24,452
11104500100.501210.146	Salaries – Full Time Regular	\$198,000
11104500100.504010	Local Travel – Class C	\$500
11104500100.505120	General Office Supplies	\$2,500
11104500100.508303.106	Indigent Rent & Utilities	\$1,496,042
Amended Total Appropriations		\$467,973,962

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Lee County, Florida, that the General Fund #00100 budget is hereby amended to show the above additions to its Estimated Revenue and Appropriation accounts.

Duly voted upon and adopted in Chambers at a regular Public Hearing by the Board of County Commissioners on this \_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:  
LINDA DOGGETT, EX-OFFICIO CLERK

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA

BY: \_\_\_\_\_  
DEPUTY CLERK

\_\_\_\_\_  
CHAIR

APPROVED AS TO FORM

\_\_\_\_\_  
OFFICE OF COUNTY ATTORNEY

DOC TYPE YA  
LEDGER TYPE BA

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

**Blue Sheet No. 20130191**

**1. ACTION REQUESTED/PURPOSE:**

- 1) Award Project CN-12-15 ADA TRANSITION PLAN to Atkins North America, Inc. (an International Consultant with a local office of 22 employees) in the amount of \$249,735.00.
- 2) Authorize the DOT Director to approve a 10% contingency in the amount of \$24,973.50, for a total approval amount of \$274,708.50.
- 3) Authorize Chair to execute Professional Service Agreement on behalf of the Board.

**2. FUNDING SOURCE:**

Fund – Transportation Capital Improvement; Program – Major Maintenance; Program – Master Signal (Intersections)

The ranking of firms was approved September of 2012, funds were available in the FY 2011/12 CIP and have been carried over into the current FY 2012/13 CIP.

**3. WHAT ACTION ACCOMPLISHES:**

Provides a Consultant to develop an Americans with Disabilities Act (ADA) Transition Plan that focuses on Lee County maintained pedestrian and bicycle facilities in public rights-of-way on county maintained arterials and collectors with an emphasis on signalized intersections.

**4. MANAGEMENT RECOMMENDATION:** Approve.

**5. Departmental Category:** C12A

**6. Meeting Date:** 3/12/2013

**7. Agenda:**

Consent

**8. Requirement/Purpose: (specify)**

- Statute
- Ordinance
- Admin Code AC-4-4
- Other

**9. Request Initiated**

**Commissioner:**  
**Department:** TRANSPORTATION  
**Division:** Administration  
**By:** David Loveland

**10. Background:**

On September 15, 2012, the Board approved the ranking for the project known as CN-12-15 ADA Transition Plan, in the following order: 1) Atkins North America, Inc.; 2) Agnoli Barber & Brundage & Brundage, Inc.; 3) Wilson and Company; and 4) David Plummer & Associates (all local consultants).

Negotiations were successful with the number one ranked firm, Atkins North America, Inc., in the amount of \$249,735.00. Staff is also requesting an approval of an additional 10% or \$24,973.50 for a total of \$274,708.50, the additional 10% will be utilized at the discretion of the DOT Director.

This contract will develop an ADA Transition Plan that will include sidewalks, bicycle / shared use paths, curb ramps, street crossings, crosswalks, median separators and pedestrian activated signal systems. The Consultant shall investigate the current state of ADA Compliance on Lee County Arterials and Collectors, identify deficiencies, prioritize correction of the deficiencies, and provide cost estimates by corridor or intersection to address all identified ADA related deficiencies to bring the facilities into compliance with federal Public Right-of-Way Accessibilities Guidelines (PROWAG). The PROWAG guidelines are issued by the Architectural and Transportation Barriers Compliance Board under the oversight of the United States Department of Justice. The

**11. Required Review:**

<i>David Loveland</i>	<i>Emma Wolf</i>	<i>Dawn Perry-Lehnert</i>	<i>Mike Figueroa</i>	<i>David Harris</i>	<i>Pam Keyes</i>
TRANSPORTATION	Budget Analyst	County Attorney	Risk	Budget Services	Public Works Director

**12. Commission Action:**

Consultant shall also coordinate with the Lee County GIS Department to develop a GIS layer to provide an inventory of curb ramps. Optional services under this project may include developing design plans and/or design details to correct deficiencies at high priority intersections or roadway segments.

The optional design services are included in the scope so staff can move to a design phase if the development of the transition plan came in under budget or the study identified a critical area that needed to be addressed immediately and/or staff had a project in the works, i.e. resurfacing, that had ADA deficiencies and using Atkins to do the design would be the most efficient/cost effective way to accomplish the additional ADA work. Otherwise areas that need to be addressed would be funded through the CIP process as funds are available.

This project was anticipated and funds are available in the following account: 40671330700

Attachments: 1) Two (2) Original Professional Service Agreement for Execution.

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the Board of County Commissioners of LEE COUNTY, a political subdivision of the STATE OF FLORIDA hereinafter referred to as the "COUNTY", and ATKINS NORTH AMERICA, INC. hereinafter referred to as the "CONSULTANT".

WITNESSETH

WHEREAS, the COUNTY desires to obtain the professional services of said CONSULTANT to provide and perform professional services as further described hereinafter concerning the Project to be referred to and identified as: CN-12-15 ADA Transition Plan, and

WHEREAS, the CONSULTANT hereby certifies that CONSULTANT has been granted and possesses valid, current licenses to do business in the State of Florida and in Lee County, Florida, issued by the respective State Boards and Government Agencies responsible for regulating and licensing the professional services to be provided and performed by the CONSULTANT pursuant to this Agreement; and

WHEREAS, the CONSULTANT has reviewed the professional services required pursuant to this Agreement and is qualified, willing and able to provide and perform all such services in accordance with the provisions, conditions and terms hereinafter set forth; and

WHEREAS, the selection and engagement of the CONSULTANT has been made by the COUNTY in accordance with the provisions of the Consultants' Competitive Negotiation Act, Chapter 287.055, Florida Statutes, and in accordance with the provisions of the Lee County Contract Manual for Professional Services as approved and put into effect by the Lee County Board of County Commissioners, September 25, 2001, and as subsequently revised.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree that with the mutual acceptance of this Agreement as indicated hereinafter by the execution of this Agreement by both parties that a Contract shall exist between both parties consisting of:

ARTICLE 1.00 - SCOPE OF PROFESSIONAL SERVICES

CONSULTANT hereby agrees to provide and perform the professional services required and necessary to complete the services and work as set forth EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", which EXHIBIT "A" is attached hereto and made a part of this Agreement.

ARTICLE 2.00 - DEFINITIONS

The following definition of terms associated with this Agreement is provided to establish a common understanding between both parties to this Agreement as to the intended usage, application, and interpretation of such terms pertaining to this Agreement.

## 2.01 COUNTY

The term COUNTY shall refer to the Board of County Commissioners of Lee County, a political subdivision of the State of Florida, and any official and/or employees thereof who shall be duly authorized to act on the COUNTY'S behalf relative to this Agreement.

## 2.02 CONSULTANT

The term CONSULTANT shall refer to the individual or firm offering professional services which by execution of this Agreement shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and subcontractors, required under the covenants, terms and provisions contained in this Agreement and any and all Change Orders thereto.

## 2.03 PROFESSIONAL SERVICES

The term PROFESSIONAL SERVICES shall refer to all of the services, work, materials and all related professional, technical and administrative activities which are necessary to be provided and performed by the CONSULTANT and its employees and any and all sub-consultants and subcontractors the CONSULTANT may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions of this Agreement.

## 2.04 SUB-CONSULTANT

The term SUB-CONSULTANT shall refer to any individual or firm offering professional services which is engaged by the CONSULTANT to assist the CONSULTANT in providing and performing the professional services, work and materials for which the CONSULTANT is contractually obligated, responsible and liable to provide and perform under this Agreement. The COUNTY shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the CONSULTANT and any SUB-CONSULTANT.

## 2.05 SUBCONTRACTOR

The term SUBCONTRACTOR shall refer to any individual, company or firm providing other than professional services which is engaged by the CONSULTANT to assist the CONSULTANT in providing and performing services, work and materials for which the CONSULTANT is contractually obligated, responsible, and liable to provide and perform under this Agreement. The COUNTY shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the CONSULTANT and any SUBCONTRACTOR.

## 2.06 PROJECT

The term PROJECT shall refer to such facility, system, program or item as described in the summary statement set forth in the Preamble on Page One of this Agreement.

## 2.07 BASIC SERVICES

The term BASIC SERVICES shall refer to the professional services set forth and required pursuant to this Agreement and as described in further detail in the attached EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", which EXHIBIT "A" is attached hereto and made a part of this Agreement.

Date: 09/25/01

## 2.08 ADDITIONAL SERVICES

The term ADDITIONAL SERVICES shall refer to such professional services as the COUNTY may request and authorize, in writing, the CONSULTANT to provide and perform relative to this Agreement which are not included in the BASIC SERVICES. Additional services shall be authorized by the execution of both parties to this Agreement by a Change Order Agreement.

## 2.09 CHANGE ORDER

The term CHANGE ORDER shall refer to a written document, CHANGE ORDER AGREEMENT, executed by both parties to this Agreement setting forth and authorizing changes to the agreed upon Scope of Professional Services and Tasks, Compensation and Method of Payment, Time and Schedule of Performance, or Project Guidelines and Criteria as such were set forth and agreed to in the initial AGREEMENT, SUPPLEMENTAL TASK AUTHORIZATION(S), or previous CHANGE ORDERS issued thereto. The CHANGE ORDER document, which shall be executed on a Lee County standard form, shall set forth the authorized changes to the: scope of professional services, tasks, work or materials to be performed or provided by the CONSULTANT; the compensation and method of payment; the schedule or time period for performance and completion, and the guidelines, criteria and requirements pertaining thereto.

The amount of the change in contract compensation and time set forth in any and all Change Orders executed and issued under this Agreement shall be understood and agreed by both Parties to this Agreement to be fair, equitable, adequate and complete. The changed compensation shall be understood and agreed to be the total of all costs associated with or impacted by the Change Order including, but not limited to any and all direct costs, indirect costs and associated costs which may result from or be caused by the Change Order, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the CONSULTANT'S general administrative and overhead costs and profit.

In the event the County decides to delete all, or portions, of the Scope of Services, Task(s), or Requirements set forth in the initial Agreement, Supplemental Task Authorizations or previously authorized Change Orders, the COUNTY may do so by the unilateral issuance of a written Change Order to the CONSULTANT. Such a unilaterally issued Change Order shall set forth, if appropriate, (1) an agreement by both the COUNTY and the CONSULTANT establishing changes in the amount of compensation to be paid the CONSULTANT as a result of the deletion or decrease in services required, or (2) in the absence of such an agreement concerning compensation, the unilaterally issued Change Order shall set forth the basis to be used in subsequently considering, and reaching agreement on change(s) in the compensation to be paid the CONSULTANT. The failure on the part of the CONSULTANT to execute a Change Order issued unilaterally by the COUNTY to effect a deletion or decrease in the services required shall have no effect on, or otherwise prevent the COUNTY from exercising its rights to direct the stated deletion or decrease in the services to be provided or performed by the CONSULTANT.

## 2.10 SUPPLEMENTAL TASK AUTHORIZATION

The term Supplemental Task Authorization as used refers to a written document executed by both parties to an existing Professional Services Agreement, or Service Provider Agreement, setting forth and authorizing a limited number of Professional Services, tasks, or work. Such Supplemental Task Authorizations are consistent with and have previously been included within the scope of services in the initial Professional Services Agreement, or Service Provider Agreement, for which authorization has not been previously given or budgeted.

Date: 09/25/01

## 2.11 DEPARTMENT DIRECTOR

The term DEPARTMENT DIRECTOR shall refer to the Director of the Department requesting the service, employed by the Lee County Board of County Commissioners to serve and act on the COUNTY'S behalf, as it relates to this Project. The Chairman of the Board of County Commissioners, or his designated representative, shall act on behalf of the COUNTY to execute any and all CHANGE ORDER(S) or SUPPLEMENTAL TASK AUTHORIZATION(S) approved by the COUNTY and issued to the CONSULTANT pursuant to this Agreement. The DEPARTMENT DIRECTOR, within the authority conferred by the Board of County Commissioners, acting as the COUNTY'S designated representative shall issue written notification to the CONSULTANT of any and all changes approved by the COUNTY in the CONSULTANT'S: (1) compensation (2) time and/or schedule of service delivery; (3) scope of services; or other change(s) relative to BASIC SERVICES and ADDITIONAL SERVICES pursuant to this Agreement, or CHANGE ORDER(S) or SUPPLEMENTAL TASK AUTHORIZATION(S) pertaining thereto. The DEPARTMENT DIRECTOR shall be responsible for acting on the COUNTY'S behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, CHANGE ORDER(S), or SUPPLEMENTAL TASK AUTHORIZATION(S) issued thereunder.

## 2.12 PROJECT MANAGER

The term PROJECT MANAGER shall refer to the person employed or retained by the COUNTY and designated, in writing, to serve and act on the COUNTY'S behalf to provide direct contact and communication between the COUNTY and CONSULTANT with respect to providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the CONSULTANT pursuant to this Agreement and such written SUPPLEMENTAL TASK AUTHORIZATION(S) and CHANGE ORDER(S) as are authorized.

The PROJECT MANAGER is not authorized to, and shall not, issue any verbal, or written, request or instruction to the CONSULTANT that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) Scope of Services to be provided and performed by the CONSULTANT; (2) The time the CONSULTANT is obligated to commence and complete all such services; (3) The amount of compensation the COUNTY is obligated or committed to pay the CONSULTANT. The PROJECT MANAGER shall review and make appropriate recommendations on all requests submitted by the CONSULTANT for payment for services and work provided and performed, and reimbursable costs and expense, as provided for in this Agreement and approved CHANGE ORDER(S), or SUPPLEMENTAL TASK AUTHORIZATION(S) thereto.

## 2.13 LUMP SUM FEE(S)

Lump Sum Fee(s), hereinafter identified as L.S., are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, Exhibit "A", or as may be set in subsequent Supplemental Task Authorizations, and/or Change Orders agreed to in writing by both parties to this Agreement.

2.14      NOT-TO-EXCEED FEE(S)

When all, or any portion, of the CONSULTANT'S compensation to provide and perform the services and work necessary and required pursuant to the Tasks set forth in Agreement Exhibit "A", and any Change Orders, Supplemental Task Authorizations, and work Orders authorized thereto, is established to be made on a NOT-TO-EXCEED (N.T.E.) amount basis, it is mutually understood and agreed that such compensation for each completed Task shall be made on the following basis:

For the actual hours necessary, required and expended by the CONSULTANT'S professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Attachment No. 1 to Exhibit "B" to the above referenced Agreement and any Change Orders or Supplemental Task Authorizations authorized thereto; and

For the actual necessary, required and expended non-personnel reimbursable expenses and costs, multiplied by the applicable "Basis of Charges" for each item as set forth in Attachment No. 2 to Exhibit "B" to the above referenced Agreement and any Change Orders or Supplemental Task Authorizations authorized thereto; and

For the actual, necessary and required hours, and non-personnel expenses and costs, expended by Sub-Consultants and SubContractors engaged by the CONSULTANT, multiplied by such hourly rates and unit costs as are agreed to by the COUNTY and the CONSULTANT and as are set forth as a part of the above referenced Agreement and any Change Orders or Supplemental Task Authorizations authorized thereto; and

With the understanding and agreement that the COUNTY shall pay the CONSULTANT for all such costs and expenses within the established Not-to-Exceed amount for each Task or Sub-Task subject to the CONSULTANT presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the COUNTY covering all such costs and expenses; and

With the understanding and agreement that the CONSULTANT'S invoices and all payments to be made for all Not-to-Exceed amounts shall be subject to the review, acceptance and approval of the COUNTY; and

With the understanding and agreement that when the CONSULTANT'S compensation is established on a Not-to-Exceed basis for a specific Task(s) or Sub-Task(s) the total amount of compensation to be paid the CONSULTANT to cover all personnel costs, non-personnel reimbursable expenses and costs, and Sub-Consultant and SubContractor costs for any such specific Task(s) or Sub-Task(s) shall not exceed the amount of the total Not-to-Exceed compensation established and agreed to for each specific Task(s) or Sub-Task(s). In the event the amount of compensation for any Task(s) or Sub-Task(s) to which the CONSULTANT is entitled on the Not-to-Exceed basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the Not-to-Exceed amount established for the specific Task or Sub-Task, it is understood and agreed that any unexpended amount under a specific Task or Sub-Task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other Task(s) or Sub-Task(s).



## ARTICLE 3.00 - OBLIGATIONS OF THE CONSULTANT

The obligations of the CONSULTANT with respect to all the BASIC SERVICES and ADDITIONAL SERVICES authorized pursuant to this Agreement shall include, but not be limited to, the following:

### 3.01 LICENSES

The CONSULTANT agrees to obtain and maintain throughout the period this Agreement is in effect all such licenses as are required to do business in the State of Florida and in Lee County, Florida, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the CONSULTANT pursuant to this Agreement.

### 3.02 PERSONNEL

#### (1) QUALIFIED PERSONNEL

The CONSULTANT agrees when the services to be provided and performed relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all BASIC SERVICES and ADDITIONAL SERVICES to be provided pursuant to this Agreement.

#### (2) CONSULTANT'S PROJECT DIRECTOR

The CONSULTANT agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the CONSULTANT'S Project Director. The CONSULTANT'S Project Director shall be authorized and responsible to act on behalf of the CONSULTANT with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement thereto. The CONSULTANT'S Project Director shall have full authority to bind and obligate the CONSULTANT on any matter arising under this Agreement unless substitute arrangements have been furnished to the COUNTY in writing. The CONSULTANT agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the CONSULTANT throughout the entire period this Agreement is in effect. The person selected by the CONSULTANT to serve as the CONSULTANT'S Project Director shall be subject to the prior approval and acceptance of the COUNTY.

#### (3) REMOVAL OF PERSONNEL

The CONSULTANT agrees, within thirty (30) calendar days of receipt of a written request from the COUNTY, to promptly remove and replace the CONSULTANT'S Project Director, or any other personnel employed or retained by the CONSULTANT, or personnel of the sub-consultant(s) or subcontractor(s) engaged by the CONSULTANT to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the COUNTY shall request, in writing, be removed, which request may be made by the COUNTY with or without cause.

### 3.03 TIMELY ACCOMPLISHMENT OF SERVICES

The timely performance and completion of the required services, work and materials is vitally important to the interests of the COUNTY. Time is of the essence for all of the duties and obligations contained in this Agreement thereto. The COUNTY may suffer damages in the event that the CONSULTANT does not accomplish and complete the required services in a timely manner. The CONSULTANT agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all BASIC SERVICES and ADDITIONAL SERVICES will be provided, performed and completed in a timely and diligent manner throughout.

### 3.04 STANDARDS OF PROFESSIONAL SERVICE

The work and/or services to be provided and/or performed by the CONSULTANT and by any Sub-Consultant(s) and/or SubContractor(s) engaged by the CONSULTANT as set forth in the Scope of Professional Services, Exhibit "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the COUNTY approves this Agreement, or which may subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes, policies, standards or other guidelines which requires the CONSULTANT to provide and/or perform work and/or services which are significantly different from that set forth in the Scope of Professional Services, Exhibit "A", shall serve as a basis for the COUNTY to consider the development and issuance of a Change Order to provide for a change to, or Additional Services to the services set forth in the Agreement.

### 3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

#### (1) RESPONSIBILITY TO CORRECT

The CONSULTANT agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by CONSULTANT or by any sub-consultant(s) and/or subcontractor(s) retained or engaged by the CONSULTANT pursuant to this Agreement. The CONSULTANT shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of CONSULTANT or any sub-consultant(s) or subcontractor(s) engaged by the CONSULTANT.

#### (2) COUNTY'S APPROVAL SHALL NOT RELIEVE CONSULTANT OF RESPONSIBILITY

Neither review, approval, or acceptance by the COUNTY of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and incidental professional services, work and materials furnished hereunder by the

(2) COUNTY'S APPROVAL SHALL NOT RELIEVE CONSULTANT OF RESPONSIBILITY  
(Continued)

CONSULTANT, or any sub-consultant(s) or subcontractor(s) engaged by the CONSULTANT, shall in any way relieve CONSULTANT of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all sub-consultants and/or subcontractors engaged by the CONSULTANT to provide and perform services in connection with this Agreement. Neither the COUNTY'S review, approval or acceptance of, nor payment for, any of the CONSULTANT'S services, work and materials shall be construed to operate as a waiver of any of the COUNTY'S rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

3.06      LIABILITY

(1)      CONSULTANT TO HOLD COUNTY HARMLESS

The CONSULTANT shall be liable and agrees to be liable for and shall indemnify and hold the COUNTY harmless for any and all claims, suits, judgements or damages, losses and expenses including court costs and attorney's fees arising out of the CONSULTANT'S errors, omissions, and/or negligence, or those of any and all sub-consultants and/or subcontractors engaged by the CONSULTANT during the providing, performing and furnishing of services, work and materials pursuant to this Agreement and any and all Change Orders, Supplemental Task Authorizations thereto. The CONSULTANT shall not be liable to nor indemnify the COUNTY for any portions of damages arising out of any error, omission, and/or negligence of the COUNTY, its employees, agents, or representatives or third parties. The CONSULTANT hereby acknowledges that the compensation to be paid the CONSULTANT by the COUNTY as set forth in Agreement Exhibit "B" entitled "COMPENSATION AND METHOD OF PAYMENT" includes compensation as consideration for the indemnification provided herein.

3.07      NOT TO DIVULGE CERTAIN INFORMATION

CONSULTANT agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without COUNTY'S prior written consent, or unless incident to the proper performance of CONSULTANT'S obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONSULTANT or any sub-consultant(s) or subcontractor(s) pursuant to this Agreement. CONSULTANT shall require all of its employees, sub-consultant(s) and subcontractor(s) to comply with the provisions of this paragraph.

3.08      CONSULTANT TO REPAIR PROPERTY DAMAGE CAUSED BY THE CONSULTANT

CONSULTANT agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expense and in a manner acceptable to and approved by the COUNTY, any property damage arising out of, or caused by, the willful or negligent acts of the CONSULTANT, or of its sub-consultants and/or subcontractors. This CONSULTANT'S obligation under this sub-article does not apply to property damage caused by any other Consultant or Contractor engaged directly by the COUNTY.

### 3.08 CONSULTANT TO REPAIR PROPERTY DAMAGE CAUSED BY THE CONSULTANT (Continued)

The COUNTY reserves the right, should the CONSULTANT fail to make such repairs and/or replacement within a reasonable period of time, to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the CONSULTANT, or by the CONSULTANT reimbursing the COUNTY for all such costs and expenses.

### 3.09 RESPONSIBILITY FOR ESTIMATES

(1) In the event the services required pursuant to this Agreement include the CONSULTANT preparing and submitting to the COUNTY, cost estimates, the CONSULTANT, by exercise of his experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth in, or as may be required under the Agreement and shall be held accountable, responsible and liable for the accuracy, completeness, and correctness of any and all such cost estimates. For purposes of the Liability Provisions of this Article only, the CONSULTANT'S estimate(s) shall be considered valid and effective for a period of six (6) months from the date of the COUNTY'S acceptance of the estimate(s).

(2) The cost estimates of CONSULTANTS or SUB-CONSULTANTS engaged by CONSULTANTS, for the appraisal or valuation of property or easements, or the estimate of damages or costs associated with the acquisition of property or easements are exempted from the provisions of Article 3.09.

(3) Cost Estimates

(A) ORDER OF MAGNITUDE ESTIMATE

This is an approximate estimate made without detailed architect/engineering data. Examples include, but are not limited to, an estimate from cost-capacity curves, an estimate using scale-up or scale-down factors, and an approximate ratio estimate. This type of estimate shall be accurate within plus fifty percent (50.0%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the ORDER OF MAGNITUDE ESTIMATE shall be recoverable by the COUNTY.

(B) BUDGET ESTIMATE

Budget in this case applies to the COUNTY'S budget and not to the budget as a project controlled document. A budget is prepared with the use of flowsheets, layouts, and equipment details. This type of estimate shall be accurate within plus twenty-five percent (25.0%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the BUDGET ESTIMATE shall be recoverable by the COUNTY.

(C) CONSTRUCTION COST ESTIMATE.

A construction cost estimate for purposes of this Agreement is an estimate prepared on the basis of well defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing the project. This type of estimate shall be accurate within plus or minus ten percent (10%) of the cost of the construction of the project. The accuracy and reliability of a CONSTRUCTION COST ESTIMATE is vital to the COUNTY'S interests because it may be used for such purposes as, but not limited to the following; budgeting, obtaining, allocating or obligating funds for the project; evaluating and determining the reasonableness and acceptableness of bids or price proposals for construction projects; or establishing the assessment amounts for Municipal Service Benefit Units (M.S.B.U.).

In the event the COUNTY solicits and receives bids or price proposals from contractors on a construction project based on specifications, design, drawings and a CONSTRUCTION COST ESTIMATE prepared by the CONSULTANT, and the lowest bid or price proposal, submitted by a responsive and responsible bidder or proposer, which bid or price proposal exceeds the amount of the CONSULTANT'S CONSTRUCTION COST ESTIMATE by more than the percent accuracy set forth hereinabove, the CONSULTANT shall, upon notification by the COUNTY, assume responsibility for and proceed to provide and perform the following service without additional compensation:

The CONSULTANT will, subject to the review and approval of the COUNTY, modify at its expense the specifications, design, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the CONSTRUCTION COST ESTIMATE prepared by the CONSULTANT. Any such modifications made by the CONSULTANT shall not conflict with the functional or operational requirements established by the COUNTY for the project and set forth in the Agreement or Change Order(s) or Supplemental Task Authorization(s) issued thereto, nor shall any such modifications conflict with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawings prepared by the CONSULTANT, nor shall such modifications adversely affect the safe use or operation of the constructed project.

In the event (1) the CONSULTANT'S modification of the design, specifications, drawings and related bidding and contract documents, and (2) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and responsible bidder or proposer that are within the established percent accuracy of the CONSULTANT'S CONSTRUCTION COST ESTIMATE, the costs associated with the CONSULTANT'S preparation and development of the CONSTRUCTION

(C) CONSTRUCTION COST ESTIMATE.(Continued)

COST ESTIMATE shall be recoverable by the COUNTY by an appropriate reduction in the CONSULTANT'S invoice requesting payment for services rendered.

For determination of compliance with the accuracy requirement established for the CONSTRUCTION COST ESTIMATE prepared by the CONSULTANT, the amount of the CONSTRUCTION COST ESTIMATE submitted by the CONSULTANT shall be adjusted from the date the CONSTRUCTION COST ESTIMATE was received by the COUNTY until the date bids or price proposals are received by the COUNTY, by applying the percent change in the "20 Cities Cost Index" as published in the ENR (formerly ENGINEERING NEWS-RECORD) a McGraw-Hill, Inc. publication.

If, in response to its solicitation, the COUNTY receives less than three bids or priced proposals for a project, there is the potential that such bids or priced proposals may not be a realistic representation of the costs expected to be associated with the project. If under such circumstances, and if in the professional judgment of the CONSULTANT, the low bid or the low priced proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the project, the CONSULTANT may deem it appropriate to recommend the COUNTY reject any such bid(s) or priced proposal(s). If under such circumstances the COUNTY concurs with the CONSULTANT'S recommendation and rejects the bid(s) or priced proposal(s), the COUNTY will not hold the CONSULTANT responsible to, nor will the COUNTY require the CONSULTANT to, modify the specifications, design, drawings and related bidding and contract documents as set forth hereinbefore.

3.10 PERMITS

The CONSULTANT will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the COUNTY in obtaining all reviews, approvals and permits, with respect to the CONSULTANT'S design, drawings and specifications required by any governmental body having authority over the project. Any fees required for such reviews, approvals or permits will be covered by a check issued by the COUNTY and made payable to the respective governmental body upon the CONSULTANT furnishing the COUNTY satisfactory documentation of such fees. The CONSULTANT will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the COUNTY in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The COUNTY shall, at the CONSULTANT'S request, assist in obtaining required signatures and provide the CONSULTANT with all information known to be available to the COUNTY so as to assist the CONSULTANT in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

### 3.11      ADDITIONAL SERVICES

Should the COUNTY request the CONSULTANT to provide and perform professional services for this project which are not set forth in EXHIBIT "A", the CONSULTANT agrees to provide and perform such ADDITIONAL SERVICES as may be agreed to in writing by both parties to this Agreement.

Such ADDITIONAL SERVICES shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions set forth in this Agreement thereto.

ADDITIONAL SERVICES shall be administered and authorized as "SUPPLEMENTAL TASK AUTHORIZATIONS" or "CHANGE ORDERS" under the Agreement. The CONSULTANT shall not provide or perform, nor shall the COUNTY incur or accept any obligation to compensate the CONSULTANT for any ADDITIONAL SERVICES unless and until a written "SUPPLEMENTAL TASK AUTHORIZATIONS" or "CHANGE ORDER" shall have been agreed to and executed by both parties.

Each such "SUPPLEMENTAL TASK AUTHORIZATION" or "CHANGE ORDER" shall set forth a comprehensive, detailed description of: (1) the Scope of the ADDITIONAL SERVICES requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing said ADDITIONAL SERVICES.

### 3.12      TRUTH-IN-NEGOTIATIONS CERTIFICATE

The COUNTY may request the CONSULTANT to execute a Truth-in-Negotiations Certificate ("Certificate"), in a form attached as EXHIBIT "F". The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the COUNTY determines the contract price was increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs.

### 3.13      COMPLETION OF TASKS

Unless otherwise set forth in the Agreement the CONSULTANT shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in Agreement Exhibit "A" entitled "Scope of Professional Services" and Change Orders, and Supplemental Task Authorizations authorized. The compensation to be paid the CONSULTANT as set forth in Agreement Exhibit "B" entitled "Compensation and Method of Payment" and Change Orders, and Supplemental Task Authorizations authorized thereto shall be understood and agreed to adequately and completely compensate the CONSULTANT for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in Agreement Exhibit "A" and Change Orders, Supplemental Task Authorizations, and Work Orders authorized thereto as stated above."

### 3.14 AFFIRMATIVE ACTION BY CONSULTANT WHEN ENGAGING SUB-CONSULTANTS

Florida Statute #287.042(4)(f) establishes that agencies, including Lee County, are encouraged to spend twenty-five (25%) percent of the monies actually spent for contractual services for the purpose of entering into contracts with certified Minority Business Enterprises. Accordingly, the CONSULTANT is encouraged, when selecting or engaging the services of sub-consultants or subcontractors pursuant to this Agreement, to spend twenty-five (25%) percent of the amount of compensation established in this Agreement and in subsequent CHANGE ORDERS, and SUPPLEMENTAL TASK AUTHORIZATIONS authorized thereto for the engagement of the services of certified Minority Business Enterprise sub-consultants or subcontractors.

In furtherance of this statutory goal the COUNTY expects the CONSULTANT to take affirmative action towards achieving this goal. "Affirmative Action" as used herein shall constitute a good faith effort by the CONSULTANT to achieve the stated goal of engaging certified Minority Business Enterprise sub-consultants or subcontractors to provide or perform services and/or work pursuant to the SCOPE OF SERVICES required under this Agreement. Efforts taken by the CONSULTANT to assist the COUNTY in meeting this statutory goal must be documented in detail, records of sub-consultants or subcontractors contacted maintained, including negotiation efforts, and written Agreements maintained for services or work awarded to sub-consultants or subcontractors.

The CONSULTANT, upon receipt of a written request by the COUNTY, shall within ten (10) calendar days thereafter submit to the COUNTY copies of records and supporting documentation to show evidence of its affirmative action efforts to achieve the above stated goal.

The CONSULTANT is encouraged to contact the Lee County Department of Equal Opportunity for information and assistance regarding the COUNTY'S Minority Business Enterprise certification program and listing of certified Minority Business Enterprises.

## ARTICLE 4.00 - OBLIGATIONS OF THE COUNTY

### 4.01 DESIGNATION OF PROJECT MANAGER

The COUNTY agrees after the execution of this Agreement to promptly advise the CONSULTANT, in writing, of the person designated to serve and act as the COUNTY'S PROJECT MANAGER pursuant to the provisions of Article 2.13 of this Agreement. Such notification shall be provided to the CONSULTANT by the COUNTY'S DEPARTMENT DIRECTOR.

### 4.02 AVAILABILITY OF COUNTY INFORMATION

#### (1) PROJECT GUIDELINES AND CRITERIA

Guidelines to the CONSULTANT regarding requirements the COUNTY has established or suggests relative to the Project including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria are set forth in EXHIBIT "E", entitled "PROJECT GUIDELINES AND CRITERIA", which EXHIBIT "E" is attached hereto and made a part of this Agreement.



#### 4.02 AVAILABILITY OF COUNTY INFORMATION (Continued)

##### (2) COUNTY TO PROVIDE PERTINENT REFERENCE MATERIAL

At the CONSULTANT'S request, the COUNTY agrees to provide to the CONSULTANT, at no cost to the CONSULTANT, all pertinent information known to be available to the COUNTY to assist the CONSULTANT in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the COUNTY such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

#### 4.03 AVAILABILITY OF COUNTY'S DESIGNATED REPRESENTATIVES

The COUNTY agrees that the DEPARTMENT DIRECTOR and the PROJECT MANAGER shall be available within a reasonable period of time, with reasonable prior notice given by the CONSULTANT, to meet and/or consult with the CONSULTANT on matters pertaining to the services to be provided and performed by the CONSULTANT. The COUNTY further agrees to respond within a reasonable period of time to written requests submitted by the CONSULTANT.

#### 4.04 ACCESS TO COUNTY PROPERTY

The COUNTY agrees, with reasonable prior written notice given by the CONSULTANT, to provide the CONSULTANT with access within a reasonable period of time to COUNTY property, facilities, buildings and structures to enable the CONSULTANT to provide and perform the required professional services and work pursuant to this Agreement. Such rights of access shall not be exercised in such a manner or to such an extent as to impede or interfere with COUNTY operations, or the operations carried on by others under a lease, or other contractual arrangement with the COUNTY, or in such a manner as to adversely affect the public health and safety. Such access may, or may not be, within the CONSULTANT'S normal office and/or field work days and/or work hours.

### ARTICLE 5.00 - COMPENSATION AND METHOD OF PAYMENT

#### 5.01 BASIC SERVICES

The COUNTY shall pay the CONSULTANT for all requested and authorized BASIC SERVICES rendered hereunder by the CONSULTANT and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the COUNTY in accordance with the provisions for compensation and payment of said BASIC SERVICES set forth and prescribed in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which EXHIBIT "B" is attached hereto and made a part of this Agreement, or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written Change Order executed by both parties.

#### 5.02 ADDITIONAL SERVICES

The COUNTY shall pay the CONSULTANT for all such ADDITIONAL SERVICES as have been requested and authorized by the COUNTY and agreed to, in writing, by both parties to this Agreement and which have been rendered as ADDITIONAL SERVICES by the CONSULTANT and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by

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5.02      ADDITIONAL SERVICES (Continued)

the COUNTY in accordance with the provisions for compensation and payment of said ADDITIONAL SERVICES as set forth and prescribed in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which EXHIBIT "B" is attached hereto and made a part of this Agreement, or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written Change Order or Supplemental Task Authorization executed by both parties.

5.03      METHOD OF PAYMENT  
(1)      MONTHLY STATEMENTS

The CONSULTANT shall be entitled to submit not more than one invoice statement to the COUNTY each calendar month covering services rendered during the preceding calendar month. The CONSULTANT'S invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement, or CHANGE ORDER(S), and SUPPLEMENTAL TASK AUTHORIZATION(S) thereunder. The CONSULTANT'S invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in the Agreement, or in CHANGE ORDER(S), and/or SUPPLEMENTAL TASK AUTHORIZATION(S) there under.

(2)      PAYMENT FOR SERVICES PERFORMED

The COUNTY shall pay the CONSULTANT for services performed using either of the following methods, or using a combination thereof:

- (A) The COUNTY shall pay the CONSULTANT on the basis of services completed for tasks set forth in Exhibits "A" and "B", as evidenced by work products such as reports, drawings, specifications, etc., submitted by the CONSULTANT and accepted by the COUNTY. No payments shall be made for CONSULTANT'S Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the CONSULTANT and accepted by the COUNTY. Whenever an invoice statement covers services for which no work product is required to be furnished by the CONSULTANT to the COUNTY, the COUNTY reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (B) The COUNTY shall pay the CONSULTANT for services performed for tasks set forth in Exhibits "A" and "B" on the basis of an invoice statement covering CONSULTANT'S Work-in-Progress expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages are subject to the review and approval of the COUNTY. The decision of the COUNTY shall be final as to the work-in-Progress percentages paid. Payment by the COUNTY for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the COUNTY of any such service or work-in-Progress. The CONSULTANT shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not

(2) PAYMENT FOR SERVICES PERFORMED (Continued)

previous work-in-Progress payments have been made. All tasks to be paid for on a work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in Exhibit "B" with the notation (WIPP). Only tasks so identified will be paid on a work-in-Progress percentage basis. The COUNTY reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

(3) PAYMENT SCHEDULE

The COUNTY shall issue payment to the CONSULTANT within thirty (30) calendar days after receipt of an invoice statement from the CONSULTANT in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the COUNTY object or take exception to the amount of any CONSULTANT'S invoice statement, the COUNTY shall notify the CONSULTANT of such objection or exception within the thirty (30) calendar day payment period set forth hereinbefore. If such objection or exception remains unresolved at the end of said thirty (30) calendar day period, the COUNTY shall withhold the disputed amount and make payment to the CONSULTANT of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

5.04 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE COUNTY

In the event of termination of this Agreement at the convenience of the COUNTY, not at the fault of the CONSULTANT, the COUNTY shall compensate the CONSULTANT only for: (1) all services performed prior to the effective date of termination; (2) reimbursable expenses then due; and (3) reasonable expenses incurred by the CONSULTANT in affecting the termination of services and work, and incurred by the submittal to the COUNTY of project drawings, plans, data, and other project documents.

5.05 PAYMENT WHEN SERVICES ARE SUSPENDED

In the event the COUNTY suspends the CONSULTANT'S services and work on all or part of the services required to be provided and performed by the CONSULTANT pursuant to this Agreement, the COUNTY shall compensate the CONSULTANT only for the services performed prior to the effective date of suspension and reimbursable expenses then due and any reasonable expenses incurred or associated with, or as a result of such suspension.

5.06 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE

In the event the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased due to: (1) termination; (2) suspension in whole or in part; and (3) and/or are modified by the subsequent issuance of SUPPLEMENTAL TASK AUTHORIZATION(S) and/or CHANGE ORDER(S), other than receiving the compensation set forth in Sub-Articles 5.04 and 5.05, the CONSULTANT shall not be entitled to receive compensation

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5.06 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE (Continued)

for anticipated professional fees, profit, general and administrative overhead expenses or for any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 6.00 - TIME AND SCHEDULE OF PERFORMANCE

6.01 NOTICE TO PROCEED

Following the execution of this Agreement by both parties, and after the CONSULTANT has complied with the insurance requirements set forth hereinafter, the COUNTY shall issue the CONSULTANT a WRITTEN NOTICE TO PROCEED. Following the issuance of such NOTICE TO PROCEED the CONSULTANT shall be authorized to commence work and the CONSULTANT thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

6.02 TIME OF PERFORMANCE

The CONSULTANT agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in EXHIBIT "C", entitled "SCHEDULE OF PERFORMANCE, which EXHIBIT "C" is attached hereto and made a part of this Agreement.

Should the CONSULTANT be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the CONSULTANT, or its sub-consultant(s) and/or subcontractor(s), and not due to their fault or neglect, the CONSULTANT shall notify the COUNTY, in writing, within five (5) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the CONSULTANT'S time of performance. Upon receipt of the CONSULTANT'S request for an extension of time, the COUNTY shall grant the extension if the COUNTY determines the delay(s) encountered by the CONSULTANT, or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

6.03 CONSULTANT WORK SCHEDULE

The CONSULTANT shall be required as a condition of this Agreement to prepare and submit to the COUNTY, on a monthly basis, commencing with the issuance of the NOTICE TO PROCEED, a CONSULTANT'S WORK SCHEDULE. The WORK SCHEDULE shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work required completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in EXHIBIT "C", pursuant to this Agreement in such a manner that the CONSULTANT'S planned and actual work progress can be readily determined. The CONSULTANT'S WORK SCHEDULE of planned and actual work progress shall be updated and submitted by the CONSULTANT to the COUNTY on a monthly basis.

6.04            FAILURE TO PERFORM IN A TIMELY MANNER

Should the CONSULTANT fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the COUNTY may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the COUNTY at its option, may, upon written notice to the CONSULTANT, withhold any or all payments due and owing to the CONSULTANT, not to exceed the amount of the compensation for the work in dispute, until such time as the CONSULTANT resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any CHANGE ORDER(S), or SUPPLEMENTAL TASK AUTHORIZATION(S) issued thereto.

**ARTICLE 7.00 - SECURING AGREEMENT**

The CONSULTANT warrants that the CONSULTANT has not employed or retained any company or person other than a bona fide, regular, full time employee working for the CONSULTANT to solicit or secure this Agreement and that the CONSULTANT has not paid or agreed to pay any person, company, corporation or firm other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

**ARTICLE 8.00 - CONFLICT OF INTEREST**

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The CONSULTANT further agrees that no person having any such interest shall be employed or engaged by the CONSULTANT for said performance.

If CONSULTANT, for itself and on behalf of its subconsultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by CONSULTANT or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the COUNTY'S attention, in writing. The COUNTY will advise the CONSULTANT, in writing, within ten (10) calendar days as to the period of time required by the COUNTY to determine if such a conflict of interest exists. If the COUNTY determines that there is a conflict of interest, CONSULTANT or such sub-consultant shall decline the representation upon written notice by the COUNTY.

If the COUNTY determines that there is not such conflict of interest, then the COUNTY shall give its written consent to such representation. If CONSULTANT or sub-consultant accepts such a representation without obtaining the COUNTY'S prior written consent, and if the COUNTY subsequently determines that there is a conflict of interest between such representation and the work being performed by CONSULTANT or such sub-consultant under this Agreement, then the CONSULTANT or such sub-consultant agrees to promptly terminate such representation. CONSULTANT shall require each of such sub-consultants to comply with the provisions of this Section.

**ARTICLE 8.00 - CONFLICT OF INTEREST (Continued)**

Should the CONSULTANT fail to advise or notify the COUNTY as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the CONSULTANT fail to discontinue such representation, the COUNTY may consider such failure as justifiable cause to terminate this Agreement.

**ARTICLE 9.00 - ASSIGNMENT, TRANSFER AND SUBCONTRACTS**

The CONSULTANT shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of CONSULTANT with a third party; or (2) the disestablishment of the CONSULTANT'S professional practice and the establishment of a successor consultant, or consulting organization. Nor shall the CONSULTANT subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement thereto, without prior written approval of the COUNTY. The CONSULTANT shall have the right, subject to the COUNTY'S prior written approval, to employ other persons and/or firms to serve as sub-consultants and/or subcontractors to CONSULTANT in connection with CONSULTANT providing and performing services and work pursuant to the requirements of this Agreement. The COUNTY shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In providing and performing the services and work required pursuant to this Agreement, CONSULTANT intends to engage the assistance of the sub-consultant(s) and/or subcontractor(s) set forth in EXHIBIT "D", entitled "CONSULTANT'S ASSOCIATED SUB-CONSULTANTS AND SUBCONTRACTORS", which EXHIBIT "D" is attached hereto and made a part of this Agreement.

**ARTICLE 10.00 - APPLICABLE LAW**

Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, or the laws, rules, and regulations of the United States when providing services funded by the United States government.

**ARTICLE 11.00 - COVENANTS AGAINST DISCRIMINATION**

**11.01 FOR PROJECTS WITH FUNDS APPROPRIATED FROM GENERAL LEE COUNTY REVENUES**

The CONSULTANT for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to COUNTY hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The CONSULTANT shall comply with Lee County's Affirmative Action Plan or state laws in the hiring of sub-consultants. CONSULTANTS who are uncertain of their obligation must obtain a copy of all relevant guidelines concerning Lee County's Affirmative Action Plan from the Lee County Department of Equal Opportunity.

11.02 FOR PROJECTS WITH FUNDS APPROPRIATED EITHER IN PART OR WHOLLY FROM FEDERAL OR STATE SOURCES

The CONSULTANT for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to COUNTY hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The CONSULTANT shall make every effort to comply with any Disadvantaged Business Enterprise goals which have been established for this project. CONSULTANTS who are uncertain of their obligations regarding Disadvantaged Business Enterprises for this project must obtain a copy of all relevant federal or state guidelines from the Lee County Department of Equal Opportunity. The failure of the CONSULTANT to adhere to relevant guidelines shall subject the CONSULTANT to any sanctions which may be imposed upon the COUNTY.

ARTICLE 12.00 - WAIVER OF BREACH

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00 - INSURANCE

13.01 INSURANCE COVERAGE TO BE OBTAINED

- (1) The CONSULTANT shall obtain and maintain such insurance as will protect him from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of his employees including claims insured by usual personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees including claims insured by usual personal injury liability coverage; and (4) from claims for injury to or destruction of tangible property including loss or use resulting therefrom; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of this Agreement, whether such services, work and operations be by the CONSULTANT, its employees, or by any sub-consultant(s), subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.
- (2) The insurance protection set forth hereinabove shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.
- (3) The CONSULTANT, throughout the time this Agreement is in effect, shall require and ensure that any and all of its Sub-Consultants and/or SubContractors obtain, have, and maintain the insurance coverages required by law to be provided.
- (4) The CONSULTANT shall obtain, have and maintain during the entire period of this Agreement all such insurance policies as are set forth and required herein.

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13.01 INSURANCE COVERAGE TO BE OBTAINED (Continued)

(5) In the event that the CONSULTANT engages Sub-Consultants or Sub-Contractors to assist the CONSULTANT in providing or performing services or work pursuant to the requirements of this Agreement, the insurance coverages required under Article 13.03 to be provided by the CONSULTANT shall cover all of the services or work to be provided or performed by all of the Sub-Consultants or Sub-Contractors engaged by the CONSULTANT. However, in the event the services or work of Sub-Consultants or Sub-Contractors engaged by the CONSULTANT is not covered by the CONSULTANT'S INSURANCE POLICY(S), it shall be the responsibility of the CONSULTANT to ensure that all Sub-Consultants or Sub-Contractors have fully complied with the COUNTY insurance requirements for: (1) Worker's Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; or (4) Professional Liability as required and set forth in Agreement Article 13.00.

The services or work to be provided or performed by the following Sub-Consultant(s) or Sub-Contractor(s) identified in Agreement Exhibit "D" are exempted and excluded from the Professional Liability insurance coverage requirements set forth in this Agreement:

<u>Service and/or work to be Provided and/or Performed</u>	<u>Indicate Name of Individual or Firm</u>
--	--

(If none, enter the word "none" in the space below.)

**NONE**



### 13.01 INSURANCE COVERAGE TO BE OBTAINED Continued

- (6) The insurance coverage to be obtained by the CONSULTANT or by Sub-Consultants or Sub-Contractors engaged by the CONSULTANT, as set forth in Agreement Article 13.03 for: (1) workers' Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; or (4) Professional Liability is understood and agreed to cover any and all of the services or work set forth in Agreement Exhibit "A" and all subsequent Change Order(s), or Supplemental Task Authorization(s). In the event the COUNTY shall execute and issue a written Change Order(s), or Supplemental Task Authorization(s) authorizing the CONSULTANT to provide or perform services or work in addition to those set forth in Agreement Exhibit "A", it is agreed that the COUNTY has the right to change the amount of insurance coverages required to cover the additional services or work. If the additional insurance coverages established exceeds the amount of insurance coverage carried by the CONSULTANT, the compensation established for the Change Order(s), or Supplemental Task Authorization(s) shall include consideration of any increased premium cost incurred by the CONSULTANT to obtain same.

### 13.02 CONSULTANT REQUIRED TO FILE INSURANCE CERTIFICATE(S)

- (1) The CONSULTANT shall submit to the COUNTY'S RISK MANAGEMENT DIVISION all insurance certificates which are required under this Agreement for review and approval with respect to compliance with the insurance requirements. After approval by the RISK MANAGEMENT DIVISION, the COUNTY will execute this Agreement and issue a written Notice to Proceed. The CONSULTANT may then commence with any service or work pursuant to the requirements of this Agreement.
- (2) All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the COUNTY and licensed in the State of Florida.
- (3) Each Certificate of Insurance submitted to the COUNTY shall be an original and shall be executed by an authorized representative of the insurance company affording coverage.
- (4) Each Certificate of Insurance shall be addressed to the Lee County Board of County Commissioners, Attention: Lee County Contracts Management, P O Box 398, Fort Myers, Florida 33902-0398.
- (5) Each Certificate of Insurance shall specifically include all of the following:
- (A) The name and type of policy and coverages provided; and
  - (B) The amount or limit applicable to each coverage provided and the deductible amount, if any, applicable to each type of insurance coverage being provided; and
  - (C) The date of expiration of coverage; and
  - (D) The designation of the Lee County Board of County Commissioners both as an additional insured and as a certificate holder. (This requirement is excepted for Professional Liability Insurance and for Workers' Compensation Insurance); and

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13.02      CONSULTANT REQUIRED TO FILE INSURANCE CERTIFICATE(S) (Continued)

- (E) A specific reference to this Agreement and the Project to which it pertains. (This requirement may be excepted for Professional Liability Insurance); or

In the event the CONSULTANT has, or expects to enter into an agreement for professional services other than those provided for in this Agreement, the CONSULTANT may elect to submit a certificate of insurance containing the following statement:

"This policy covers the services or work provided or performed by the Named Insured for any and all projects undertaken for Lee County pursuant to one or more written Professional Services Agreements, or written Supplemental Task Authorizations, or Change Orders thereto, and the limit(s) of liability shown shall not be intended or construed as applying to only one project."

Upon receipt and approval of such a certificate of insurance the COUNTY will administer the insurance required for all such agreements utilizing the single "multi-project" certificate of insurance and a separate certificate of insurance will not be required for each separate agreement.

- (F) The following clause must appear on the Certificate of Insurance:

"Cancellation - Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the Certificate Holder named."

- (G) A statement indicating any services or work included in or required under Agreement Exhibit "A" Scope of Professional Services that is specifically excluded or exempted from coverage under the provisions, terms, conditions or endorsements of the CONSULTANT'S insurance policy(s). A statement which indicates any and all deductible amounts applicable to each type of insurance coverage required. In the absence of any such statements, the COUNTY will proceed with the understanding, stipulation and condition that there are no deductible amount(s), or exclusions or exemptions to the insurance coverage(s) provided.

- (6) Each Certificate of Insurance shall be issued by an insurance agent and/or agency duly authorized to do so by and on behalf of the insurance company affording the insurance coverage(s) indicated on each Certificate of Insurance.
- (7) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of this Agreement, the CONSULTANT shall furnish to the COUNTY renewal or replacement Certificate(s) of Insurance, or Certified Binder(s), not later than fifteen (15) calendar days prior to the date of their expiration. Failure of the CONSULTANT to provide the COUNTY with such renewal certificate(s) shall be considered justification for the COUNTY to terminate this Agreement.

13.02     CONSULTANT REQUIRED TO FILE INSURANCE CERTIFICATE(S) (Continued)

- (8) If any of the insurance coverage(s) required by this Agreement shall reach the date of expiration indicated on the approved Certificate(s) of Insurance without the COUNTY having received satisfactory evidence of renewal or replacement, the CONSULTANT shall automatically and without further notice stop performing all previously authorized services and work. During any time period that the CONSULTANT'S services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the CONSULTANT shall not be entitled to any additional compensation or time to provide and perform the required services or work and the COUNTY shall not be required to make payment on any invoices submitted by the CONSULTANT. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall be made promptly by the COUNTY.

13.03 - INSURANCE COVERAGES REQUIRED

The CONSULTANT shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

(1) WORKERS' COMPENSATION

Coverage to comply for all employees for statutory limits in compliance with the applicable State and Federal laws. In addition, the policy must include the following:

- (A) Employer's Liability with a minimum limit per accident in accordance with statutory requirements, or a minimum limit of \$100,000 for each accident, whichever limit is greater.
- (B) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the COUNTY with thirty (30) days prior written notice of cancellation and/or restriction.

(2) COMMERCIAL GENERAL LIABILITY

Coverage must be afforded on a form no more restrictive than the last edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include the following:

- (A) Minimum limits of \$100,000 per occurrence and \$300,000 aggregate for Bodily Injury Liability and a minimum limit of \$100,000 for Property Damage Liability, or a minimum combined single limit of \$300,000.
- (B) Contractual coverage applicable to this specific Agreement including any hold harmless and/or such indemnification agreement.
- (C) Such additional requirements as are set forth in Article 13:01 and 13.02 hereinabove.

(3) BUSINESS AUTOMOBILE LIABILITY

Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy filed by the Insurance Services Office and must include the following:

- (A) Minimum limits of \$100,000 per person and \$300,000 per accident for Bodily Injury Liability and a minimum limit of \$100,000 for Property Damage Liability, or a minimum combined single limit of \$300,000.
- (B) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.
- (C) Such additional requirements as are set forth in Articles 13.01

(4) PROFESSIONAL LIABILITY

Coverage must include the following:

- (A) A minimum aggregate limit of \$1,000,000.00 .
- (B) Such additional requirements as are set forth in Articles 13.01 and 13.02 hereinabove.
- (C) Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits be written so as to provide an applicable deductible amount, or other exclusion or limitation as to the amount of coverage to be provided within the minimum coverage limits set forth above, the COUNTY shall hold the CONSULTANT responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible amount, exclusion or limitation, the CONSULTANT shall be required to provide written documentation that is acceptable to the COUNTY establishing that the CONSULTANT has the financial resources readily available to cover damages, injuries and/or losses which are not covered by the policy's deductible amounts, exclusions and/or limitations as stated above.

ARTICLE 14.00 - DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT

The duties and obligations imposed upon the CONSULTANT by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

ARTICLE 15.00 - REPRESENTATION OF THE COUNTY

The CONSULTANT in providing and performing the services and work required pursuant to this Agreement thereto shall only represent the COUNTY in the manner and to the extent specifically set forth in writing in this Agreement or thereto, and as provided in any written SUPPLEMENTAL TASK AUTHORIZATION(S), and CHANGE ORDER(S) issued thereunder.

**ARTICLE 15.00 - REPRESENTATION OF THE COUNTY (Continued)**

In the event the CONSULTANT'S services or work involves construction contract administrative support services, the CONSULTANT is not authorized to act on the COUNTY'S behalf, and shall not act on the COUNTY'S behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid the construction contractor, or (2) the time for completing the work as required and agreed to in the construction contract, or (3) the scope of the work set forth in the construction contract documents, unless such representation is specifically provided for, set forth and authorized in this Agreement or thereto.

The COUNTY will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the CONSULTANT not specifically provided for and authorized as stated hereinabove.

**ARTICLE 16.00 - OWNERSHIP OF DOCUMENTS**

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the CONSULTANT under this Agreement shall be property of the CONSULTANT until the CONSULTANT has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the COUNTY of a written Change Order deleting all or portions of the scope of services or task(s) to be provided or performed by the CONSULTANT, all of the above documents, to the extent requested in writing by the COUNTY, shall be delivered by the CONSULTANT to the COUNTY within seven (7) calendar days of the COUNTY making such a request. In the event the COUNTY gives the CONSULTANT a written Notice of Termination of all or part of the services or work required, or upon the issuance to the CONSULTANT by the COUNTY of a written Change Order deleting all or part of the services or work required, the CONSULTANT shall deliver to the COUNTY the requested documents as set forth hereinabove, with the mutual understanding and commitment by the COUNTY that compensation earned or owing to the CONSULTANT for services or work provided or performed by the CONSULTANT prior to the effective date of any such termination or deletion will be paid to the CONSULTANT within thirty (30) calendar days of the date of issuance of the Notice of Termination or Change Order.

The CONSULTANT, at its expense, may make and retain copies of all documents delivered to the COUNTY for reference and internal use. The CONSULTANT shall not, and agrees not to, use any of these documents, and data and information contained therein on any other project or for any other client without the prior expressed written permission of the COUNTY.

Any use by the COUNTY of said documents, and data and information contained therein, obtained by the COUNTY under the provisions of this Agreement for any purpose not within the scope of this Agreement shall be at the risk of the COUNTY, and without liability to the CONSULTANT. The COUNTY shall be liable and agrees to be liable for and shall indemnify, defend and hold the CONSULTANT harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional

**ARTICLE 16.00 - OWNERSHIP OF DOCUMENTS (Continued)**

consultation services, and attorneys' fees arising out of the COUNTY'S use of such documents in a manner contrary to the provisions set forth hereinabove. The COUNTY hereby acknowledges receipt of \$10.00 (ten and no hundreds dollars) and other good and valuable consideration from the CONSULTANT which has been paid as specific consideration for the indemnification provided herein.

**ARTICLE 17.00 - MAINTENANCE OF RECORDS**

The CONSULTANT 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 for a minimum of five (5) years from the date of termination of this Agreement.

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 five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the COUNTY, and provided further that to the extent provided by law the COUNTY shall retain all such records confidential.

**ARTICLE 18.00 - HEADINGS**

The HEADINGS of the Articles, Sections, Exhibits, Attachments, Phases or Tasks as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits, Attachments, Phases or Tasks.

**ARTICLE 19.00 - ENTIRE AGREEMENT**

This Agreement, including referenced Exhibits and Attachments hereto, constitutes the entire Agreement between the parties hereto and shall supercede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

The following listed documents, which are referred to hereinbefore, are attached to and are acknowledged, understood and agreed to be an integral part of this Agreement:

- (1) EXHIBIT "A" entitled "Scope of Professional Services" dated March 12, 2012.
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment" March 12, 2012.
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance" dated March 12, 2012.
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub-Consultant(s) and SubContractor(s)", dated March 12, 2012.

ARTICLE 19.00 - ENTIRE AGREEMENT (Continued)

- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria", dated March 12, 2012.
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate", dated March 12, 2012.
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles", dated March 12, 2012.

ARTICLE 20.00 - NOTICES AND ADDRESS OF RECORD

0.01 NOTICES BY CONSULTANT TO COUNTY

All notices required and/or made pursuant to this Agreement to be given by the CONSULTANT to the COUNTY shall be in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following COUNTY address of record and sent to the attention of the County's Project Manager:

Lee County Board of County Commissioners  
Post Office Box 398  
Fort Myers, Florida 33902-0398  
Department: Department of Transportation

20.02 NOTICES BY COUNTY TO CONSULTANT

All notices required and/or made pursuant to this Agreement to be given by the COUNTY to the CONSULTANT shall be made in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following CONSULTANT'S address of record:

ATKINS NORTH AMERICA, INC.  
Mr. Nathan L. West, P.E.  
Project Manager  
1514 Broadway Suite 203  
Fort Myers, FL 33913  
Telephone Number: (239) 334-7275  
Fax Number: (239) 334-7277  
Email: nathan.west@atkinsglobal.com

20.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party given in accordance with the requirements of this Article.

ARTICLE 21.00 - TERMINATION

This Agreement may be terminated by the COUNTY at its convenience, or due to the fault of the CONSULTANT, by the COUNTY giving thirty (30) day written notice to the CONSULTANT.

## ARTICLE 21.00 - TERMINATION (Continued)

If the CONSULTANT is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the CONSULTANT or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the COUNTY'S designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the COUNTY may, without prejudice to any other right or remedy, and after giving the CONSULTANT a thirty (30) calendar day written notice, terminate this Agreement.

In addition to the COUNTY'S contractual right to terminate this Agreement in its entirety as set forth above, the COUNTY may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services as set forth in Exhibit "A", or the Project Guidelines and Criteria as set forth in Exhibit "E", or as such may be established by a Supplemental Task Authorization or Change Order Agreement. The COUNTY shall provide written notice to the CONSULTANT in order to implement a stoppage, suspension, supplement or change.

The CONSULTANT may request that this Agreement be terminated by submitting a written notice to the COUNTY dated not less than thirty (30) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the COUNTY reserves the right to accept or not accept the termination request submitted by the CONSULTANT, and no such termination request submitted by the CONSULTANT shall become effective unless and until CONSULTANT is notified, in writing, by the COUNTY of its acceptance.

### 21.01 CONSULTANT TO DELIVER MATERIAL

Upon termination, the CONSULTANT shall deliver to the COUNTY all papers, drawings, models, and other material in which the COUNTY has exclusive rights by virtue hereof or of any business done, or services or work performed or provided by the CONSULTANT on behalf of the COUNTY.

## ARTICLE 22.00 - AMENDMENTS

The covenants, terms and provisions set forth and contained in all of the Articles to this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement, as evidenced by Exhibit H for amending articles. In the event of any conflicts between the requirements, provisions and/or terms of the Agreement and any written Amendment (Exhibit H), the requirements, provisions and/or terms of the Amendment shall take precedence.

## ARTICLE 23.00 - MODIFICATIONS

Modifications to covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed CHANGE ORDER(S) or SUPPLEMENTAL TASK AUTHORIZATION(S). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written CHANGE ORDER(S), and/or SUPPLEMENTAL TASK AUTHORIZATIONS, the latest executed CHANGE ORDER(S), and/or SUPPLEMENTAL TASK AUTHORIZATION(S) shall take precedence.



**ARTICLE 23.00 - MODIFICATIONS (Continued)**

In the event the COUNTY issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the COUNTY'S internal control purposes only, and any and all terms, provisions and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms thereof shall impair the rights of either party.

**ARTICLE 24.00 - ACCEPTANCE**

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:  
CLERK OF CIRCUIT COURT  
Charlie Green, Clerk

COUNTY: LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
Chairman of the Board

DATE: \_\_\_\_\_

APPROVED AS TO FORM

BY: \_\_\_\_\_  
County Attorney's Office

ATTEST:

\_\_\_\_\_

ATKINS NORTH AMERICA INC.  
(CONSULTANT)

C. Ernest Edgar, IV  
(Witness) / **Secretary**

BY: Mark D. Micikas  
(Authorized Signature)  
Mark D. Micikas, PE

[Signature]  
(Witness)

Vice President  
(Title)

DATE: 2/4/13

CORPORATE SEAL:

Date: 09/25/01

SCOPE OF SERVICES

For CN-12-15 ADA Transition Plan

BASIC SERVICES

Section 1 GENERAL SCOPE STATEMENT

The CONSULTANT shall provide and perform the following services, which shall constitute the GENERAL SCOPE of the BASIC SERVICES under the covenants, terms, and provisions of this SERVICE PROVIDER AGREEMENT.

Section 2 TASKS

Pursuant to the GENERAL SCOPE of the BASIC SERVICES stated herein above, the CONSULTANT shall perform all services and/or work necessary to complete the following task(s) and/or provide the following item(s) which are enumerated to correspond to the task(s) and/or items set forth in EXHIBIT "B" entitled "COMPENSATION AND METHOD OF PAYMENT".

**2.1 PURPOSE**

The Americans with Disabilities Act (ADA) of 1990, Title II, addresses the subject of making public transportation accessible to those with disabilities. The Lee County Department of Transportation (the "COUNTY") has initiated the preparation of an ADA Transition Plan (the "Plan"), as outlined in 28 C.F.R. Section 35.

Provide professional engineering and consulting services associated with the preparation of an approved ADA Transition Plan for Lee County Department of Transportation. The work shall include performing engineering analysis, survey, site inspection, and GIS development per federal ADA guidelines, and the following scope of services.

**2.2 PROJECT DESCRIPTION**

The CONSULTANT shall provide professional engineering services in the preparation of a comprehensive ADA Transition Plan for Lee County Department of Transportation.

The ADA Transition Plan primarily will focus on Lee County maintained pedestrian and bicycle facilities in public rights-of-way on county maintained arterials and collectors with an emphasis on signalized intersections.

The CONSULTANT shall also coordinate with the Lee County GIS Department to develop a GIS layer which provides an inventory of curb ramps.

**I. Task I – Project Area Determination/GIS Development**

The CONSULTANT will coordinate with the COUNTY through up to three meetings to define and

finalize the location priorities for field investigation. Shown below are the possible locations for field investigations broken down by phases:

- Phase I – Existing Signalized Intersections owned or maintained by Lee County.
- Phase II – Areas within 2-miles of schools
- Phase III - Areas within one quarter mile of:
  - Transit stops
  - Hospitals and medical facilities
  - Government buildings

The CONSULTANT will coordinate with all appropriate State, County, and local government agencies to determine and establish accurate maintenance ownership of facilities. This will be utilized to accurately classify COUNTY site for field inspections and classifications. At this time attached are the

The CONSULTANT will coordinate with the COUNTY and appropriate GIS staff through up to three (3) coordination meetings to determine the desired level GIS development expected for this project.

These meetings will determine the level of documentation to be entered and contained in the final GIS database for the project. The CONSULTANT will provide preliminary concepts and electronic examples of proposed GIS database for review and approval by COUNTY staff. Based on the final approved concept the CONSULTANT will provide a Preliminary GIS Database Development Report that document the approved concept. This report will be used to set foundation for Phase II and Phase III development of Scope of Services.

### **Deliverables**

- A. Complete – Final Table of County Approved Inspection Locations
- B. Project Map – Documenting all Inspection Locations
- C. Preliminary GIS Database Development Report

## **II. Task II – Data Collection/GIS Database Implementation**

### **I.I. Field Inspections**

Using the defined list locations completed in Phase I, the CONSULTANT will inventory and assess the pedestrian ADA features or lack thereof at selected locations on Lee County locations. The CONSULTANT will utilize electronic data collection for these inspections to the extent possible on the project; the CONSULTANT will use GPS Sub-Meter data collection units, as well as other available electronic data collection equipment, to document site amenities for accurate integration into COUNTY GIS system. All data collected will be provided to the client at the completion of the project.

- I.I.I. Prepare a sketch of the intersection geometry and pedestrian features.
- I.I.II. Document ADA deficiencies within the limits of the signalized intersections.

I.I.III. Coordinate location and pedestrian feature data collection with Lee County Asset Management so that collected data can be added to the County's GIS asset management system.

At sites where there is no existing pedestrian pathway, document whether or not there is any obvious evidence of pedestrian use.

I.I.IV. Determine physical obstacles that limit the accessibility of facilities to individuals with disabilities.

I.I.V. Provide photographs of all inspected and applicable ADA amenities at each inspected location.

I.II. Prioritize Improvements: Tabulate and classify the inventory data by types of improvements needed, defining the design standards that will be used for the improvements. Assist the County in prioritizing the improvements.

I.III. Plan Schedule: Assist the County preparing a schedule for implementing the improvements and grouping the improvements into project packages that will be used in applying for federal, state and other funding sources for the improvements.

I.IV. Funding Applications: Assist the County in identifying potential funding opportunities for the Plan and preparing and submitting applications for funding.

I.V. Public Involvement:

Assist the County in developing and implementing an information page for the County's website where the public can seek out information about pedestrian accessibility in the public right of way and the Plan.

Assist the County in developing a web based procedure for citizens to file comments and inquiries regarding County pedestrian facilities, the process for review and responding to the comments and inquiries, and updating the Plan if required. The County's web developers will perform all website programming.

I.VI. Publishing the Plan

Prepare the Plan update complete with text and graphics for review by the County. Address the County's review comments and prepare print-ready text and graphics of the approved Plan for publication by the County.

I.VII. GIS Development/Coordination/Implementation

The CONSULTANT will coordinate with COUNTY staff on a bi-weekly schedule to provide updated status on the development and implementation of GIS database.

### **Deliverables**

- A. Draft ADA Transition Plan
  - a. Five (5) Hard Copies

- b. One (1) Electronic PDF version
- B. Draft Improvement Prioritization Plan
  - a. Five (5) Hard Copies
  - b. One (1) Electronic PDF version
- C. Draft Improvement Plan Schedule
  - a. Five (5) Hard Copies
  - b. One (1) Electronic PDF version

I.VIII. ADA Geographic Information System (GIS) Database Development Implementation

**Concept** - The Lee County ADA Intersection Project will utilize an ESRI geodatabase specifically designed to house and manage the various information types and documents related to the intersections and to the non intersection locations where deficiencies are noted. The intent of the geodatabase will be to serve as an ongoing and evolving tool to be used by County staff to track and manage ADA intersection and sidewalk information on an ongoing basis. The geodatabase will be used in conjunction with a secure, web-based mobile mapping platform to facilitate field operations and updating, and provide a common mapping interface easily accessible to technical and management staffs.

**Geodatabase Design** - Custom attribute fields will be created in the geodatabase for the individual crossing and sidewalk location feature classes. Attribute fields will contain standard information generated from the field survey assessments such as, street name, cross street name, sidewalk width, clear width to obstruction, cross slope, landing presence, sidewalk condition, and material, as well as additional fields deemed useful and determined by consultation with Lee County staff.

Hyperlink fields will be created to link associated documents and tables with the individual crossing and sidewalk locations. These will provide ease of access to photographs, field reports, specification tables, and/or construction plans, as deemed useful by County staff.

Quality Control – After field data is input to the geodatabase, the geodatabase will be examined for incomplete data entry and inaccurate data entry by reviewing a series of feature class reports and tabular printouts. This is routinely done throughout the project life to spot data issues. All hyperlink fields are tested for proper operation. Problems and data corrections are fed back through the GIS technical staff for assimilation into the geodatabase.

**Mobile Mapping Platform** - In addition to the work elements, the Consultant proposes to utilize GPS and GIS technology to facilitate ease of use of accumulated data for intersection sites, and to assist in utilizing the generated information in decision making processes. Mobile based mapping technologies will be utilized to facilitate field operations by making GIS project data layers available for Lee County staff and the CONSULTANT staff on iPhones, iPads and Android devices as well as standard internet web browsers, and will utilize secured logon and passwords to limit access to the web based mapping. The mobile mapping platform will utilize the same geodatabase as developed for the primary data input, thus avoiding duplicate data input and duplicate data management.

**Deliverables**

- A. GIS Database for ADA Transition

### III. Task III – Final ADA Transition Report/GIS Database

***I.IX. Final ADA Transition Report*** – The CONSULTANT will finalize and prepare the final ADA transition report, based on all comments from draft version provided as part of deliverables in Phase II of Scope of Services.

***I.X. Final GIS Database*** – The CONSULTANT will finalize and prepare the final GIS database electronic files, based on all comments from draft version provided as part of deliverables in Phase III of Scope of Services.

### IV. Task IV – Optional Design Services

Optional services may also include developing design plans and/or design details to correct deficiencies at high priority intersection(s) or roadway segment(s).

- To Be Negotiated at COUNTY discretion

EXHIBIT B

Date: November 30, 2012

COMPENSATION AND METHOD OF PAYMENT

For CN-12-15 ADA Transition Plan

Section 1. BASIC SERVICES/TASK(S)

The COUNTY shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
I	Project Area Determination/GIS Development	\$85,085.00	NTE	W.I.P.P.
II	Data Collection/GIS Database Implementation	\$152,430.00	NTE	W.I.P.P.
III	Final ADA Transition Report/GIS Database	\$12,220.00	NTE	W.I.P.P.
IV	Optional Design Services	\$0.00	NTE	W.I.P.P.
TOTAL		\$249,735.00	NTE	

(Unless list is continued on next page)

Section 2. ADDITIONAL SERVICES

The COUNTY shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the COUNTY shall be as set forth in Article 3.11 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated \_\_\_\_\_, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated \_\_\_\_\_, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".



ATTACHMENT NO. 1 TO EXHIBIT B

Date: November 30, 2012

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE \*\*\*

For CN-12-15 ADA Transition Plan

ATKINS NORTH AMERICA INC.

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Project Manager	\$55.93	2.95	\$165.00
Senior Engineer	\$45.76	2.95	\$135.00
Engineer	\$35.59	2.95	\$105.00
Field Staff/Designer	\$32.20	2.95	\$95.00
Clerical	\$22.03	2.95	\$65.00
GIS Specialist	\$32.20	2.95	\$95.00

\*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

\*\*NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative and overhead costs, and profit.

\*\*\*NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: November 30, 2012

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

for CN-12-15 ADA Transition Plan

ATKINS NORTH AMERICA INC.

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (or)	\$0.555/Mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals:	
Breakfast	\$ 9.00
Lunch	\$13.00
Dinner	\$24.00
In accordance with the GSA M&IE schedule for Travel utilizing the "Fort Myers, Florida" rates	
Reproduction (Photocopy) 8 ½" x 11"	\$0.15/Page
8 ½" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
<b>NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).</b>	
Administrative Services Fee – Applicable only when specifically authorized by the County, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

NOTE: N.T.E. indicates Not-To-Exceed

ATTACHMENT NO. 1 TO EXHIBIT B

Date: November 30, 2012

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE \*\*\*

For CN-12-15 ADA Transition Plan

David Douglas & Associates, Inc.

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Field Staff/Designer	\$32.20	2.95	\$95.00

\*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

\*\*NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative and overhead costs, and profit.

\*\*\*NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: November 30, 2012

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

for CN-12-15 ADA Transition Plan

David Douglas & Associates, Inc.

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (or)	\$0.555/Mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals:	
Breakfast	\$ 9.00
Lunch	\$13.00
Dinner	\$24.00
In accordance with the GSA M&IE schedule for Travel utilizing the "Fort Myers, Florida" rates	
Reproduction (Photocopy)   8 ½" x 11"	\$0.15/Page
8 ½" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
<b>NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).</b>	
Administrative Services Fee – Applicable only when specifically authorized by the County, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

NOTE: N.T.E. indicates Not-To-Exceed

ATTACHMENT NO. 1 TO EXHIBIT B

Date: November 30, 2012

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE \*\*\*

For CN-12-15 ADA Transition Plan

Johnson Engineering, Inc.

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Senior GIS Specialist	\$55.93	2.95	\$165.00
GIS Specialist	\$32.20	2.95	\$95.00

\*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

\*\*NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative and overhead costs, and profit.

\*\*\*NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: November 30, 2012

**NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS**

for CN-12-15 ADA Transition Plan

Johnson Engineering, Inc.

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (or)	\$0.555/Mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals: Breakfast Lunch Dinner	 \$ 9.00 \$13.00 \$24.00
In accordance with the GSA M&IE schedule for Travel utilizing the "Fort Myers, Florida" rates	
Reproduction (Photocopy)      8 ½" x 11"	\$0.15/Page
8 ½" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
<b>NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).</b>	
Administrative Services Fee – Applicable only when specifically authorized by the County, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: November 30, 2012

TIME AND SCHEDULE OF PERFORMANCE

For CN-12-15 ADA Transition Plan

This EXHIBIT C establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to Article 6.00 of this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
Task I	Project Area Determination/GIS Development	60 Days	60 Days
Task II	Data Collection/GIS Database Implementation	180 days	240Days
Task III	Final ADA Transition Report/GIS Database	30 days	270 Days
Task IV	Optional Design Services	0 Days	270 Days

EXHIBIT D

Date: November 30, 2012

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S)

For CN-12-15 ADA Transition Plan

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and works on this Project:

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Disadvantaged, Minority or Women Business Enterprise. (If Yes, Indicate Type)			Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
		Yes	No	Type	Yes	No
Task I – III	Johnson Engineering, Inc. 2122 Johnson Street Fort Myers, FL 33902		X			X
Task I & II	David Douglas & Associates 1821 Victoria Ave. Ft. Myers, Florida 33901		X			X

I



Date: November 30, 2012

PROJECT GUIDELINES AND CRITERIA

For CN-12-15 ADA Transition Plan

The COUNTY has established the following Guidelines, Criteria, Goals, Objectives, Constraints, Schedule, Budget and/or Requirements which shall serve as a guide to the CONSULTANT in performing the professional services and work to be provided pursuant to this Agreement:

(If none, enter the word "none" in the space below)

Item No. 1

- The Americans with Disabilities Act (ADA) of 1990, Title II
- LeeTran – Planned ADA improvement/Inspection List – Phases 1-4 (Attached)

EXHIBIT F

DATE: November 30, 2012

TRUTH IN NEGOTIATION CERTIFICATE

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the Lee County Board of County Commissioners for the project known as:

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Article 3.11.
2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth here-in-above.
3. The truth of statements made herein may be relied upon by the County and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the CONSULTANT, doing business as:

ATKINS NORTH AMERICA, INC.

*Nathan L West*

BY: Nathan L West

TITLE: Group Manager

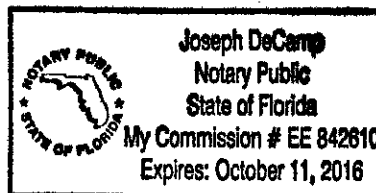
The foregoing instrument was signed and acknowledged before me this 11 day of Feb, 2013, by Nathan L West who has produced (Print or Type Name)

FLDLW230-032-75-136-0 as identification. (Type of Identification and Number)

*Joseph DeCamp*  
Notary Public Signature

Joseph DeCamp  
Printed Name of Notary Public

EE 842610 Oct 11, 2016  
Notary Commission Number/Expiration



CMO:  
00/00/00

EXHIBIT F

DATE: November 30, 2012

TRUTH IN NEGOTIATION CERTIFICATE

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the Lee County Board of County Commissioners for the project known as:

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

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3. The truth of statements made herein may be relied upon by the County and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the CONSULTANT, doing business as:

ATKINS NORTH AMERICA , INC.

\_\_\_\_\_

BY: \_\_\_\_\_

TITLE: Mark D. Mlcikas, PE, Vice President

The foregoing instrument was signed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ who has produced  
(Print or Type Name)  
\_\_\_\_\_ as identification.  
(Type of Identification and Number)

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Notary Commission Number/Expiration

CMO:  
00/00/00

Date: November 30.2012

AMENDMENT TO ARTICLES

For CN-12-15 ADA Transition Plan

For amending (i.e., changing, deleting from or adding to) the articles.

(NOTE: Each Article to be amended should be set forth and described in such a manner as to clearly indicate what the proposed changes, deletions or additions are with respect to the present Article provisions, and should set forth the wording of the Article resulting from the Amendment. The following identification system should be followed: Indicate additional (new) words or phrases by inserting the words in the text and then underline, (i.e., Months) and indicated words or phrases in the text to be deleted by striking over (i.e. ~~Weeks~~).

THE PROVISIONS HEREBY SUPERCEDE ANY PROVISIONS TO THE CONTRARY CONTAINED ELSEWHERE IN THE ARTICLES OR EXHIBITS.

AMENDMENT NO.

ARTICLE No. \_\_\_ is hereby amended as follows:

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

**Blue Sheet No. 20130196**

**1. ACTION REQUESTED/PURPOSE:**

- A) Award project B-130176 NEW PASS BRIDGE SEAWALL REPAIR (BRIDGE #120022) to the lowest responsive, responsible bidder meeting all bid requirements, Quality Industries USA, Inc. (a local vendor), in the amount of \$100,381.01 with a project completion of 120 calendar days.
- B) Authorize Chair to execute agreement upon receipt.
- C) Grant the Procurement Director the authority to act on behalf of the Board and proceed to the next qualified contractor in the event that the awarded contractor is unable to fully comply with the requirements of the solicitation or in the event of non-compliance.

**2. FUNDING SOURCE:**

Fund – Transportation Capital Improvement; Program – Major Maintenance; Project – Master Bridge.  
Funds are available in the FY 2012/13 Major Maintenance Program.

**3. WHAT ACTION ACCOMPLISHES:**

Provides a Contractor to repair the seawall at New Pass Bridge on Hickory Boulevard.

**4. MANAGEMENT RECOMMENDATION:** Approve.

**5. Departmental Category:** C12B

**6. Meeting Date:** 3/12/2013

**7. Agenda:**

Consent

**8. Requirement/Purpose:** (specify)

- Statute
- Ordinance
- Admin Code AC-4-4
- Other

**9. Request Initiated**

**Commissioner:**  
**Department:** TRANSPORTATION  
**Division:** Administration  
**By:** David Loveland

**10. Background:**

The Department of Transportation submitted a request to Procurement Management to obtain bids for the project known as New Pass Bridge Seawall Repair (Bridge #120022). This project was anticipated and funds were budgeted in the Master Bridge Project within the Major Maintenance Program.

On the bidding deadline of February 6, 2013, Procurement Management received three bids. The bids have been reviewed by the Department of Transportation and the projects' Consultant, HighSpans Engineering, Inc., and it is being recommended that award be made to the lowest responsive, responsible bidder meeting all bid requirements, Quality Enterprises USA, Inc. (a local vendor), in the amount of \$100,381.01. The scope of service includes removal and replacement of 54 linear feet of seawall on the northwest approach slab due to severe scour. 588 linear feet of sheet pile will be driven with tie back anchors, dead men, concrete caps, and rubble rip rap. This project is not related to any direct safety concerns.

This project was anticipated and included in the FY12/13 Major Maintenance Budget. Funds are available in the following account: 40571430700.503490

- Attachments: 1) Bid Tabulation Dated February 6, 2013  
2) Department Recommendation of Award  
3) Consultant Recommendation of Award  
4) Construction Contract

**11. Required Review:**

<i>David Loveland</i>	<i>Emma Wolf</i>	<i>Dawn Perry-Lehnert</i>	<i>Mike Figueroa</i>	<i>David Harris</i>	<i>Pam Keyes</i>
TRANSPORTATION	Budget Analyst	County Attorney	Risk	Budget Services	Public Works Director

**12. Commission Action:**



FORMAL QUOTATION #B-130176		LEE COUNTY, FLORIDA TABULATION SHEET			
OPENING DATE: February 6, 2013		FOR			
Lisa Crone		New Pass Bridge Seawall Repair			
VENDORS	Marine Contracting Group, Inc.**	Kelly Brothers**	QE Quality Enterprises		
TOTAL BID	\$241,939.00	\$225,911.02	\$100,381.01		
COPIES & CD	YES	YES	YES		
ADDENDA 1 & 2 ACKNOWLEDGED	YES	YES	YES		
SIGNED	YES	YES	YES		
BOND - 5,550.00	YES	YES	YES		
Schedule D	YES	YES	YES		
Local Bidder Preference Affidavit	N/A	YES	YES		
Immigration Affidavit	YES	YES	YES		
Contractor History	YES	YES	YES		
Contractor Qualification Quest.	YES	YES	YES		
NO BIDS					
**CORRECTED BID AMOUNT					

**M E M O R A N D U M**  
**FROM**  
**LEE COUNTY DEPARTMENT OF TRANSPORTATION**

DATE: 02-18-2013

TO: Procurement Management

FROM: Ehab Guirguis

**RE: RECOMMENDATION OF BID AWARD**

PROJECT NAME New Pass Bridge Seawall Repair

BID NO: B-130176 PROJECT MANAGER Ehab Guirguis,P.E.

A review by this office of the experience, qualifications and capabilities of Quality Enterprises USA Inc., the apparent low bidder indicates that said bidder, is qualified to construct this project and it is recommended that the Contract be awarded to the above said bidder for:

The total price of \$ 100,381.01.

If the total awarded Contract Price is to include alternate bid items indicate which "alternate bid items" are recommended to be included in the award and amounts.

<u>Alternate</u>	<u>Amount</u>
_____	_____
_____	_____
_____	_____

Funds are available/will be made available in account string number: Master Bridge

Account Narrative:

Any additional required information to be included on the Blue Sheet for award (ie; transfer of funds, budget amendment, etc.):

CMO:039  
9/25/01





February 13, 2013

Lisa H. Crone  
Procurement Analyst  
Division of Procurement Management  
1825 Hendry Street, 3rd Floor  
Ft. Myers, FL 33901

**Solicitation #: B-130176**

**Solicitation Name:** New Pass Bridge Seawall Repair

**Scope of Work:** Repair of seawall at New Pass Bridge on Estero Boulevard.

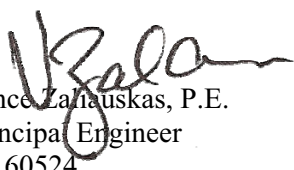
**Re: EOR Recommendation of Award**

Ms. Crone,

As Engineer of Record for the Project, I have reviewed the submitted Contractor Bids for B-130176, New Pass Seawall Repair. After review of the bids, HighSpans Engineering, Inc. recommends that the Contract be awarded to the Apparent Low Bidder, Quality Enterprises USA Inc.

If you have any questions, please contact this office.

Sincerely,  
HighSpans Engineering, Inc.  
CA 27559

  
Vince Zaluskas, P.E.  
Principal Engineer  
PE 60524

LEE COUNTY CONSTRUCTION CONTRACT  
AGREEMENT FORM

Contract No. \_\_\_\_\_  
Board Award Date: \_\_\_\_\_

AGREEMENT

made as of the \_\_\_\_ day of \_\_\_\_\_ in year of 2013, BETWEEN the COUNTY: Board of County Commissioners, Lee County, Florida  
and the CONTRACTOR:

Quality Industries USA, Inc.  
3894 Mannix Drive, Ste. 216  
Naples, FL 34114-5406  
Phone 239-435-7200

Check Appropriate Line:

Individual  
 Partnership  
 Incorporated  
State of \_\_\_\_\_

in consideration of the mutual covenants herein set forth, agree as follows:

ARTICLE 1. WORK

The CONTRACTOR shall perform all the Work required by the Contract Documents for the:

**NEW PASS BRIDGE SEA WALL REPAIR**

in full accordance with the drawings and as elaborated in the specifications.

PROJECT NAME: B-130176 NEW PASS BRIDGE SEA WALL REPAIR (BRIDGE #120022)

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 **One Hundred Thousand Three Hundred Eighty-One Dollars and 01 Cents (\$100,381.01)**.

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:

CSD:515(1 of 4):04/05/89  
REV:03/06/96

# CONSTRUCTION CONTRACT

3.1 Not later than fifteen (15) calendar days following the approval of an Application for payment, ninety percent (90%), or eighty five percent (85%) if the Public Payment & Performance Bond is waived, of the portion of the Contract Price properly allocable to labor, materials and equipment incorporated in the Work and ninety percent (90%), or eighty five percent (85%) if the Public Payment & Performance Bond is waived, of the portion of the Contract Price properly allocated to materials and equipment suitably stored at the site or at 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.

3.1.1 At the discretion of the project manager, department director and final authorization by the Public Works Director, once the project reaches 50% completion and the County is holding 5% of the total contract amount, no further retainage may be withheld from the subsequent monthly invoices, provided however, that the project is on schedule. At any time the project falls behind schedule, the County retains the exclusive right to revert back to the original contract terms, by withholding the full 10% retainage, until the project is back on schedule or the project is completed.

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

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 Conditions, Plans and Specifications and other Contract Documents, all of which are made a part hereof and enumerated as follows:

4.1 Lee County Request for Bids/Project Manual Titled: B-130176 New Pas Bridge Sea Wall Repair  
DATED: January, 2013

4.1.1 Contractors Bid Proposal Dated February 6, 2013, **ATTACHED AS EXHIBIT "A"**

4.2 Project Drawings consisting of the following sheets listed by title and date:

SHEET	DESCRIPTION	DATE
SW1-01	Key Sheet	10/12/12
SW1-02	General Notes	10/12/12
SW1-03	Plan	10/12/12
SW1-04	Details & Section	10/12/12
SW1-05	Notes & Details For Precast Concrete Piles	10/12/12
SW1-06	Precast Sheet Pile Type "A" – 10	10/12/12
SW1-07	Precast Concrete Sheet Pile Type "B"-Variable Angle Corner Pile	10/12/12
SW1-08	Rebar List	10/12/12

4.3 Public Payment & Performance Bond – **N/A**

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 Addenda, if any – Addendum One Dated January 28, 2013, Addendum Two Dated February 1, 2013

CSD:515(2 of 4):04/05/89  
REV:10/16/96

CONSTRUCTION CONTRACT  
ARTICLE 4. CONTRACT DOCUMENTS (Continued)

4.8 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 paragraph 5.6 of the General Conditions.

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 Bid Proposal.

5.3 Final completion shall be achieved not later than the number of days specified in the Bid Proposal.

Liquidated Damages:

5.4 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 delay (but not as a penalty) the sum of \$580.00\_ per day shall be deducted from monies due the CONTRACTOR or paid by the CONTRACTOR to the COUNTY for each calendar day that expires after the time specified for Substantial Completion and the project fails to reach Substantial Completion. The CONTRACTOR shall also be liable for any Actual Damages sustained by the COUNTY due to the CONTRACTOR'S failure to fully complete the work by the time agreed upon for Final Completion in the Contract Documents. Actual damages may include, but not be limited to: costs related to supervision, inspection, rentals, testing, consulting fees, or lost productivity. The COUNTY shall have the right to deduct all damages due from the final payment request as well as retainage. However, prior to deducting liquidated damages, the COUNTY shall give the CONTRACTOR seven (7) calendar days notice prior to submitting the adjusted amount due to the Clerk for payment. Further the CONTRACTOR shall be liable for any actual damages sustained by the COUNTY due to the CONTRACTOR'S failure to fully complete the work by the time agreed upon for final completion in the Contract Documents. Actual damages may include, but not be limited to, cost related to supervision, inspection, rentals, testing, consulting fees, or lost productivity.

ARTICLE 6. MISCELLANEOUS PROVISIONS

6.1 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, has been approved by the COUNTY.

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

6.3 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.

6.4 The CONTRACTOR shall not assign or transfer any of its rights, benefits, or obligations, except for transfer that result 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.

CONSTRUCTION CONTRACT

6.5 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.

In witness whereof, COUNTY and CONTRACTOR have signed this agreement in quadruple. One counterpart has been retained by the Clerk of the Board of County Commissioners, one to the Project Sponsoring Department, and one part each has been delivered to Lee County Contracts Management, and the CONTRACTOR. All portions of the Contract Document have been signed or identified by COUNTY and CONTRACTOR, or by COUNTY'S CONSULTANT on their behalf.

Signed, sealed, and delivered in the presence of:

\_\_\_\_\_  
\_\_\_\_\_  
Secretary

\_\_\_\_\_  
\_\_\_\_\_  
(Correct Name of Business)

BY: \_\_\_\_\_

(Corporate Seal)

Title \_\_\_\_\_

Date: \_\_\_\_\_

BOARD OF COUNTY COMMISSIONERS OF  
LEE COUNTY, FLORIDA

ATTEST: Clerk of the Board

BY: \_\_\_\_\_  
Chair

BY: \_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

APPROVED AS TO FORM

BY: \_\_\_\_\_  
Assistant County Attorney

SOLICITATION NO. B-130176

**ORIGINAL**  
*copy*  
*Exhibit "A"*

OFFICIAL BID FORM

FOR

**NEW PASS BRIDGE SEA WALL REPAIR (BRIDGE #120022)**

Bids are to be submitted in TRIPLICATE by  
3:00 P.M., **WEDNESDAY, February 6, 2013**, to:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY PROCUREMENT MANAGEMENT  
COUNTY/CITY ANNEX  
1825 HENDRY STREET, 3RD FL, FORT MYERS, FL 33901

or mail to:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY PROCUREMENT MANAGEMENT  
Post Office Box 398  
Fort Myers, FL 33902-0398

BID OPENING:

LEE COUNTY PROCUREMENT MANAGEMENT  
COUNTY/CITY ANNEX  
1825 HENDRY STREET, 3RD FL, FORT MYERS, FL 33901

**WEDNESDAY, FEBRUARY 6, 2013**

3:00 P.M.

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA

BIDDER: Quality Enterprises USA, Inc.  
Individual or Firm Name

REV:04/21/93

CC-1 ADDENDUM ONE DATED January 28, 2013

OFFICIAL BID FORM

DATE: February 6, 2013

TIME: 3:00 p.m.

Lee County Procurement Management  
Board of County Commissioners  
P O Box 398  
Ft Myers Florida 33902-0398

Gentlemen:

1. The Undersigned, hereinafter called "BIDDER", having visited the site of the proposed project and having become familiar with the local conditions, nature and extent of the work, and having examined carefully the Agreement Form, General Conditions, Supplementary Conditions, Plans and Specifications and other Contract Documents, and having fulfilled their requirements as well as the Bonding requirements herein, proposes to furnish all labor, materials, equipment and other items, facilities and services for the proper execution and completion of the:

**NEW PASS BRIDGE SEA WALL REPAIR (BRIDGE #120022)**

in full accordance with the drawings and specifications prepared in accordance with your Advertisement for Bids, Instructions to Bidders, Construction Contract and all other documents related thereto on file in Procurement Management, and if awarded the contract, to complete the said work within the time limits specified for the following proposal price:

**SEE PAGE CC2-A**

NOTE: If applicable, insert additional sheets of Alternates or Schedule of Unit Prices.

2. There is enclosed a Certified Check, Cashier's Check or Proposal Security (paper or electronic format) in the amount of not less than (Written in words & numbers) of the Total Amount Bid (including Alternate(s) if applicable) payable to the Lee County Board of County Commissioners as a guarantee for the purpose set out in the Instruction to Bidders.

3. The BIDDER hereby agrees that:

(a) The above proposal shall remain in full force and effect for a period of 90 calendar days after the time of the opening of this proposal and it shall not be revoked, withdrawn or canceled within that time frame. Once the bidder has been notified that his bid has been awarded by the Board of County Commissioners, within the above time frame the price proposed as submitted shall constitute the contract price which shall be executed within the time frames established by these documents.

**BID SCHEDULE**

**NEW PASS BRIDGE SEAWALL REPAIR (BRIDGE #120022)**

Bid No: B-130176

Contractor: Quality Enterprises USA, Inc.

Seawall Partial Replacement - Quantities		UNIT	QTY	Unit Price	Cost
0455 14 3	Conc Sheet Piling 10" x 30" (Type A)	LF	532	\$101.11	\$53,790.52
0455 14 3	Conc Sheet Piling 10" x 30" (Type B)	LF	56	\$211.45	\$11,841.20
0400 4	Class IV Concrete (with silica fume) (Cap)	CY	8	\$463.13	\$3,705.04
0400 4	Class IV Concrete (with calcium nitrite) (Dead Men)	CY	2.5	\$1,905.80	\$4,764.50
415 1 3	Reinforcing Steel (Bulkhead and and tie back rod)	LB	1800	\$2.14	\$3,852.00
120	Excavation and Backfill	CY	205	\$13.00	\$2,665.00
530 3	Rubble Rip Rap (Rubble Bank and Shore)	TN	141	\$37.62	\$5,304.42
530 74	Bedding Stone	TN	42	\$49.59	\$2,082.78
	Maintenance of Traffic	LS	1	\$1,950.00	\$1,950.00
	Erosion Control	LS	1	\$1,300.00	\$1,300.00
	Contingency (10%)	LS	1	\$9,125.55	\$9,125.55
<b>Total Estimated Cost:</b>					<b>\$100,381.01</b>



(b) In the event the award is made to this BIDDER, the BIDDER will enter into a formal written agreement with the COUNTY in accordance with the accepted proposal, will execute the contract contained within these documents, and if required provide a Public Payment & Performance Bond from a Surety in good standing with the Florida Department of State who is licensed to do business in Florida and acceptable to the COUNTY. The Public Payment & Performance Bond shall be in the amount of one hundred percent (100%) of the accepted proposal. The BIDDER shall, within seven (7) calendar days of the Notice of Award, submit the required Certificates of Insurance. The BIDDER further agrees that in the event of the BIDDER'S default or breach of any of the agreements of this proposal, the bid deposit shall be forfeited.

4. Acknowledgment is hereby made of receipt of the following Addenda issued during the bidding period.

Addendum No. 1 Dated 1/28/13 Addendum No. 2 Dated 2/1/13

Addendum No.     Dated            Addendum No.     Dated           

5. If awarded this construction contract, the BIDDER agrees to complete the work covered by this contract as follows:

(a) Substantial completion in 90 consecutive calendar days from date of Official Notice to Proceed.

(b) Final completion in 120 consecutive calendar days from the date of official Notice to Proceed.

(c) Both the COUNTY and CONTRACTOR recognize that the liquidated damages reflect a good faith estimate and that the injury to COUNTY which could result from a failure of CONTRACTOR to complete on schedule is uncertain and cannot be computed exactly. In no way shall costs for liquidated damages be construed as a penalty on the CONTRACTOR.

6. Neither the undersigned nor any other person, firm or corporation named herein, nor anyone else to the knowledge of the undersigned, have themselves solicited or employed anyone else to solicit favorable action for this proposal by the COUNTY, also that no head of any department or employee therein, or any officer of Lee County, Florida is directly interested therein.

This proposal is genuine and not collusive or a sham; the person, firm or corporation named herein has not colluded, conspired, connived or agreed directly or indirectly with any bidder or person, firm or corporation, to put in a sham proposal, or that such other person, firm or corporation, shall refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the unit prices of said proposal or proposals of any other bidder, or to secure any advantage against the COUNTY or any person, firm or corporation interested in the proposed contract; all statements contained in the proposal or proposals described above are true; and further, neither the undersigned, nor the person, firm or corporation named herein, has directly or indirectly submitted said proposal or the contents thereto, to any association or to any member or agent thereof.

7. The below signed BIDDER agrees to comply with all applicable provisions as set forth in the Anti-Discrimination requirements included as part of the General Conditions of this documents. The BIDDER further agrees to hold harmless, defend and indemnify the COUNTY and its agents for any losses including attorney's fees, incurred as a result of its failure to abide by the applicable Anti-Discrimination laws.

Howard J. Murrell, Jr.  
(Name of License Holder)  
Collier County - 001263  
Lee County - 0804472  
(Occupational No.)  
(Specify Jurisdiction)

CBCA57231  
(State Certificate No.)  
(Lee County Competency No.)  
(State Registration No.)

In witness whereof, the BIDDER has hereunto set his signature and

affixed his seal this 6th day of February, A.D., 2013.

ATTEST: [Signature] (SEAL)  
Stacey L. Murrell, Secretary

By: Printed Louis J. Gaudio

By: Signature [Signature]

TITLE: Vice President

Quality Enterprises USA, Inc.  
Company Name

Louis J. Gaudio  
Contact Person

3894 Mannix Drive, Suite 216  
Mailing Address

239-435-7200  
Phone Number

Naples, Florida 34114-5406  
City, State, and Zip

239-435-7202  
Fax Number

Incorporated in the State of Virginia

SOLICITATION NO.: B-130176

BID BOND

Complete EITHER Section 1, Lee County Paper Bid Bond, OR Section 2, Lee County Electronic Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we

Quality Enterprises USA, Inc. as Principal, and  
(BIDDER'S Name)

Fidelity and Deposit Company of Maryland a Corporation licensed to do  
(Surety's Name)

business under the laws of the State of Florida as a Surety, are held and firmly bound unto LEE COUNTY BOARD OF COUNTY COMMISSIONERS, LEE COUNTY, FLORIDA, a Political Subdivision of the State of Florida,

in the SUM OF FIVE THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$5,550.00)

for the payment whereof, well and truly to be made, we bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, firmly, by these presents.

SIGNED AND SEALED this 30th day of January 2013

WHEREAS, said Principal is herewith submitting a Proposal for the construction of:

**NEW PASS BRIDGE SEA WALL REPAIR**

NOW, THEREFORE, the condition of the above obligation is such that if said Principal shall be awarded the Contract upon said Proposal within the specified time and shall enter into a written Contract, satisfactory in form, provide an acceptable Public Payment & Performance Bond from a Surety acceptable to the COUNTY and provide other Insurance as may be required to the COUNTY within seven (7) calendar days after the written Notice of Award date, or within such extended period as the COUNTY may grant, then this obligation shall be null and void; otherwise said Principal and Surety shall pay to said COUNTY in money the difference between the amount of the Bid of said Principal and the amount for which said COUNTY may legally contract with another party to perform said work, if the latter amount be in excess of the former, together with any expenses and reasonable attorney's fees incurred by said COUNTY if suit be brought hereon, but in no event shall said Surety's liability exceed the penal sum hereof plus such expenses and attorney's fees. For purposes of unsuccessful bid protests filed by the Principal herein, this obligation shall bind the Surety to pay costs and damages associated with the bid protest or delays to the project upon a finding from the Board of County Commissioners for Lee County that the bid protest was frivolous and/or lacked merit. The liability of the Surety shall not exceed the penal sum of the bid bond.

Witness as to Principal:

Marcie Cohen  
(By) Marcie Cohen

Quality Enterprises USA, Inc.

Howard J. Murrell (SEAL)  
(Principal) Howard J. Murrell  
President

Witness as to Surety:

Terri K. Strawhand  
Terri K. Strawhand

Fidelity and Deposit Company of Maryland (SEAL)

(Surety's Name)  
Tammy A. Ward  
(By-As Attorney-in-Fact, Surety)  
Tammy A. Ward

Affix Corporate Seals and attach proper Power of Attorney for Surety.

CMO:001  
REV:09/18/00

**EXTRACT FROM BY-LAWS OF THE COMPANIES**

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

**CERTIFICATE**

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 20th day of January, 2013.



*Geoffrey Delisio*

Geoffrey Delisio, Vice President

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

**Blue Sheet No. 20130206**

**1. ACTION REQUESTED/PURPOSE:**

Request Board approves disbursements. The check and wire registers can now be viewed on the Clerk's website, www.leeclerk.org by accessing the BoCC Minutes and Documents link.

**2. FUNDING SOURCE:**

N/A.

**3. WHAT ACTION ACCOMPLISHES:**

Florida Statute Chapter 136.06(1) requires that all County disbursements be recorded in the Minutes of the Board.

**4. MANAGEMENT RECOMMENDATION:** Compliance with the requirements of FS 136.06(1).

**5. Departmental Category:** C16A

**6. Meeting Date:** 3/12/2013

**7. Agenda:**

Consent

**8. Requirement/Purpose: (specify)**

- Statute 136.06(1)
- Ordinance
- Admin Code
- Other

**9. Request Initiated**

**Commissioner:** All

**Department:** CONSTITUTIONAL OFFICERS

**Division:** Clerk of Courts

**By:** Terry Mallow

**10. Background:**

**11. Required Review:**

<i>Terry Mallow</i>					
FINANCE					

**12. Commission Action:**

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

Blue Sheet No. 20130206

**1. ACTION REQUESTED/PURPOSE:**

Request Board approves disbursements. The check and wire registers can now be viewed on the Clerk's website, [www.leeclerk.org](http://www.leeclerk.org) by accessing the BoCC Minutes and Documents link.

**2. FUNDING SOURCE:** N/A

**3. WHAT ACTION ACCOMPLISHES:**

Florida Statute Chapter 136.06(1) requires that all County disbursements be recorded in the Minutes of the Board

**4. MANAGEMENT RECOMMENDATION:**

Compliance with the requirements of FS 136.06(1)

**5. Departmental Category:**

CIGA

**6. Meeting Date:** 03/12/2013

**7. Agenda:**

- Consent
- Administrative
- Appeals
- Public
- Walk-On

**8. Requirement/Purpose: (specify)**

- Statute 136.06 (1)
- Ordinance
- Admin. Code
- Other

**9. Request Initiated:**

- Commissioner:** All
- Department:** Constitutional Officers
- Division:** Clerk of Courts
- By:** Terry Mallow

**10. Background:**

**11. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<u>TSN</u>									

**12. Commission Action:**

- Approved
- Deferred
- Denied
- Other

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

**Blue Sheet No. 20130207**

**1. ACTION REQUESTED/PURPOSE:**

Approve the Minutes for the following meetings of the Board of County Commissioners held during the week of February 25 thru March 1, 2013: February 26, 2013 (Regular).

**2. FUNDING SOURCE:**

N/A.

**3. WHAT ACTION ACCOMPLISHES:**

Approval of the Board Minutes, pursuant to Florida Statute 286.011.

**4. MANAGEMENT RECOMMENDATION:** Approve.

**5. Departmental Category:** C16B

**6. Meeting Date:** 3/12/2013

**7. Agenda:**

Consent

**8. Requirement/Purpose: (specify)**

- Statute 286.011
- Ordinance
- Admin Code
- Other

**9. Request Initiated**

**Commissioner:** All  
**Department:** CONSTITUTIONAL OFFICERS  
**Division:** Clerk of Courts  
**By:** Lisa L. Pierce

**10. Background:**

The summary of each of the above Minutes were provided to the Board members sitting at those meetings within one week of the meeting. Any comments from the Commissioners were taken into consideration in the development of the final minutes now presented for approval.

Attached is a listing of all documents that have not been received as of the date the Blue Sheet approval request was submitted for the Agenda.

**11. Required Review:**

<i>Lisa L. Pierce</i>					
MINUTES					

**12. Commission Action:**

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

Blue Sheet No. 20130207

**1. ACTION REQUESTED/PURPOSE:**

Approve the Minutes for the following meetings of the Board of County Commissioners held during the week of February 25 thru March 1, 2013

February 26, 2013 (Regular)

**2. FUNDING SOURCE:**

Not Applicable.

**3. WHAT ACTION ACCOMPLISHES:**

Approval of the Board Minutes, pursuant to Florida Statute 286.011

**4. MANAGEMENT RECOMMENDATION:**

Approve.

**5. Departmental Category:**

C16B

**6. Meeting Date:**

3/12/2013

**7. Agenda:**

- Consent
- Administrative
- Appeals
- Public
- Walk-On

**8. Requirement/Purpose:  
(specify)**

- Statute
- Ordinance
- Admin.
- Code
- Other

**9. Request Initiated:**

Commissioner \_\_\_\_\_  
 Department Minutes Office  
 Division \_\_\_\_\_  
 By: Lisa L. Pierce,  
 Minutes Office Manager

**10. Background:**

The summary of each of the above Minutes were provided to the Board members sitting at those meetings within one week of the meeting. Any comments from the Commissioners were taken into consideration in the development of the final minutes now presented for approval.

Attached is a listing of all documents that have not been received as of the date the Blue Sheet approval request was submitted for the Agenda.

**11. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<u>Lisa L. Pierce</u>									

**12. Commission Action:**

- Approved
- Deferred
- Denied
- Other



**REGULAR MEETING NEEDS LIST - February 26, 2013**

<b>ITEM NO.</b>	<b>BLUE SHEET</b>	<b>DESCRIPTION</b>	<b>COPY</b>	<b>ORIGINAL</b>	<b>SCAN</b>
C1a	20130143	PSA-VOX International, Inc.			
C5b	20130160	Easement Purch.Agr-Abraham			
C6a	20130135	RESO 13-02-19 1. Grant Agr./Bob Janes Triage-\$750,000.00; 2. Subrecipient Agr/Salvation Army 3. Subrecipient Agr/Lee Mental Health Cen. 4. Subrecipient Agr/Lee Memorial Health Sys.		02/28/13 mw	mw
C7b	20130161	5 <sup>th</sup> Amend. To Lease Agr-Senator.Bill Nelson (4 Originals)			
C7c	20130167	RESO 13-02-20-Budget.Amend-Fund14800-\$642,818.00			
C9a	20130153	Designation Agreement-John Yarborough Linear Park			
C12b	20130106	1. Constr.Agr.-Hannula Landscape & Irrig.Inc. 2. Public Payment & Performance Bond			
A3b	20130140	1.RESO.13-02-21-Budget Amend-Fund 30112-\$2,200,000; 2.Transfer of Funds--Fund #17401-2,200,000 3.Const.Mgr.Agr/Manhattan Twins Joint Venture			
9:30PH2	20130157	ORDINANCE NO.13-04-Mann/Kiker, called and carried.			

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

**Blue Sheet No. 20130202**

**1. ACTION REQUESTED/PURPOSE:**

Approve selection of underwriters Bank of America/Merrill Lynch and RBC Capital Markets for the Tourist Development Revenue Bonds, Series 2013 (Minnesota Twins).

**2. FUNDING SOURCE:**

Fees Paid from Bond Proceeds – Issuance Costs.

**3. WHAT ACTION ACCOMPLISHES:**

Provides underwriter selection for the Tourist Development Revenue Bonds, Series 2013 (Minnesota Twins).

**4. MANAGEMENT RECOMMENDATION:** Approval.

**5. Departmental Category:** A1A

**6. Meeting Date:** 3/12/2013

**7. Agenda:**

Administrative

**8. Requirement/Purpose: (specify)**

- Statute
- Ordinance
- Admin Code
- Other

**9. Request Initiated**

**Commissioner:**  
**Department:** COUNTY MANAGER  
**Division:** Budget Services  
**By:** Peter Winton

**10. Background:**

On November 6, 2012, the Board of County Commissioners approved the execution of a Development Agreement and Lease for thirty years with the Minnesota Twins and approved initiating a Request for Proposal (RFP) for design and construction management (Blue Sheet 20120979). In conjunction with the Development Agreement and Lease, the County will make improvements to the Lee County Sports Complex. The majority of the funds will come from the issuance of bonds.

On January 8, 2013, the Board of County Commissioners approved Blue Sheet 20121096 which authorized the Administration to proceed with the process for eventual issuance of the Tourist Development Revenue Bonds, Series 2013 (Minnesota Twins).

On February 1, 2013, Dunlap and Associates, Inc. the County’s Financial Advisor issued a Request for Proposal for the Tourist Development Revenue Bonds, Series 2013 (Minnesota Twins). A public notice was also placed in the News-Press. Responses from fourteen (14) underwriters were received on February 21, 2013.

The Bond Selection Committee (Finance Director-Clerk of Circuit Court, Fiscal Analyst from Budget Services, Acting Assistant County Manager) along with the Financial Advisor reviewed the Request for Proposals on February 27, 2013. Also in attendance were an Accountant from the General Accounting Office, Budget Services Manager, Principal Management Analyst from Budget Services and Interim County Attorney.

The following recommendations regarding the underwriters to market the Series 2013 Bonds:

UNDERWRITER

ALLOCATION

Bank of America/Merrill Lynch (Co-Senior Book Running Manager)	50%
RBC Capital Markets (Co-Senior Manager)	50%

**11. Required Review:**

<i>Peter Winton</i>	<i>Emma Wolf</i>	<i>Jim Lewin</i>	<i>Robert Franceschini</i>	<i>David Harris</i>	<i>Andrea Fraser</i>
COUNTY MANAGER	Budget Analyst	Fiscal	Purchasing	Budget Services	County Attorney
<i>Peter Winton</i>					
County Manager					

**12. Commission Action:**

## **Background continued**

Page 2

The County received responses from a variety of capable underwriters. The attached “Underwriter Proposals – Notes” prepared by Dunlap & Associates, Inc. highlight fifteen factors to which each respondent submitted comments. One of the important factors analyzed was the number and type of tourist tax credits to which the underwriter has been a Senior Manager. Since all respondents received the funding model for baseball debt, responses which focused upon innovative financing ideas was also important.

A matrix was also prepared by Dunlap & Associates, Inc. which detailed the proposed costs, recommendations for the inclusion of a debt service reserve and the “all-in” true interest. The “all-in” true interest cost is a representation of the projected interest rate including the sale of the bonds and the costs of issuance.

Bank of America/Merrill Lynch had one of the lowest proposed cost figures of \$2.927 per \$1,000 of bonds issued. Their all-in true interest cost was 4.04%.

There was discussion regarding historical capability to finance a tourist tax related debt financing. In 2010, Bank of America/Merrill Lynch was selected as Senior Manager (along with two co-managers) to oversee the sale of the Tourist Development Tax Revenue Bonds, Series 2010A, 2010B and 2010C for the construction of jetBlue Park. The bonds were closed on October 6, 2010 with an All-In True Interest Cost of 3.67%. Given the successful closing in 2010 for the same credit (tourist tax) as the 2013 issue, it was decided to again select Bank of America/Merrill Lynch.

During the course of developing the modeling, RBC Capital Markets worked closely with the County and the Minnesota Twins in integrating the debt service on the existing Hammond Stadium, the debt service for jetBlue Park, internal loans and other non-tourist tax revenue sources (state grant, lease and rental payments) with the proposed Series 2013 bond issue to fashion a financing model. RBC Capital Markets has a keen understanding of the financing structure.

Therefore, it was decided to include RBC Capital Markets as a co-senior manager thereby combining two underwriters talents – one who has had a proven success record for selling Lee County bonds with a tourist tax credit and the other that thoroughly understands the financing structure of this particular credit.

A matrix detailing the responses of the underwriters and the “Underwriters Proposals Notes” – both prepared by Dunlap & Associates are attached as backup to this agenda item.

The Bond Counsel is Nabors, Giblin & Nickerson PA and the Disclosure Counsel is Bryant Miller & Olive PA both of which were selected by the County Attorney.

## Lee County - Tourist Tax Bonds - Underwriting Proposals Summary

Firm	Mgmt Fee	Average Takedown	Expenses (1)	Total	Recommendation	All-In True Interest Cost
<b>BofA/Merrill Lynch (Structured as RFP)</b>	\$0.000	\$2.500	\$0.427	\$2.927	DSRF	4.04%
<b>Citi (Structured as RFP)</b>	\$0.00	\$1.50	\$0.59	\$2.09	DSRF	4.10%
<b>Fifth Third - (Request Co-Manager - fee would match Senior) - Structured as RFP</b>	\$0.00	\$3.42	\$0.49	\$3.91	DSRF	N/A
<b>Gardnyr Michael (request Co-Manager - fee would match Senior) Surety to 2042</b>	\$0.00	\$0.00	\$0.00	\$0.00	Surety	3.520%
<b>DSRF to 2042</b>	\$0.00	\$0.00	\$0.00	\$0.00		3.427%
<b>Jefferies (Growing Fund Balance instead of Level)</b>	\$0.00	\$4.86	\$0.54	\$5.40	DSRF	4.203%
<b>Jefferies (As Per RFP)</b>	\$0.00	\$3.15	\$0.30	\$3.46	DSRF	4.216%
<b>JP Morgan (Structured as RFP)</b>	\$0.00	\$2.46	\$0.54	\$3.00	DSRF	4.21%
<b>Loop and Goldman (Structured as RFP)</b>	\$0.00	\$2.50	\$0.63	\$3.13	DSRF	4.25%
<b>Structured for Close to 1.00x Coverage</b>						4.33%
<b>Morgan Stanley (Structured as RFP)</b>	\$0.00	\$3.00	\$0.75	\$3.75	DSRF	4.271%
<b>Raymond James (Lower Fund Balance)</b>	\$0.00	\$3.61	\$0.30	\$3.91	DSRF	3.756%
<b>Raymond James (Structured as RFP)</b>	\$0.00	\$3.89	\$0.00	\$3.89	DSRF	4.168%
<b>RBC (Structured as RFP)</b>	\$0.00	\$3.64	\$0.52	\$4.16	DSRF	4.153%
<b>Southwest Securities (No DSRF)</b>	\$0.00	\$3.92	\$0.57	\$4.49	No DSRF	4.207%
<b>Southwest Securities (DSRF)</b>	\$0.00	\$3.94	\$0.51	\$4.45		4.176%
<b>Stifel Nicolaus (Structured as RFP)</b>	\$0.00	\$4.86	\$0.52	\$5.38	DSRF	4.631%
<b>SunTrust</b>	\$0.00	\$4.84	\$0.00	\$4.84	DSRF and Bond Insurance	4.000%
<b>Wells Fargo (Structured as RFP)</b>	\$0.00	\$4.52	\$0.55	\$5.07	DSRF	4.01%

(1) Subject to change based upon par amount

Definition :  
DSRF - Debt Service Reserve Fund

\*\*Summary sheet is intended as an outline and should not be assumed that all conditions of the proposals are detailed.

Lee County, Florida  
Underwriter Proposals Notes – Tourist Tax

**Review Points**

1. Firm History
2. Joint Venture and Any Lobbying or Finder's Fee Arrangements
3. Team Members and Experience
4. Firm and Individual National Experience
5. Credit Enhancement Providers and any Innovative Structures
6. Florida Related Experience and Innovative Structures
7. Three references from similar transactions
8. Alternative Financing Structures
9. Distribution Capabilities in Florida and the Southeastern United States.
10. Underwriter Counsel Firms
11. Identify likely Purchasers of the Bonds and the General Percentage or Breakdown
12. Additional Information
13. Statement of Assurance Not Presently in Violation of Any Statutes or Regulatory Rules
14. Recommendation
15. Litigation

**Summary/Notes**

**Bank of America – Merrill Lynch**

1. Bank of America acquired Merrill Lynch in January 2009 – 17,500 financial advisors – Merrill Lynch founded in 1958 – Merrill Lynch Wealth, US Trust, Bank of America and Bank of America Merrill Lynch are affiliates of Bank of America Corporation
2. No joint venture
3. Coleman Cordell – 30 years of experience  
Jose Pagan – 26 years of experience  
Dave Anderson – 30 years of experience – Underwriting  
Others listed
4. From January 2010 – Senior Manager - 10 issues – Tourist/Stadium
5. Discussed Assured and Build America Mutual – insurance may be beneficial if investors request
6. From January 2010 – Senior Manager - 6 issues – Tourist/Stadium
7. Polk County, City of Orlando and Sarasota County
8. Timing - Par Coupon Structure – Savings Structure
9. 704 retail offices nationally – 128 Florida offices – 2 offices Lee County – 17,500 professionals nationally – 1,359 professionals in Florida – 16 professionals in Lee County
10. Foley & Lardner and Gray Robinson
11. Target existing bondholders or previous buyers (10% Insurance, 5% Other, 45% Retail and 40% Bond Funds)
12. Largest employer among all financial institutions in Lee County – #1 Senior Manager of municipal bonds on negotiated bases nationally and Florida for 2012 – Experience with Lee County Tourist Tax issuances – listed City of Bradenton's McKechnie Field, City of Miami's Marlin's Stadium as experience
13. No violations that may impact these financings

Lee County, Florida  
Underwriter Proposals Notes – Tourist Tax

14. Tourist - DSRF
15. Provided website

**Citigroup**

1. Founded in 1873 from mergers of several companies – Citi Global Markets is a subsidiary of Citigroup, Inc. – located in over 100 countries and has over 260,000 employees - #1 Underwriter nationally
2. Will distribute municipal securities to retail investors Morgan Stanley Smith Barney – Citi will compensate MSSB
3. Michael Hole – 27 years of experience  
Joshua Krivisky – Doesn't state  
Marc Livolsi – Underwriting  
Al Dopking – Underwriting
4. From January 1998 - 43 issues – Tourist/Stadium
5. Doesn't feel bond insurance is beneficial
6. From January 1998 - 11 issues – Tourist/Stadium
7. City of West Palm Beach, Peace River Manasota Regional Water Supply Authority, Florida Keys Aqueduct Authority, Ernest N. Morial Convention Center, Washington State Convention Center and Georgia World Congress Center
8. Nothing for Tourist
9. Nationally – 645 offices – 15,187 professionals – Southeast – 148 offices – 2,619 professionals – Florida – 58 offices – 1,353 professionals – Fort Myers/Naples – 4 offices – 29 professionals – Per Greenwich Associates – Citi ranked #1 in various categories
10. Bryant Miller Olive, Greenberg Traurig and Greenspoon Marder
11. 25% retail – 45% Bond Funds – 30% Insurance Companies
12. Experience with rating agencies and distribution capabilities – listed Amway Center (Orlando), Tampa Bay Arena and Raymond James Stadium as stadium experience
13. No violations that may impact these financings
14. Tourist – Discussed that the underlying rating would probably would benefit from a DSRF and that the Additional Bonds Test is appropriate and would allow the County to secure the lowest cost of funds
15. Listed ligation

**Fifth Third**

1. Fifth Third Securities is a subsidiary of Fifth Third Bancorp – Fifth Third Bancorp merge in The Ohio Company in 1998 – Public finance and Institutional sales office in 9 states – 15 financial centers in Lee County and employees 186 people
2. No joint venture – Responded as Co-Manager
3. David Byrne – 13 years of experience  
Brad Garret – 13 years of experience  
Bill Terlesky – 14 years of experience - Underwriting  
Others listed
4. From January 2006 – Senior Manager

Lee County, Florida  
Underwriter Proposals Notes – Tourist Tax

0 issues – Tourist/Stadium

5. Discussed relationship with rating agencies and insurers
6. From January 2006 – Senior Manager 0 issues – Tourist/Stadium
7. Polk City, City of Tampa, Seminole County, City of Daytona Beach and Metropolitan Government of Nashville and Davidson County TX
8. Shorten final maturity on Tourist and no DSRF
9. Would focus on retail and discussed ability for market bonds
10. GrayRobinson and Greenberg Traurig
11. 20% Retail, 25% Investment Advisors, 25% Insurance Companies, 25% Bond Funds and 5% Others
12. Ability to place market and place bonds
13. Provided website
14. Tourist – DSRF – does not provide additional detail
15. Listed litigation

**Gardnyr Michael**

1. Founded in 1991 – considers itself a boutique investment banking firm
2. No joint venture – Responded as Co-Manager
3. Pfil Hunt – 26 years of experience  
James Pietkiewicz – 28 years of experience – Underwriting  
Michael Stewart – 26 years of experience  
Others listed
4. From January 2009 – Doesn't state if Senior Manager - 5 issues – Tourist/Stadium
5. Discussed relationship with credit agencies and insurers
6. From January 2009 – Doesn't state if Senior Manager - 5 issues – Tourist/Stadium
7. City of Cocoa, City of Auburndale and FSU Financial Assistance Inc.
8. No alternative –responding as Co-Manager
9. Discussed types of investors
10. Akerman Senterfitt and Greenberg Traurig
11. 80% Institutional and 20% Retail
12. No additional information – Co-Manager – listed FSU as stadium type experience
13. No violations that would impact their duties
14. Tourist – Surety (scenarios used financial maturity of 2042)
15. No litigation in the last 3 years relating to any regulatory agency rules – listed one item which was settled

**Jefferies**

1. Provided service for 50 years – 13 offices nationally with 95 professionals – 2 Florida offices with 6 professionals
2. No joint venture
3. David Abrams – 27 years of experience  
Rawn Williams – 21 years of experience  
Patti Grant Wilkinson – 25 years of experience

Lee County, Florida  
Underwriter Proposals Notes – Tourist Tax

Jim McGinley – 20 years of experience – Underwriting  
Others listed

4. Listed experience (no count) – listed Abrams' experience – Tourist/Stadium
5. Discussed new firm Build America Mutual – listed rating for firms
6. Information provided included Abrams and Williams experience with Jefferies and other firms (JEA, OUC, Florida Panthers Stadium (others listed))
7. Tourist – Miami-Dade County, City of Jacksonville and Harris County – Houston Sports Authority
8. Line of Credit  
Commercial Paper  
Shorter Call Features
9. 17 municipal sales specialist with an average of 22 years of experience – 73 professionals with direct access to retail
10. Foley Lardner and Greenburg Traurig
11. Detailed who current holds majority of each credit's bonds and would target those investor
12. Jefferies received the 2012 Northeast Bond Buyer Deal of the Year – bankers have experience with Marlins Stadium and Florida Panthers Hockey Club stadium
13. No violations that would impact their duties
14. Tourist – Restructure and not have a level ending fund balance
15. Provided website

**JP Morgan**

1. Founded in 1891 – serves 4,000 issuers globally – 118 bankers based in 14 offices – 29 professionals dedicated to primary and secondary markets – 15 professionals dedicated to institutional sales
2. No joint ventures
3. T.J. Whitehouse – 13 years of experience  
Tim Williams – 15 years of experience  
Peter Clark – 37 years of experience – Underwriting  
Others listed
4. Since January 2008 - 22 issues – Tourist/Stadium
5. Insurance probably not a benefit – discussed Assured and Build America Mutual
6. Since 2011 - 2 issues – Tourist/Stadium
7. Osceola County, Palm Beach County and District of Columbia Water and Sewer Authority
8. Delay Draw Term Loan – Would relate to Transportation  
Floating Rate Notes  
Forward Delivery
9. 14 Florida offices – 184 national offices – 20,597 retail professionals through UBS, Charles Swab, Chase Investment Services and JPM firms
10. Gray Robinson and Greenberg Traurig
11. Contact current bondholders and Florida Funds – expects retail buyers in the first 10 years



Lee County, Florida  
Underwriter Proposals Notes – Tourist Tax

12. Ranked #1 in 2012 for Senior Manager on all municipal bonds and notes issuance – pre and post financing expertise – listed Marion County Convention and Recreation Facility as stadium type experience
13. No violations that would impact their duties
14. Tourist – DSRF – but suggested No DSRF or Forward Delivery for a portion of the project – this option could reduce the negative arbitrage on the project funds but investors may require a pricing premium which could offset the benefits of this type of funding
15. Listed litigation

**Loop Capital and Goldman Sachs**

1. Goldman – Founded in 1927 – 70 offices located in 30 countries – 32,000 professionals – 13 institutional sales professionals  
Loop - Founded in 1997 – 170 employees – 22 offices – 41 public finance investment professionals
2. Joint with Goldman and Loop as the only managers – if other firms are included they request to resubmit their proposal
3. Goldman  
Greg Carey – 29 years of experience  
David Levy - Doesn't state years of experience  
Ed Drosch – 26 years of experience – Underwriting  
Others listed  
  
Loop  
Kimberly Mitchell – 19 years of experience  
Bill Sadowski – 35 years of experience  
Others listed
4. Goldman - From January 2009 – Senior Manager  
12 issues – Tourist/Stadium  
Loop - From January 1997 – Doesn't State Senior  
81 issues – Tourist/Stadium
5. Discussed experience with bond insurers and credit agencies
6. Goldman - From January 1997 – Senior Manager  
4 issues – Tourist/Stadium  
Loop - From January 1997 – Senior Manager  
0 issues – Tourist/Stadium
7. Louisville Arena Authority, Barclays Center, New York Stadium, Miami-Dade County, Palm Beach County and City Miami Gardens
8. Provided case studies
9. Goldman – 550 professionals – 13 sales professionals – 105,000 financial advisor in an agreement with Incapital LLC.  
Loop – 22 sales professionals – 22 offices in Florida – relationship with UBS
10. D. Seaton and Associates and Greenberg Traurig
11. Contact current bond holders – largely institutional with some retail
12. Quantitative abilities – Research capabilities – listed Minnesota Twins Target Field and New Meadowlands (New York Giants) as stadium experience

Lee County, Florida  
Underwriter Proposals Notes – Tourist Tax

13. No violations that would impact their duties
14. Tourist – DSRF – Provided an additional scenario for 1.00x but could require no Capitalized Interest and immediate Debt Service Payments
15. Listed litigation

**Morgan Stanley**

1. Founded in 1935 – 58 Florida offices - 19 institutional municipal professionals – 1,345 financial advisors in Florida
2. Will distribute municipal securities to retail investors Morgan Stanley Smith Barney – Morgan Stanley will compensate MSSB
3. JW Howard – 24 years of experience  
Alyssa Chong – 3 years of experience  
Luke Hale – joined MS 2000 – Underwriting  
Others listed
4. From January 2007 – Senior Manager - 11 issues – Tourist/Stadium
5. Discussed Build America Mutual – probably not beneficial
6. From January 2007 – Senior Manager - 0 issues – Tourist/Stadium
7. City of Sunrise, City of Cape Coral and Orlando Utilities Commission
8. Alternative Couponing Structure  
Short call options  
Combination
9. 148 offices Southeast – 58 offices in Florida – 1,345 employees in Florida – 1 office in Fort Myers
10. Greenberg Traurig and Weiss Serota Heffman Pastortza Cole & Boniske
11. 10% Direct Retail, remaining intuitional
12. Discussed other refunding opportunities – Capital and Transportation – listed Yankee Stadium and Heinz Field as stadium experience
13. No violations that would impact their duties
14. Tourist – DSRF – Doesn't believe bond insurance would be beneficial – structured scenario to meet \$2.9 million fund balance
15. Listed litigation

**Raymond James**

1. Founded in 1962 – acquired Morgan Keegan January 2012 – 7,000 financial advisors – 2,600 offices – Raymond James Financial Services, Raymond James Ltd., Eagle Asset Management and Eagle Family Mutual Funds
2. No joint venture
3. Betsy Heddon – joined firm 2003  
Jon Echelberger – 23 years of experience  
Jacob Sorensen – 14 years of experience – Underwriting  
Others listed
4. From January 2008 – Senior Manager - 75 issues – Tourist/Stadium
5. Discussed Assured possibility of using prior existing policies on refinancings
6. From January 2008 – Senior Manager - 7 issues – Tourist/Stadium
7. Tampa Bay Water, City of Fort Myers and Charlotte County

Lee County, Florida  
Underwriter Proposals Notes – Tourist Tax

8. Shorten final maturity of Tourist Tax
9. 2,636 offices and 6,400 professionals nationwide – 277 retail locations in Florida – 15 retail locations and 41 retail professionals in Lee County – 400 fixed income professionals
10. Gray Robinson and Broad & Cassel
11. 15% Retail, 35% Bond Funds ,30% Insurance Companies and 20% Trust Funds
12. Discussed Sequestration on County's outstanding BAB's and investments – listed Sarasota County Baltimore Orioles Facility as stadium experience
13. No violations that would impact their duties
14. Tourist – DSRF and lower fund balance
15. Listed litigation

**RBC Capital**

1. Founded in 1869 - 11<sup>th</sup> safest bank in North America per Global Finance – ranked #1 senior manager nationally in number of issues 12 out the last 13 years
2. No joint venture
3. Julie Santamaria – 18 years of experience  
Doug Draper – 13 years of experience  
Peter Druhot – 16 years of experience – Underwriting  
Others listed
4. From January 2009 – Senior Manager (negotiated) - 10 issues - Tourist
5. Discussed Assured – doesn't believe it will benefit the County
6. From January 2009 – Senior Manager (negotiated)  
0 issues – Tourist – listed experience but not number of issues
7. Town of Davie, Town of Davie and City of St. Augustine
8. Variable Rate  
Shorter Call  
Retail Step Up Coupon  
Par Bonds  
Floating Rate Notes  
Medium Term Note Program
9. 199 offices in 41 states – 2,100 retail professionals – 9 Florida offices – 71 retail professionals in Florida – JD Power & Associates ranked firm #2 in customer satisfaction – 74 institutional professionals
10. Greenberg Traurig and Mark Raymond Law
11. 32% Bond Funds, 37% Retail, 9% Insurance Companies, 16% Banks and 6% Other
12. Experience with Lee County and Twins Stadium Project – listed bankers experience with Miami Heat and Sarasota County's Baltimore Orioles, City of Bradenton's Pittsburgh Pirates as stadium experience
13. No violations that would impact their duties
14. Tourist – DSRF unless constraint changes
15. Provided website

Lee County, Florida  
Underwriter Proposals Notes – Tourist Tax

**Southwest Securities Group**

1. Founded in 1972 – 1,100 employees – SWS Group is the parent company – Subsidiaries (Southwest Securities, SWS Financial Services, Southwest Securities FSB and Southwest Insurance Agency) – 30 public finance bankers and 4 regional underwriting centers
2. No joint ventures
3. Cliff Steinhauer – 36 years of experience – Underwriting  
Kit Caldwell  
Richard Litton – joined firm in 1995  
Joe Niggel – 23 years of experience  
Andy Kuo – 9 years of experience  
Victor Pucciarelli – 30 years of experience
4. From January 2008 – Senior Manager - 69 issues – Tourist/Stadium
5. Discussed relationship with bond insurers and benefit to certain maturities
6. From May 2008 – Senior Manager - 0 issues – Tourist/Stadium
7. City of Oakland Park, Dare County, NC and Berkeley County Water & Sanitation, SC
8. 2 Day Retail period  
Level or Accelerated Principal  
Bond Insurance and Surety  
Avoid Synthetic Interest Rate Structures
9. 225 correspondent firms in 38 states – 4,500 brokers – 30 offices nationally
10. Goren, Cherof, Doody & Ezrol and Holland & Knight
11. 60-80% institutional – remaining retail – provided list of Lee County bondholders
12. Discussed amount of clients, scope of services, 54 institution sales professionals
13. No violations that would impact their duties
14. Tourist – No DSRF
15. Listed litigation

**Stifel Nicolaus**

1. Founded in 1890 – 1,800 brokers – 5,400 employees – acquired all or a portion of Hanifen Imhoff, Legg Mason's Capital Markets Group, Ryan, Beck & Co, 58 brokerage offices from UBS, Thomas Weisel Partners Group and Stone & Youngberg – 309 retail brokerage offices
2. No joint venture
3. Alex Bugallo – 10 years of experience  
Mathew Sansbury – 11 years of experience  
Alan Murphy – over 30 years of experience – Underwriting  
Others listed
4. From January 2009 – Senior Manager – Excludes Florida experience  
12 issues – Tourist/Stadium
5. Discussed Assured, NPFC and AMBAC
6. From January 2009 – Senior Manager  
3 issues/3 Co-Senior – Tourist/Stadium
7. City of Daytona Beach, Charlotte County and Miami-Dade County

Lee County, Florida  
Underwriter Proposals Notes – Tourist Tax

8. Level debt service vs. level savings
9. 39 national/4 Florida Intuitional offices – 309 national/14 Florida retail offices – 1,883 retail brokers nationally
10. Holland & Knight and GrayRobinson
11. 20-30% retail and remaining institutional
12. Provide analysis on additional potential refundings Transportation and Five Cent Bonds – also provided update of Capital and Transportation refunding – listed Sarasota County Baltimore Orioles Spring Training Facility as experience
13. In compliance since August 2005
14. Tourist – DSRF but if possible surety and lowering the fund balance
15. List of litigation

**SunTrust Robinson Humphrey**

1. In 2001 SunTrust acquired Robinson Humphrey - 160,000 retail accounts – 3<sup>rd</sup> largest bank in State of Florida
2. Has affiliate – SunTrust Investment Services that would participate in the retail distribution. They may share a portion of the Underwriter fee
3. Doug McCuean – 25 years of experience  
Hank Harris – 25 years of experience  
Jimmy Torrell worked with SunTrust since May 2000  
Dara Smith – 27 years of experience – Underwriting  
Others listed
4. Doesn't provide number of deals – listed several case studies
5. Discussed Build America Mutual
6. Doesn't provide number of deals – listed several case studies
7. City of Miami Beach, South Florida Stadium and Florida Hurricane Catastrophe Fund
8. SIFMA Spread Bonds – variable Swap
9. Nationally – 1,193 retail offices with 506 retail brokers  
Lee County – 24 branches in and around Lee County with a retail broker assigned to each
10. Bryant Miller Olive and Broad Cassel
11. Current Market Conditions -Institutional 80% - Retail/Professional Retail 20%
12. Based in Southeast – Structuring expertise – Distribution Capabilities – municipal Investor Community – listed South Florida Stadium (Dolphins) as stadium experience
13. No violations
14. Tourist – Bond Insurance to attract more investors (all or a portion) and DSRF
15. No litigation in last 5 years involving issuance of securities by a governmental agencies. Listed other litigation.

Lee County, Florida  
Underwriter Proposals Notes – Tourist Tax

**Wells Fargo**

1. Subsidiary of Wells Fargo & Company – founded in 1852 - largest US bank by market capitalization - ranked #2 for loans – 24 professionals in the Municipal Bond Trading/Syndicate – 15 professionals in Institutional Client Services Group
2. No joint ventures
3. Michael Olliff – 16 years of experience  
David Thornton – 21 years of experience  
Walker McQuage – 16 years of experience – Underwriter  
Molly Clark – 12 years of experience  
Others listed
4. From January 2009 – Senior Manager - 1 issues – Tourist/Stadium
5. Insurance probably not a benefit unless surety is required
6. From January 2010 – Senior Manager - 0 issues – Tourist/Stadium
7. School District of Lee County, Manatee County, School Board of Hillsborough County
8. Call refunding bonds as soon as possible  
Lock in current low interest rates
9. Nationally – 875 locations with 15,200 professionals  
Florida – 48 retail brokerage offices with 1,111 professionals
10. Greenberg Traurig and Broad & Cassel
11. Tourist – mix of retail and institutional
12. Reviewed other scenarios for Tourist Tax such as short term funding options but determined that locking in currently low interest rates would be the preferred option
13. States in compliance
14. Tourist – DSRF – Discussed surety policy and conversation with Assured
15. Provided website

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

**Blue Sheet No. 20130216**

**1. ACTION REQUESTED/PURPOSE:**

Conduct public hearing to adopt an ordinance reducing the collection rate for Road, Parks and School Impact Fees for two years.

**2. FUNDING SOURCE:**

N/A.

**3. WHAT ACTION ACCOMPLISHES:**

Allows public input on the proposed ordinance prior to Board vote on proposed legislation.

**4. MANAGEMENT RECOMMENDATION:** Seeking Board direction.

**5. Departmental Category:** 9:30 PH1

**6. Meeting Date:** 3/12/2013

**7. Agenda:**

Public

**8. Requirement/Purpose: (specify)**

- Statute                      125.66(2)
- Ordinance                    LDC
- Admin Code
- Other

**9. Request Initiated**

**Commissioner:**  
**Department:** COUNTY ATTORNEY  
**Division:** No Divisions  
**By:** Donna-Marie Collins

**10. Background:**

On January 22, 2013 the Board directed to public hearing, an ordinance suspending the collection of impact fees for two years. At the ordinance adoption hearing held on February 12, 2013, the Board deferred the item to the March 4th Management & Planning meeting to consider options other than suspension. The consensus of the Board was to pursue a reduction in the rate of collection of Road, Park and School impact fees for two-years. (Fire and EMS fees were excluded in the proposed reduction.)

The attached ordinance includes the following provisions:

- (1) Reduces the rate of collection of Road, Park, and School Impact Fees for two years commencing on March 13, 2013 and terminating on March 13, 2015.
- (2) Clarifies the refund policy on fees paid.
- (3) Requires County Administration to update the Board on various economic indicators, including employment, taxable sales, and development permitting activity at the end of the first year of the reduction period.

The LPA found a full suspension originally proposed to be inconsistent with the Lee Plan unless the Board replaces impact fee revenues with revenues from another source. The LPA recommended that the Board discuss a reduction of school and fire impact fees with the School Board and Fire Districts so that those entities could clarify the continued need for impact fees at the current or reduced level.

Attachments: Draft Ordinance dated March 5, 2013 (to follow)

**11. Required Review:**

<i>Andrea Fraser</i>	<i>Emma Wolf</i>	<i>David Harris</i>	<i>Peter Winton</i>		
COUNTY ATTORNEY	Budget Analyst	Budget Services	County Manager		

**12. Commission Action:**

**ORDINANCE NO. 13-\_\_\_\_\_**

**AN ORDINANCE PERTAINING TO IMPACT FEES IN LEE COUNTY, REDUCING THE RATE OF THE COLLECTION OF CERTAIN IMPACT FEES FOR TWO YEARS, CLARIFYING THE POLICY ON REFUNDS OF FEES PAID, AND REQUIRES COUNTY ADMINISTRATION TO UPDATE THE BOARD ON DEVELOPMENT PERMITTING ACTIVITY AT THE END OF THE FIRST YEAR OF THE REDUCTION PERIOD; AS TO THE REDUCTION IN THE RATE OF COLLECTION OF SCHOOL IMPACT FEES ON RESIDENTIAL DEVELOPMENT, THE ORDINANCE IS APPLICABLE WITHIN THE INCORPORATED AND UNINCORPORATED AREAS OF LEE COUNTY**

WHEREAS, Florida Statutes Section 125.01(1)(t) authorizes counties to adopt ordinances necessary for the exercise of its powers; and,

WHEREAS, the Board of County Commissioners (Board) adopted the Lee County Land Development Code containing regulations applicable to land development in Lee County; and,

WHEREAS, the recent economic downturn has resulted in an unprecedented decline in new residential and commercial building construction activity in Lee County; and,

WHEREAS, in recognition of the downturn in the U.S. economy, the Board has implemented measures to provide temporary relief to the building and construction industry; and,

WHEREAS, the Board desires to temporarily reduce the rate of collection of development impact fees in an effort to stimulate economic development and the pursuit of construction activity; and,

WHEREAS, the Board has determined that a two-year reduction on the rate of collection of Road, Community Parks, Regional Parks, and School impact fees will further the desired purpose of stimulating economic development in Lee County; and,

WHEREAS, the Board has determined that Fire and EMS Impact Fees would not be subject to reduction for public safety reasons; and

WHEREAS, the Board desires an update from County Administration on development permitting activity after the first year of the suspension to gauge the effect of the reduction; and

WHEREAS, on January 28, 2013 the Local Planning Agency (LPA) concluded the Board's initial proposal to temporarily suspend impacts fees for two years was inconsistent with the Lee Plan unless the suspension included direction to administrative staff to replace impact fee revenue from other sources. The LPA recommended that the Board pursue discussions with the School Board and Fire Districts to determine their continued need for impact fees at some level.



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

**SECTION ONE: REDUCTION ON THE RATE OF COLLECTION OF DEVELOPMENT IMPACT FEES IN THE UNINCORPORATED AREAS OF THE COUNTY**

The collection rate for Road, Community Park and Regional Park impact fees set forth in Chapter 2 of the Land Development Code is reduced by \_\_\_\_\_% for two-years commencing on, Wednesday, March 13, 2013 and ending on Friday, March 13, 2015, without further action by the Board.

**SECTION TWO: REDUCTION OF THE COLLECTION RATE FOR SCHOOL IMPACT FEES COUNTYWIDE**

The collection rate for school impact fees set forth in Chapter 2 of the Land Development Code is reduced by \_\_\_\_\_% countywide for two-years, commencing on, Wednesday, March 13, 2013 and ending on Friday, March 13, 2015, without further action by the Board.

**SECTION THREE: REFUNDS**

Refunds of impact fees paid prior to March 13, 2013 will be issued only in accordance with Chapter 2 of the Land Development Code.

**SECTION FOUR: REPORT ON PERMITTING ACTIVITY**

County Administration will collect data during the two year reduction period and will update the Board on various economic indicators, including, but not limited to, employment, taxable sales, and permitting activity at the end of the first year.

**SECTION FIVE: 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 SIX: 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 SEVEN: 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 EIGHT: EFFECTIVE DATE**

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

Commissioner \_\_\_\_\_ made a motion to adopt the foregoing ordinance. The motion was seconded by Commissioner \_\_\_\_\_. The vote was as follows:

John E. Manning	_____
Cecil L Pendergrass	_____
Larry Kiker	_____
Tammara Hall	_____
Frank Mann	_____

DONE AND ADOPTED this 12<sup>th</sup> day of March 2013.

ATTEST:  
LINDA DOGGETT, CLERK

LEE COUNTY  
BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
Cecil L Pendergrass, Chairman

Approved as to form by:

\_\_\_\_\_  
County Attorney’s Office