

**INTERLOCAL AGREEMENT BETWEEN ALACHUA COUNTY AND
THE CITY OF NEWBERRY FOR TOURIST DEVELOPMENT TAX FUNDING
FOR THE CONSTRUCTION OF CITY OF NEWBERRY NATION'S PARK**

13th THIS INTERLOCAL AGREEMENT (hereinafter the "Agreement") is made as of this day of JULY, 2010 by and between Alachua County, Florida, a charter county and political subdivision of the State of Florida (hereinafter the "COUNTY"), and the City of Newberry, Florida, a municipal corporation of the State of Florida (hereinafter the "CITY").

WITNESSETH:

WHEREAS, the CITY will be the owner and operator of the City of Newberry Nation's Park, a public sports arena (hereinafter "Nation's Park"); and

WHEREAS, Nation's Park is a "sports arena" that "shall have as one of its main purposes the attraction of tourists" as referenced in Section 125.0104, Florida Statutes, in that Nation's Park will include sixteen youth baseball-size baseball fields that will provide a much needed venue that can be marketed in the State of Florida, nationally and internationally. It is anticipated that this venue will result in more than 20 additional competitive events per year and the generation of more than \$30 million in economic benefits annually from athletes and spectators; and

WHEREAS, the CITY has agreed to undertake a project for the development of Nation's Park to accommodate youth baseball and additional competitive events; and

WHEREAS, the CITY will obtain financing for the purpose of development of Nation's Park; and

WHEREAS, the development of Nation's Park by the CITY complies with and will further the purposes of the Alachua County Tourist Development Plan set out in Section 38.02, Alachua County Code, and as required by Section 125.0104, Florida Statutes, in that construction of this sports arena will promote and advertise tourism in the City, the County, the State of Florida, nationally and internationally; and

WHEREAS, it is the purpose and intent of this Agreement, the parties hereto and Section 163.01, Florida Statutes, the Florida Interlocal Cooperation Act of 1969 (hereinafter the "Cooperation Act"), to permit the CITY and COUNTY to make the most efficient use of their respective powers, resources and capabilities by enabling them to cooperate on the basis of mutual advantage and thereby to provide for the construction and operation of Nation's Park in the manner that will make best use of resources available to each of them and with the geographic, economic, population and other factors influencing the needs and developments within their respective jurisdictions; and

WHEREAS, it is the purpose of the Cooperation Act to provide for a means by which the CITY and COUNTY may exercise their respective powers, privileges and authorities which they share in common and which each might exercise separately; and

WHEREAS, the CITY has committed to incur all of the indebtedness for development of Nation's Park, and

WHEREAS, the COUNTY has agreed to provide tourist development tax revenues in an amount not to exceed \$625,000.00 each year for a period of 20 years; and

WHEREAS, the CITY and the COUNTY wish by this Agreement to provide for the commitments of the CITY and the COUNTY created hereby and to more fully secure the payment of the indebtedness, as herein provided, in order to further the purposes stated herein.

NOW THEREFORE, in consideration of the mutual covenants of this Agreement, the CITY and the COUNTY agree as follows:

SECTION 1. Authority. This Agreement is entered into pursuant to the provisions of Section 163.01, Florida Statutes; Chapter 166, Florida Statutes; Chapter 125, Florida Statutes; and other applicable provisions of law.

SECTION 2. Covenants of the COUNTY. The COUNTY agrees:

a. To provide for (i) the assignment to the City and pledge on a first lien basis of an amount equal on an annual basis to the lesser of \$625,000 or the amount generated by the 1st percent tourist development tax within the County, and (ii) an assignment and pledge from the 2nd and 3rd percent tourist development tax imposed within the county in such amount as shall be necessary to transfer to the City the \$625,000 referenced in (i) above in the event that proceeds of the 1st tourist development tax in a given year are insufficient to do so; provided, that the County may grant a pledge of and lien on proceeds of the 2nd and 3rd percents of the tourist development tax to secure other indebtedness of the County, which other indebtedness shall have a lien on said proceeds of the 2nd and 3rd percents of tourist development tax superior in lien to that referenced in this subclause (ii). The amounts transferred to the City as described herein will in turn be pledged by the City to secure bonded indebtedness to finance the NationsPark baseball complex for a loan period not to exceed 20 years . The COUNTY's obligation described herein is contingent upon the CITY securing financing for the construction or purchase of Nation's Park. The County shall make payments to the City on a semi-annual basis commencing after Nations Park is completely constructed and the City issues bonds to pay for the capital costs for Nation's Park. Payments shall be made on the dates which are 30 days prior to the scheduled semi-annual debt service dates associated with the City's indebtedness, until the County's obligation under this agreement is fully satisfied. In the event amounts transferred to the City as described herein are in excess in any year to the amount necessary to pay such indebtedness, any excess amount shall be returned to the County by December 1 each year.

b. To segregate, from amounts accumulated from tourist development taxes, an amount equal to \$625,000 to be pledged as a reserve to secure the Newberry indebtedness and to be used for no other purpose. Such amount would be available to service the Newberry indebtedness only in the event that proceeds from the 1st percent tourist development tax identified above fail to reach \$625,000 in a given year (and prior to any use of moneys derived from the 2nd or 3rd percent tourist development tax for such purpose). In the event a draw is made on the reserve amount, then in any future year in which the \$625,000 annual distribution is in excess of Newberry debt service, any excess amount would go first to refill the reserve before being transferred elsewhere. Any amounts remaining in the reserve account as of the last year of the Newberry debt would be used to pay such last year's Newberry debt service.

SECTION 3. Covenants of the CITY. The CITY agrees:

a. To arrange for the construction of a 16-field youth baseball park ("Nation's Park") located on property specifically described in Exhibit A and pursuant to the conceptual plan and park facilities identified in Composite Exhibit B.

b. To comply with the COUNTY'S purchasing, small business enterprise and local preference requirements. A copy of the County's Small Business Enterprise Program is attached as Exhibit "C."

c. To own, maintain and operate Nation's Park in a manner that will attract tourists to attend multiday youth baseball tournaments conducted at least 12 weeks each year and youth baseball and girl's/women's fast-pitch softball tournaments at other times each year subject to the following criteria:

(1) Youth baseball is defined as athletic events for youth ages 5 through 13 years.

(2) A tournament will be deemed filled when at least 80 teams are scheduled for competition for a multi-day period. A tournament must be filled before placing any team at an alternative site for said tournament.

(3) Multi-day tournament is defined as having scheduled games on at least 3 consecutive days.

(4) A youth baseball multi-day tournament shall have at least 40 teams scheduled for competition.

d. To sell or otherwise transfer or dispose of Nation's Park during the term of this Agreement only with the written consent of the COUNTY.

e. To provide access to Nation's Park on a priority basis to the COUNTY so that the park can be used for events that promote tourism. The COUNTY shall have the right of first refusal to use Nation's Park for events that promote tourism, except that youth baseball tournaments scheduled and conducted by the contractor the CITY retains to operate and maintain Nation's Park shall take precedence over all other events.

f. To prepare a statement of the amount payable by the COUNTY to the CITY thirty (30) days prior to the payment date supported by a statement of the actual interest and principal payment amount charged to the city on this debt issuance.

g. To restrict the use of the concession stand revenues and spectators fees revenue to maintenance and operation of the park, including payment due to any private operator of the park.

h. To use tourist development tax revenue received from the COUNTY only for the purposes set forth herein.

i. To ensure that its agreement with Nation's Park, LLC for the operation and maintenance of Nation's Park provides that Nation's Park, LLC, and any subsidiary of Nation's Park, LLC will not schedule events at a facility that competes with Nation's Park unless the requirements section 3, paragraph c are met for the entire term of this agreement.

SECTION 4. Default.

a. Upon the occurrence of an event of default hereunder, the parties shall have such rights and remedies as are provided by Florida law; provided, that in the event of a default by the CITY herein, the COUNTY shall still be required to transfer the amounts set forth in Section 2 hereof notwithstanding such default as long of the debt issued by the CITY and secured by such amounts remains outstanding. The COUNTY shall have no right of set-off against amounts to be paid pursuant to Section 2 hereof.

b. Notwithstanding Section 4, paragraph a, above, if the CITY fails to meet the requirements set forth in this agreement, the CITY shall, at the COUNTY'S request, transfer Nation's Park, as described in Exhibit "A" (Parcel 1, Phase I only), together with all improvements thereon, to the COUNTY. Upon receiving the COUNTY'S request for transfer of Nation's Park, the CITY may elect to pay the COUNTY a sum equal to the fair market value at the time of the COUNTY'S request of the real property improvements on the Nation's Park parcel. The County and the City will each select an appraiser to determine the value of the improvements. The value of the improvements will be determined by the average of the appraisals.

SECTION 5. No Lien on Pledge of Ad Valorem Revenues. This agreement shall not constitute nor create a lien, either legal or equitable, on any of the CITY's or the COUNTY's respective ad valorem tax revenues or funds. Neither the CITY nor the COUNTY shall ever be

required to levy ad valorem taxes on any property within its respective boundaries to pay either of their share of the debt service payments or any other payments herein provided.

SECTION 6. Term. Unless extended by mutual agreement by the CITY and the COUNTY, or unless otherwise provided in this Agreement, this Agreement shall expire when the COUNTY and the CITY have fully performed their obligations as set forth herein.

SECTION 7. Filing and Effective Date. This Agreement shall become effective upon the occurrence of all of (a) the execution of this Agreement by the proper officers of the CITY and the COUNTY, and (b) filing with the Clerk of the Circuit Court of Alachua County, Florida, as required by Section 163.01 (11), Florida Statutes.

SECTION 8. Severability. If any one or more of the covenants, agreements or provisions of this Agreement should be held contrary to any express provision of law or contrary to any policy of expressed law, although not expressly prohibited, or shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Agreement which shall remain fully enforceable.

SECTION 9. Controlling Law: Members of the CITY and COUNTY Not Liable. All covenants, stipulations, obligations and agreements of the COUNTY and the CITY, contained in this Agreement, shall be deemed to be covenants, stipulations, obligations and agreements of the COUNTY and the CITY, respectively, to the full extent authorized by the Cooperative Act, and provided by the Constitution and laws of the State of Florida. No covenant, stipulation, obligation or agreement of any present or future member of the governing body or agent or employee of the CITY or the COUNTY in its, his, her or their individual capacity and neither the members of the governing body of the CITY or the COUNTY nor any official executing this Agreement shall be liable personally or shall be subject to any accountability by reason of the execution by the CITY or the COUNTY of this Agreement or any act pertaining hereto.

SECTION 10. Amendment. Any amendment of this Agreement shall be reduced to writing and signed by representatives of both parties.

SECTION 11. Notice. Any notice or correspondence required under this agreement shall be provided to the other party, by certified mail, to the address set out below

COUNTY: County Manager's Office
P.O. Box 2877
Gainesville, FL 32602

CITY: City Manager's Office
P.O. Box 369
Newberry, FL 33823

SECTION 12. Authority to Execute. The proper officers of the COUNTY and the CITY are hereby authorized to execute on behalf of their agency all documents necessary and incidental to the purpose, intent and provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Interlocal Agreement on the respective dates under each signature: The CITY, through its City Commission signing by and through its Mayor, authorized to execute same by Commission action on the day of 12 May, 2010 and by the COUNTY, through its Board of County Commissioners, signing by and through its Chairman, authorized to execute same by Board action on the 13 JULY day of JULY, 2010.

ALACHUA COUNTY:

BOARD OF COUNTY COMMISSIONERS OF
ALACHUA COUNTY, FLORIDA

ATTEST:

J. K. Irby, D.C.
J. K. Irby, Clerk

(SEAL)

By: Cynthia Moore Chestnut
Cynthia Moore Chestnut, Chair

APPROVED AS TO FORM

D. W. [Signature]
Alachua County Attorney

CITY OF NEWBERRY:

CITY COMMISSION
CITY OF NEWBERRY

ATTEST:

Gayle D. Pons
Gayle Pons, Clerk

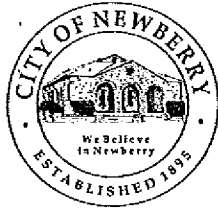
(SEAL)

By: Harry Nichols
Harry Nichols, Mayor

APPROVED AS TO FORM

Quint Scott Wells
City of Newberry Attorney

- Exhibits: A Legal Description
B Sketch and Components
C County's Small Business Enterprise Program



CITY OF NEWBERRY

PLANNING DEPARTMENT

25815 S.W. 2nd Avenue ! P.O. Box 369
Newberry, Florida 32669
(352) 472-3927 ! FAX (352) 472-3998

PARCEL 1

LEGAL DESCRIPTION NATIONS PARK PROJECT:

A tract of land situated in Section 15, Township 10 South, Range 17 East, Alachua County, Florida, being more particularly described as follows:

BEGIN at the Northwest corner of the aforementioned Section 15, and thence run N.87°55'11"E., along the North line of said Section 15, a distance of 1750.06 feet to the West right of way line of the CSX Transportation Railroad (100 foot wide right of way) and the POINT OF BEGINNING; thence run S.29°38'53"E., along said right of way line, a distance of 1,837.00 feet to a point; thence run S.87°55'11"W., a distance of 1,490.00 feet to a point; thence run N.01°14'08"W., an approximate distance of 1,613 feet to an intersection with the north line of said Section 15; thence run N.87°55'11"E , along the North line of said Section 15, a distance of approximately 640 feet to the said POINT OF BEGINNING. Subject to the maintained right of way of S. W. 30th Avenue along the North boundary thereof. Containing 40.0 acres, more of less.

PARCEL 2

LEGAL DESCRIPTION NATIONS PARK PROJECT:

A tract of land situated in Section 15, Township 10 South, Range 17 East, Alachua County, Florida, being more particularly described as follows:

BEGIN at the Northwest corner of the aforementioned Section 15, and thence run N.87°55'11"E., along the North line of said Section 15, a distance of 1750.06 feet to the West right of way line of the CSX Transportation Railroad (100 foot wide right of way); thence run S.29°38'53"E., along said right of way line, a distance of 1,837.00 feet to the POINT OF BEGINNING; thence continue along the said west right of way line, S.29°38'53"E, a distance of 1,836.77 to the beginning of a curve concave Northeasterly, said curve having a radius of 2914.825 feet; thence run Southeasterly, along said right of way line, with said curve, through an arc angle of 13°38'22", an arc distance of 613.76 feet to a point; thence run S.87°55'11"W., a distance of 2,050.00 feet to a point; thence run N.01°14'08"W., a distance of 996.00 feet; thence easterly, a distance of approximately 1,490 feet to the said POINT OF BEGINNING . Containing 40.0 acres, more of less.

EXHIBIT "A"

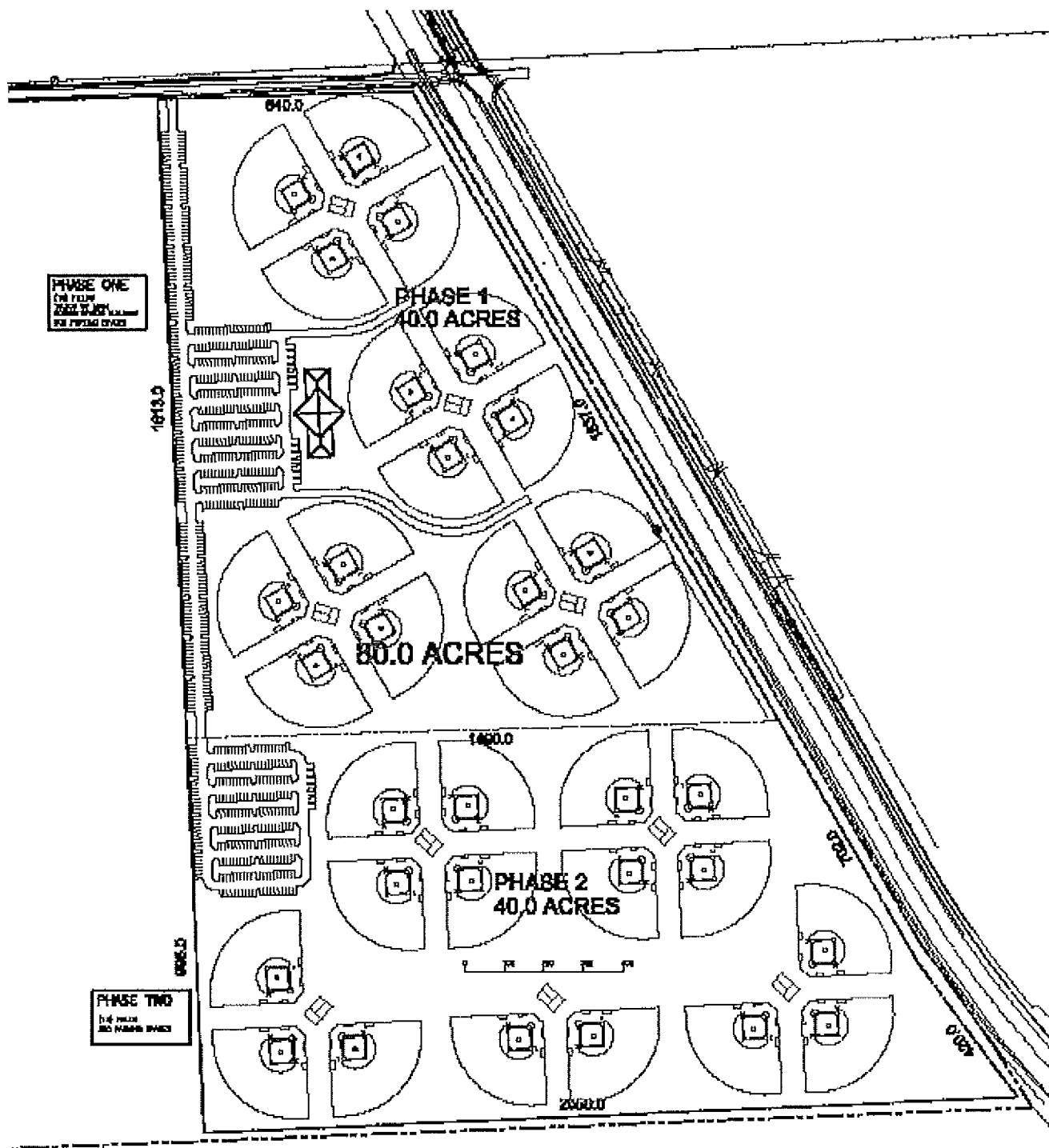


EXHIBIT "B"

Nations Park (16 fields)

Stadium Components:

1. Stadium Fields
 - Synthetic Turf Infields
 - Turf Outfields
 - Turf Irrigation
2. Stadium Support
 - Plywood Walls
 - Backstop With Score Tower
 - Covered Spectator Seating
 - Oversized Dugouts
 - Chain Link Shell On Backstop
 - Wing Netting
3. Lighting / Electronics
 - Field Lighting
 - Cat – 5 Cable
 - Fiber Optic Cable
 - Led Scoreboards

Stadium Support Facilities:

1. Buildings
 - 2 - Maintenance Buildings
 - 2 - Concessions / Bathrooms / Admin.
 - 1 - 2500 Sq. Ft. Tent
 - 4 - 800 Sq. Ft. Tents
2. Infrastructure
 - Walkways (Approx. 100,000 Sq. Ft.)
 - Parking Lots
 - Security Lighting
 - Weather Alert System
 - Perimeter Fencing
 - 100 Equipment Storage Boxes
3. Décor
 - Gateway Entrance
 - Signage
 - Flag Poles (Each Stadium / Entry)
 - Landscaping
 - Posting For Floral Arrangement
 - Irrigation

EXHIBIT C

ARTICLE II. SMALL BUSINESS ENTERPRISE PROGRAM

Sec. 22.30. Purpose and intent of article.

The lack of small business participation in the national economy is reflected in state and local contracting for the purchasing of commodities, services, and capital improvement contracts. Therefore, the purpose and intent of this article is to provide the maximum opportunity for increased participation of small businesses in the county's procurement system.

Sec. 22.31. Certification.

For the purposes of this chapter, the following certification requirements shall govern:

(1) The equal opportunity division (EO division) shall certify small business enterprises (SBE) for use by the county in its purchasing and procurement process. The EO division will maintain an up-to-date electronic list of SBE.

a. To become certified, a small business must be currently performing a useful business function, located in the SBE zone, have 25 or fewer permanent, full-time employees and have a net worth not exceeding \$1,000,000.

b. A "useful business function" is one which results in the provision of materials, supplies, equipment, or services to customers. For this reason, merely acting as a financial conduit to transfer funds to a non-SBE will not constitute a useful business function, unless it is done as a part of normal industry practices.

c. The county manager or designee will approve a list of neighboring counties to comprise the SBE zone.

d. Certifications for SBE are valid for one year from certification date.

(2) The purchasing division shall secure a list of SBE from the EO division for use in the bid solicitation process, and encourage the use of this list by all departments in their procurement activities.

(3) The county's purchasing and EO divisions shall continually endeavor to identify small businesses which are eligible for certification in all areas of county procurement.

(4) Any change of ownership or circumstances that may affect certification eligibility of an SBE must be reported to the EO division, within 14 days of the change taking place. In the event of a change, the current owner is responsible for fulfilling this reporting requirement prior to seeking business with the county.

Sec. 22.32. False representation.

(a) It is unlawful for any individual or entity to knowingly submit false information in order to qualify for SBE certification.

(b) Any contractor that falsely represents to the county that it is an SBE, or knowingly submits false information or represents that it will use the services or commodities of an SBE and subsequently does not, shall be deemed in breach of contract. Upon a determination that a breach has occurred, all payments under the contract or any other arrangement shall be immediately suspended. The contractor may show that it attempted in good faith to comply with the terms of the contract but was unable to comply. If the county determines that the contractor did not act in good faith, all amounts paid to the contractor under the county contract or agreement intended for expenditure with the SBE shall be forfeited and recoverable by the county. In addition, the contract or agreement may be rescinded and the department or division may return all unused goods received and recover all amounts paid under the contract.

(c) Any contractor or affiliate determined to have falsely represented that it or a subcontractor is an SBE, or determined to have not acted in good faith to fulfill the terms of a contract calling for it to use the services or commodities of an SBE, will be considered under the county's suspension and debarment policy.

Sec. 22.33. Acquisition of professional services.

When procuring professional services, the county shall endeavor to include SBE. The county's administrative procedures for the formal evaluation of professional services shall include but not be limited to, capabilities, adequacy of personnel, past record, experience, SBE status, and such other relevant factors.

Sec. 22.34. Reservation of contracts.

(a) The county may reserve contracts to be awarded only to SBE. The county shall review all of its needs and requirements in each fiscal year, and shall determine which contracts may be reserved for bidding only by SBE. This reservation may only be used when it is determined, before dissemination of the request for proposals or invitation to bid, that there are capable, qualified, SBE available within the SBE zone who are interested and willing to bid on these contracts in order to provide for effective competition. Once a decision has been made to reserve a contract the county shall estimate what it expects the dollar amount of the contract to be, based on the nature of the contract and its value under prevailing market conditions. If all the bids received are over this estimate, the county may reject the bids and open the bidding to all vendors and contractors. Before contracts can be reserved for bidding only by SBE, the county manager, in conjunction with the equal opportunity manager and purchasing manager, must determine that such a reservation is in the best interest of the county.

(b) The county may reserve any construction contract for competitive bidding only among contractors who agree to utilize SBE as subcontractors or subvendors. The percentage of funds which must be expended with SBE subcontractors and subvendors shall be determined by the county before the contracts is reserved. In order to bid on a construction contract so reserved, the contractor shall identify those SBE which will be utilized as subcontractors or subvendors. Once a decision has been made to reserve a contract, but before bids are requested, the county shall estimate what it expects the amount of the contract to be, based on the nature of the contract

involved and its value under prevailing market conditions. If all the bids received are over this estimate, the county may reject the bids and open the bidding to all vendors and contractors. It is the express responsibility of the contractor to verify that all SBE which will be utilized as subcontractors or subvendors are currently certified by the county.

Sec. 22.35. SBE preference.

- (a) The county will award a five-percent bid price preference, not to exceed \$50,000.00 on any single bid, to any SBE that submits a bid to the county.
- (b) The county will award a three-percent bid price preference, not to exceed \$50,000.00 on any single bid, to any contractor that agrees to use SBE for at least 15 percent of the dollar value of the bid.
- (c) The monetary value of the bid price preference given to a certified SBE in any particular procurement shall not exceed \$50,000.00.
- (d) If the adjusted bid price of the SBE vendor is equal to or lower than the original lowest responsive bid, the SBE will be awarded the contract.
- (e) The county will award a preference in evaluation points to SBE or contractors that meet the SBE participation goal in its RFP response.
- (f) The EO and purchasing divisions will formulate and present for adoption any rules necessary to implement the SBE preference in order to guide the county toward having a certain percentage of its expenditures for materials, supplies, equipment, services or construction placed with SBE.
- (g) SBE preference does not apply to contracts that are reserved in accordance with section 22.34 above. SBE bid preferences will not be combined.

Sec. 22.36. Responsiveness of bids--Good faith efforts.

- (a) Every competitive bid or proposal, if not submitted by a SBE, must demonstrate good faith efforts to utilize SBE as subcontractors or subvendors.
- (b) The county may consider written documentation submitted with the bid package or proposal in determining whether a contractor has made one or more good faith efforts including, but not limited to:
 - (1) Whether the contractor attended any presolicitation or prebid meeting that was scheduled by the county to inform SBE of contracting and subcontracting opportunities;
 - (2) Whether the contractor advertised in a general circulation, trade association, and/or SBE focus media concerning the subcontracting opportunities;
 - (3) Whether the contractor provided written notice to a reasonable number of SBE that their interest in the contract was being solicited in sufficient time to allow the SBE to participate effectively;

(4) Whether the contractor followed up initial solicitations of interest by contacting SBE to determine whether a SBE is interested;

(5) Whether the contractor selected portions of the work to be performed by SBE in order to increase the likelihood of meeting the SBE goals of the county, including, where possible, breaking down contracts into economically feasible units to facilitate SBE participation;

(6) Whether the contractor negotiated in good faith with interested SBE, not rejecting SBE as unqualified without sound reasons based on investigation of their capabilities;

(7) Whether the contractor made efforts to assist interested SBE in obtaining bonding, lines of credit, or insurance required by the county and/or the contractor; and

(8) Whether the contractor effectively used the services of available small business community organizations; small business contractors' groups; local, state, and federal business assistance offices; and other organizations that provide assistance in the recruitment and placement of small businesses.

(c) The county may waive the good faith requirement for procurement where sub-contracting is not applicable or in order to ensure adequate competition.

Sec. 22.37. Assistance program.

The SBE assistance program is established within the department of administrative services under the EO division and will report all recommendations and activities associated with the SBE program directly to the county manager. This program will assist, encourage, and serve as a liaison for a SBE to become a supplier of materials, supplies, equipment, or services to the county government. In addition, the EO and purchasing divisions shall:

(1) Review and comment on any changes to a county policy, rule or regulation relating to SBE procurement;

(2) Receive, compile and disseminate information on procurement opportunities, availability of SBE and available technical assistance;

(3) Refer all information on any business suspected of misrepresenting its SBE status to the county manager's office;

(4) Maintain a central list of certified SBE, provide it upon request, and maintain a process for timely and independent verification of the status of businesses currently certified and seeking certification from the County as an SBE; and

(5) Host, not less than annually, a workshop to assist small businesses located in the SBE zone to obtain SBE certification and to do business with the county.

(6) Present a written report to the board of county commissioners quarterly on the SBE Program.

Sec. 22.38. Implementation of policy; monitoring of compliance.

In order to systematically augment a viable SBE component within the county's purchasing and procurement system, the EO manager and the purchasing manager shall be delegated the following powers and duties to fulfill their responsibilities and functions:

- (1) Establish and compile a system of coordinated, uniform procurement policies, procedures, and practices to implement the SBE program.
- (2) Establish and strongly encourage the expenditure of 15 percent of the total competitive procurement monies with SBE for materials, supplies, equipment, services and construction.
- (3) Formulate and establish a system to record and measure the use of SBE in county contracting. This system shall maintain information and statistics on SBE participation, in order to analyze the progress of the SBE program.
- (4) The purchasing manager shall annually report the contractual or procurement disbursements made to SBE to the county manager. This information shall be made available to the board of county commissioners as well as the public at large. The purchasing division shall be responsible for the accuracy of information provided.