

## **MINUTES OF THE LEE COUNTY COMMISSION, REG. ADJ. SESSION, NOVEMBER 25, 2024**

The Lee County Commission convened in regular adjourned session at the Courthouse in Opelika, Alabama, Monday, November 25, 2024. The Chairman declared a quorum and officially opened the meeting with the following members recorded as being present: Judge Bill English, Chairman, and Commissioners Doug Cannon, Ross Morris, Jeff Drury, Tony Langley, and Richard LaGrand. Elected officials in attendance: Loachapoka Mayor Ricky Holder, Sheriff Jay Jones, Revenue Commissioner Oline Price and Coroner Daniel Sexton. News media in attendance: Opelika-Auburn news reporter Alex Husting and The Observer reporter Hannah Goldfinger.

Loachapoka Mayor Ricky Holder said first he would like to thank Judge English for his service to Lee County saying it has been an honor working with him. Mayor Holder then thanked the Lee County's Sheriff's Reserve Deputies for their help during the Loachapoka Syrup Soppin' event held October 26, 2024. Mayor Holder presented Sheriff Jones with two checks, one check from the Lee County Historical Society for \$800 and the other check of \$1,500 from the Town of Loachapoka. Sheriff Jones turned the checks over to Lieutenant Lee McLeroy who oversees the Sheriff's Reserve Deputies. Mayor Holder said the event would not go as smoothly without their help. Mayor Holder also thanked Sheriff Jones for allowing this group to help during the event.

EMA Director Rita Smith updated the Commission on a Homeland Security grant of \$110,000 for a handheld mass spectrometer. Mrs. Smith said it is an MX908 which is a multi-mission handheld mass spectrometer for real-time chemical detection and identification. This device will be used for detection and product identification during preplanned events, emergency situations, and in controlled environments. Mrs. Smith said her office intends to use the spectrometer for hazardous materials calls and in coordination with Law Enforcement, Fire and EMS as they have needs arise. The purchase will be made through a purchasing cooperative and the funds will be expended by the first quarter of the new year. Mrs. Smith said no Commission action is needed.

Copies of the items on the Consent Agenda sent to the Commissioners in their packets included: listings of claims, procurement card transactions listing and a copy of the November 13, 2024 minutes. Commissioner Drury noted a correction on his vote of the Consent Agenda, saying he abstained. Commissioner Cannon made a motion, seconded by Commissioner Morris, to approve the consent agenda items to include the one noted correction. The motion carried unanimously.

Under Old Business, the item concerning a one-time supplement for the deployment of the EMA Director was removed.

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Under New Business, Judge English said the item to discuss Public Safety Organization alignment to include Emergency Management Operations has been removed.

Next, Sheriff Jones asked the Commission for use of part of the former Shop facility and outbuildings on Magazine Avenue for his department. Sheriff Jones said his office recently hired a fleet manager and this would be a way for the department to expand. Sheriff Jones said other departments would be able to utilize it as well. Sheriff Jones said another added benefit would be for the department to utilize the covered bays and outbuildings to offer protection and climate control while protecting vehicles and equipment. In addition, Sheriff Jones said storage space is available for sensitive equipment to include radios, in-car cameras and other electronics. Additionally, the open bay structure would provide cover for watercraft and equipment used in marine operations. Commissioner Cannon said use of the facility may result in significant savings on maintenance costs. Sheriff Jones agreed. Judge English asked Mr. Hardee if the shop building on the right side has been condemned. Mr. Hardee said it should be since it is in irreparable condition and should be torn down. Mr. Hardee said the roof has a hole in it and the brick masonry is in such deplorable condition that the roof cannot be accessed for repairs. Mr. Hardee said the bricks could be taken to the Highway Department's lay-down yard to be used on road projects as needed. Commissioner Cannon made a motion seconded by Commissioner Morris to approve the Sheriff's Office use of the former Shop facility and outbuildings on Magazine Avenue as presented. The motion carried unanimously.

Next, Sheriff Jones said the Sheriff's Office has been awarded a Homeland Security Grant in the amount of \$166,000 for a body scanner. Sheriff Jones said the device is a body scanner to detect contraband materials for those being booked into the jail. Sheriff Jones said a request for proposals was sent to several vendors and three vendors returned proposals. Sheriff Jones said one vendor has been disqualified since they are under a cooperative approved by the State of New York, which is not applicable for Alabama. Sheriff Jones recommended the Commission award to the lowest responsive bidder, Tech84, under the GSA Advantage Cooperative, for a total of \$156,800, \$139,000 for a body scanner and \$17,800 for a two-year extended warranty. Commissioner Langley made a motion, seconded by Commissioner Drury, to award the bid to Tech84 for \$156,800 for a body scanner and additional two-year warranty. The motion carried unanimously.

County Engineer Justin Hardee presented a right-of-way vacation for Lee Road 9 located in District 5. Mr. Hardee said the Highway Department was approached by Capell & Howard, P.C., the attorney for Young's Plant Farm, Inc., regarding abandonment of the right-of-way on Lee Road 9 for approximately the last 1,274 feet. The Highway Department currently maintains this portion of Lee Road 9, and Young's Plant Farm, Inc. is listed at the owner of the property on both sides of this portion of the road. As required by Code of Alabama §23-4-20, the adjacent

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property owner (Young's Plant Farm, Inc.) has submitted a written petition and a legal survey requesting the Commission vacate the right-of-way along the southern end of Lee Road 9, from the dead-end north for approximately 1,274 feet. Mr. Hardee said if the vacation is granted, they would be required to build a cul-de-sac as a turn-around going back to Lee Road 10. Mr. Hardee said he is requesting the Commission set a public hearing at the January 13, 2025 Commission meeting on the request. Commissioner LaGrand made a motion, seconded by Commissioner Cannon, to set a public hearing for the vacation of Lee Road 9 at the January 13, 2025 Commission meeting. The motion carried unanimously.

Mr. Hardee presented a speed limit reduction for Lee Road 318, from Lee Road 478 to Lee Road 248, located in District 3. Mr. Hardee said residents approached the Highway Department about reducing the speed. Mr. Hardee said this portion of Lee Road 318 is approximately 1,500 feet in length and currently there are ten (10) driveways and two intersecting roads within this section of road. Due to the amount of residential development along the road, the Highway Department recommends that the speed limit be reduced from 45 mph to 35 mph from Lee Road 478 to Lee Road 248. Commissioner Drury made a motion, seconded by Commissioner LaGrand, to reduce the speed limit from 45 mph to 35 mph on Lee Road 318 from Lee Road 478 to Lee Road 248 as recommended. The motion carried unanimously.

Mr. Hardee said that Lee County was awarded \$346,516.70 through the State's Local Roads Safety Initiative (LRSI) Program for safety widening and edge striping at 11 curves on Lee Road 54 from the Macon County Line to Lee Road 146 (Moore's Mill Road). Mr. Hardee said it is a 90/10 grant for a total cost of \$385,018.56, with Lee County's match amount being \$38,501.86, and the remainder or \$346,516.70 from the Local Roads Safety Initiative (LRSI) funds. Mr. Hardee said the project entails Districts 2, 4 and 5. Commissioner Morris made a motion, seconded by Commissioner Langley, to authorize the Chairman to execute the Construction Agreement and following Resolution between the State and Lee County with the LRSI Program as presented. The motion carried unanimously.

**RESOLUTION**

**PART ONE (1): INTRODUCTION**

This Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as the State; and the Lee County Commission, Alabama, (FEIN 63-6001601) hereinafter referred to as the County.

**WHEREAS**, the State and the County desire to cooperate on a project for Safety Improvements (2' Safety Widening and 5" retroreflective edge stripe) at 11 curves on CR-54 at 11 curves; Project No. LRSI-4125( ); CPMS Reference No. 100079529.

**NOW, THEREFORE**, it is mutually agreed between the State and the County as follows:

**PART TWO (2): FUNDING PROVISIONS**

- A. Project Funding:** Funding for this Agreement is subject to availability of Federal Aid

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funds at the time of authorization. The State will not be liable for Federal Aid funds in any amount. Cost for the project will be financed, when eligible for Federal participation, on the basis of 90 percent Local Roads Safety Initiative (LRSI) funds with 10 percent County funds. Any deficiency in Federal Aid or overrun in costs will be borne by the County from County Federal Aid funds, if available, and from County funds unless approved in writing by the State. In the event of an underrun in project costs, the amount of Federal Aid funds will be the amount stated below, or 90 percent of eligible LRSI project costs.

- B. Estimated Cost:** The estimated cost and participation by the various parties is as follows:

**ESTIMATED COSTS**

|                                 |                     |
|---------------------------------|---------------------|
| LRSI                            | \$346,516.70        |
| County Funds – 10%              | <u>\$ 38,501.86</u> |
| TOTAL (Incl CE&I Indirect Cost) | \$385,018.56        |

It is further understood that this is a cost reimbursement program, and no federal funds will be provided to the County prior to accomplishment of the work for which it is requested. Furthermore, no federal funds will be reimbursed for work performed prior to project authorization.

Any cost incurred by the County relating to this project which is determined to be ineligible for reimbursement by the Federal Highway Administration (FHWA), or in excess of the limiting amounts previously stated, will not be an eligible cost to the project and will be borne and paid by the County.

- C. Time Limit:** This project will commence upon written authorization to proceed from the State directed to the County. The project shall be advance authorization by the end of the fiscal year, unless approved in writing by the State. The County agrees that the State may unilaterally extend the time of the agreement.

**PART THREE (3): PROJECT SERVICES**

- A.** The County will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will not be an eligible cost as part of this Agreement. The Right-of-Way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred.

All work accomplished under the provisions of this Agreement will be accomplished on property owned by or which will be acquired by the County in accordance with applicable Federal and state laws, regulations, and procedures. Any exceptions to this requirement must be approved by the State in writing prior to incurring costs for which reimbursement is requested by the County. In cases where property is leased, or easements obtained, the terms of the lease or easement will not be less than the expected life of the improvements.

Acquisition of real property by the County as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.

Any property or property interests acquired shall be in the name of the County with any condemnation or other legal proceedings being performed by the County.

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The County shall follow all Federal regulations related to the Management, Leasing, and Disposal of Right-of-Way, uneconomic remnants and excess Right-of-Way as found in CFR 23 § 710 Subpart D. Proceeds for Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.

No change in use or ownership of real property acquired or improved with funds provided under the terms of this Agreement will be permitted without prior written approval from the State or FHWA. The State of FHWA will be credited on a prorate share, as provided in Part Two, Section B, any revenues received by the County from the sale of lease of property.

- B. The County will relocate any Utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures. Associated Utility costs will not be an eligible cost as part of this agreement.
- C. The County will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the project with County forces or with a consultant approved by the State. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will not be an eligible cost as part of this Agreement.

If any associated Survey, Design, Plan Preparation, and Preliminary Engineering costs are an eligible cost to the project, the County will develop and submit to the State a project budget for approval. This budget will be in such form and detail as may be required by the State. At a minimum, all major work activities will be described, and an estimated cost and source of funds will be indicated for each activity. A signature line will be provided for approval by the Region Engineer and date of such approval. All costs for which the County seeks reimbursement must be included in a budget approved by the State in order to be considered for reimbursement. Budget adjustments may be necessary and may be allowed, subject to the approval of the State in writing, in order to successfully carry out the project. However, under no circumstances will the County be reimbursed for expenditures over and beyond the amount approved by the State.

The County will undertake the project in accordance with this Agreement, plans approved by the State and the requirements and provisions, including the documents relating thereto, developed by the County and approved by the State. The plans, including the documents relating thereto, are of record in the Alabama Department of Transportation and are hereby incorporated in and made a part of this Agreement by reference. It is understood by the County that failure of the County to carry out the project in accordance with this Agreement and approved plans, including documents related thereto, may result in the loss of federal or state funding and the refund of any federal or state funds previously received on the project.

Projects containing Industrial Access funds or State funds, with no Federal funds involved, shall have completed original plans furnished to the State in accordance with the Guidelines for Operations for *Procedures for Processing State and Industrial Access Funded County and City Projects*, and attached hereto as a part of this Agreement prior to the County letting the contract.

- D. The County will furnish all construction engineering for the project with County forces or

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with a consultant approved by the State as part of the cost of the project. Construction Engineering & Inspection cost are not to exceed 15%, without prior approval by the State. Associated Construction Engineering & Inspection costs will be an eligible cost as part of this Agreement.

- E. The State will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The County may request the use of an approved third-party materials inspection and testing provider, as approved by the State.

**PART FOUR (4): CONTRACT PROVISIONS**

- A. The County shall not proceed with any project work covered under the provisions of this Agreement until the State issues written authorization to the County to proceed.

- B. Associated construction cost will be an eligible cost as part of this Agreement.  
For projects let to contract by the State, the State will be responsible for advertisement and receipt of bids and the award of the Contract. Following receipt of bids and prior to the award of the Contract, the State will invoice the County for its pro rata share of the estimated cost as reflected by the bid of the successful bidder plus Engineering & Inspection and Indirect Costs (if applicable). The County shall pay this amount to the State no later than 30 days after the date bids are opened. Failure to do so may lead to the rejection of the bid.

For projects let to contract by the County, the County shall comply with all Federal and State laws, rules, regulations and procedures applicable to the advertisement, receipt of bids, and the award of the contract. The County will, when authorized by the State, solicit bids and make awards for construction and/or services pursuant to this Agreement. The County shall not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the State. Following receipt of bids, the County will provide all bids to the State with a recommendation for award. The County shall not award the contract until it has received written approval from the State.

The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable Federal and State laws, rules, regulations, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity.

- C. If necessary, the County will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for this project without cost to the State or this project. The County will be responsible for compliance with the permit and the State will have no obligation regarding the permit. The County will furnish the State (Region) a copy of the permit prior to any work being performed by the contractor.

The County will secure all permits and licenses of every nature and description applicable to the project in any manner; conform to and comply with the requirements of any such permit or license; and comply with each and every requirement of any and all agencies, and of any and all lawful authorities having jurisdiction or requirements applicable to the project or to the project activities.

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- D. The County will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that work associated on this project meets the standards of the Alabama Department of Transportation, and the project will be built in accordance with the approved plans.
- E. The County shall be responsible at all times for all of the work performed under this Agreement and, as provided in Ala. Code §11-93-2 (1975), the County shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees.  
For all claims not subject to Alabama Code §11-93-2 (1975), the County shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against any and all damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of, connected with, or related to the (1) work performed under this Agreement, (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the County pursuant to the terms of this agreement, or (3) misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the County, its officers, officials, agents, servants, and employees.
- F. The County will be obligated for the payment of damages occasioned to private property, public utilities or the general public caused by the legal liability (in accordance with Alabama and/or Federal law) of the County, its agents, servants, employees or facilities.
- G. Upon completion and acceptance of this project by the State, the County will assume full ownership and responsibility for the portion of the project work on County right-of-way and maintain the project in accordance with applicable State law and comply with the Department's Local Road Maintenance Certification Policy.

**PART FIVE (5): ACCOUNTING PROVISION**

- A. The County will, when appropriate, submit reimbursement invoices to the State for work performed in carrying out the terms of this Agreement. Requests for reimbursement will be made on forms provided by the State and will be submitted through the Region Engineer for payment. The County may invoice the State not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, and unpaid, and the invoice will be notarized. Invoices for any work performed under the terms of this Agreement will be submitted within twelve (12) months after the completion and acceptance by the State of the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- B. The County will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the State.
- C. The County will establish and maintain a cost accounting system that must be adequate and acceptable to the State as determined by the auditor of the State. All charges to the

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Project will be supported by properly examined invoices, contacts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges in accordance with the requirements of the State. All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part of the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.

The County will report to the State the progress of the project in such manner as the State may require. The County will also provide the State any information requested by the State regarding the project. The County will submit to the State financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the State.

The County will permit the State, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, to inspect, at any time, vehicles and equipment utilized or used in performance of the project and any and all data and records which in any way relate to the project or to the accomplishment of the project. The County will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the County will give its full cooperation to those persons or their authorized representatives, as applicable.

The County will comply with all audit requirements set forth in the 2 CFR Part 200 requirements, or the most current version of those requirements under federal law.

- D. The County will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of Federal interest, or close out, and the State, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to and the right to examine any of said materials at all reasonable times during said period.
- E. Any user fee or charge to the public for access to any property or services provided through the funds made available under this Agreement, if not prohibited by a Federal, State or local law, must be applied for the maintenance and long-term upkeep of the project authorized by this Agreement.
- F. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the County, for any audit performed on this project in accordance with Act No. 94-414.

**PART SIX (6): MISCELLANEOUS PROVISIONS**

- A. By entering into this Agreement, the County is not an agent of the State, its officers, employees, agents or assigns. The County is an independent entity from the State, and nothing in this Agreement creates an agency relationship between the parties.
- B. It is agreed that the terms and commitments contained in this Agreement shall not constitute a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment 26. It is further agreed that, if any provision of this Agreement shall contravene any statute or Constitutional provision

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- or amendment, either now in effect or which may be enacted during the term of this Agreement, then the conflicting provision in this agreement shall be deemed null and void.
- C. By signing the Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.
  - D. No member, officer, or employee of the County, during their tenure of employment and for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.
  - E. The terms of this Agreement may be modified by revision of this Agreement duly executed by the parties hereto.
  - F. This Agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.
  - G. Nothing shall be construed under the terms of this Agreement that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.
  - H. Exhibits A, E, H, M and N are hereby attached to and made a part of this Agreement.

**EXHIBIT A**

**PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL AID PROGRAM**

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.

DBE Obligation. The recipient of funds under the terms of this Agreement agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. The recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to see that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts. Failure of a recipient of funds under the terms of the Agreement, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this Agreement shall constitute a breach of contract and may result in termination of the contract by the State, or such other remedy may be undertaken by the State as it deems appropriate.

**EXHIBIT E**

**TERMINATION OR ABANDONMENT**

- a. The State has the right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.

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b. The State has the right to terminate this Agreement at its sole discretion without cause and make settlement with the County upon an equitable basis. The value of the work performed by the County prior to the termination of this Agreement shall be determined. In determining the value of the work performed, the State shall consider the following:

1. The ratio of the amount of work performed by the County prior to the termination of the Agreement to the total amount of work contemplated by this Agreement less any payments previously made.

2. The amount of the expense to which the County is put in performing the work to be terminated in proportion to the amount of expense to which the County would have been put had he been allowed to complete the total work contemplated by the Agreement, less any payments previously made. IN determining the value of the work performed by the County prior to the termination, no consideration will be given to profit, which the County might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the County, the value of the work performed by the County prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this Agreement.

**CONTROVERSY**

In any controversy concerning contract terms, or on a question of fact in connection with the work covered in this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.

**CONTRACT BINDING ON SUCCESSORS AND ASSIGNS**

a. This contract shall be binding upon the successors and assigns of the respective parties hereto.

b. Should the Agreement be terminated due to default by County, such termination shall be in accordance with applicable Federal Acquisition Regulations.

**EXHIBIT H**

**EQUAL RIGHTS PROVISIONS**

During the performance of this contract, the County for itself, its assignees and successors in interest agree as follows:

**a. Compliance with Regulations**

The County will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities: including but no limited to:

Pertinent Non-Discrimination Authorities:

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- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.* 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environments effects on minority and low-income populations;
- Executive Order 13166, Improved Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discrimination because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

**b. Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d,

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Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, the County agrees it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The County will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations. The County will comply with all provision of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

**c. Solicitations**

In all solicitations either by competitive bidding or negotiation made by the County for work to be performed under a subcontractor, including procurements of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the County of the County's obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

**d. Information and Reports**

The County will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a County is in the exclusive possession of another who fails or refuses to furnish this information, the County shall so certify to the State, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

**e. Sanctions for Noncompliance**

In the event of the County's noncompliance with the nondiscrimination provisions provided for herein, the State shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

1. Withholding of payments to the County under contract until the County complies, and/or
2. Cancellation, termination or suspension of the contract, in whole or in part.

**f. Incorporation of Provisions**

The County will include the foregoing provisions a. through f. in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, orders or instructions issued pursuant thereto. The County will take such action with respect to any subcontract, procurement, or lease as the State may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a County becomes involved in, or is threatened with, litigation with subcontractors, suppliers, or lessor as a result of such direction, the County may request the State to enter into such litigation to protect the interest of the State.

**g. Equal Employment Opportunity** – The following equal employment opportunity

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requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit laws at 49 U.S.C. § 5332, the County agrees to comply with all applicable equal employment requirements of U.S. Department of Labor (U.S. DOL) regulations. “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The County agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the County agrees to comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the County agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the County agrees to comply with any implementing requirements FTA may issue.

3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the County agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act”, 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

### **COST PRINCIPLES**

The State’s cost principles for use in determining the allowability of any item of cost, both direct and indirect, in this Agreement, shall be the applicable provisions of Volume I, Federal Acquisition Regulations, Parts 30 and 31. The County shall maintain costs and supporting documentation in accordance with the Federal Acquisition Regulations, Parts 30 and 31 and other Regulations referenced with these Parts where applicable. The applicable provisions of the above referenced regulations documents are hereby incorporated by reference herein as if fully set forth.

### **EXECUTORY CLAUSE AND NON-MERIT SYSTEM STATUS**

a. The County specifically agrees that this Agreement shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the State beyond the moneys available for this purpose.

b. The County, in accordance with the status of County as an independent contractor, covenants and agrees that the conduct of County will be consistent with such status, that

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County will neither hold County out as, or claim to be, an officer or employee of the State by reason hereof, and that County will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the State under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or an Federal employment law. This paragraph also applies in like manner to the employees of County.

**COUNTY'S CERTIFICATIONS**

The County by acceptance of this contract certifies that the rates or composition of cost noted in Article IV – PAYMENTS are based on the current actual hourly rates paid to employees, estimated non-salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the County. The County agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the County at the time of execution of the Agreement. The County agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The County agrees that the per diem rate will be limited to the rate allowed by the State at the time of execution of the Agreement. The County agrees that a meal allowance shall be limited to County employees while in travel status only and only when used in lieu of a per diem rate.

The County shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of the Alabama Department of Transportation. The County agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.

**EXHIBIT M**

**CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING**

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative Agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal 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

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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.

b. 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 Federal 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, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

**EXHIBIT N**

**FUNDS SHALL NOT BE CONSTITUTED AS DEBT**

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this Agreement shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this Agreement, be enacted, then the conflicting provision in this Agreement shall be deemed null and void.

When considering settlement of controversies arising from or related to the work covered by this Agreement, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

**TERMINATION DUE TO INSUFFICIENT FUNDS**

a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

b. In the event of proration of the fund from which payment under this Agreement is to be made, agreement will be subject to termination.

**NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS**

The State and County acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal

**MINUTES OF THE LEE COUNTY COMMISSION, REG. ADJ. SESSION, NOVEMBER 25, 2024**

Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the State, County, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The County agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Last, Mr. Hardee presented information on the Flood Damage Prevention Ordinance and an update of the Flood Insurance Rate Map (FIRM) for Commission review. Mr. Hardee said the Commission adopted an updated Flood Damage Prevention Resolution at the March 25, 2024 meeting for Lee County's participation in the National Flood Insurance Program (NFIP). Mr. Hardee explained this has been done in the past from time to time as FEMA updates its requirements. Since that adoption and its submittal to our State NFIP Coordinator, Lee County has been notified that the document must be adopted as an ordinance, not a resolution. Mr. Hardee said all previous updates have been done by resolution. Now, the county is being told that unless it is re-adopted as an "ordinance" prior to the January 17, 2025 deadline, that Lee County could be suspended from the NFIP. Building Official Eric Parten has been in contact with the State Coordinator on the matter since receiving the notification but has been unsuccessful in changing their position. Commissioner Drury questioned why they are requiring an Ordinance instead of a Resolution. Mr. Hardee said he discussed the matter with County Attorney Stan Martin and feels the best course of action is to request the Commission re-adopt the same document from March, but as an "ordinance". Also, at this time, FEMA's updated Flood Insurance Study and Flood Insurance Rate Map (FIRM) must be adopted for the Lee County community. These maps are updated periodically by FEMA and their updated adoption is also a requirement of the program to provide protection for Lee County and ensure its participation in the NFIP. Upon this presentation, Commissioner Cannon made a motion, seconded by Commissioner Morris to re-adopt the Flood Damage Prevention Ordinance and adopt FEMA's updated Flood Insurance Study and Flood Insurance Rate Map, which are available for inspection at the Lee County Building Inspection office. The motion carried unanimously.

**FLOOD DAMAGE PREVENTION ORDINANCE**

Lee County, Alabama (Unincorporated Areas)

2024 Update

**ARTICLE 1**

**STATUTORY AUTHORIZATION, FINDINGS OF  
FACT, PURPOSE, AND OBJECTIVES**

The National Flood Insurance Program (NFIP) is managed by the Federal Emergency Management Agency (FEMA). Communities are not required to participate in the program by any law or regulation, but instead participate voluntarily in order to obtain access to NFIP flood insurance. Communities that choose to participate in the NFIP are required to adopt and enforce a floodplain development resolution with land use and control measures that include effective enforcement provisions to regulate development in the floodplain resulting in reduced future flood losses.

## **MINUTES OF THE LEE COUNTY COMMISSION, REG. ADJ. SESSION, NOVEMBER 25, 2024**

FEMA has set forth in federal regulations the minimum standards required for participation in the NFIP; however, these standards have the force of law only because they are adopted and enforced by a state or local government; referred to as an NFIP community. Legal enforcement of the floodplain management standards is the responsibility of the participating NFIP community, which can elect to adopt higher standards as a means of mitigating flood risk. Lee County agrees to adopt and enforce this resolution, which meets or exceeds the minimum standards of the Code of Federal Regulations Title 44 §60.3 in order to participate in the NFIP and have access to federal flood insurance and other federal assistance.

### **SECTION A. STATUTORY AUTHORIZATION**

The Legislature of the State of Alabama has in Title 11, Chapter 19, Sections 1-24; Chapter 45, Sections 1-11; Chapter 52, Sections 1-84; and Title 41, Chapter 9, Section 166 of the Code of Alabama, 1975, authorized local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Lee County Commission, of Lee County, Alabama, does ordain as follows:

### **SECTION B FINDINGS OF FACT**

- (1) The flood hazard areas of Lee County, Alabama (the Federal Emergency Management Agency's [FEMA] designated Special Flood Hazard Areas (SFHAs) or other areas designated by Lee County as flood-prone areas) are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect public health, safety, and general welfare.
- (2) These flood losses are caused most often by development, as defined in this resolution, in areas designated as FEMA SFHAs or other areas designated by Lee County as vulnerable to flooding, including structures which are inadequately elevated or floodproofed (only non-residential structures) or are otherwise unprotected from flood damages; or by the cumulative effect of development in areas subject to flooding that cause increases in flood heights and velocities.

### **SECTION C STATEMENT OF PURPOSE**

It is the purpose of this resolution to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- (2) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion.
- (3) Control development (including filling, grading, paving, dredging, and all other development as defined in this resolution).
- (4) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters, or which may increase flood hazards to other lands.
- (5) Control the alteration of natural floodplains, stream channels, and natural protective barriers which may influence the flow of water.

### **SECTION D OBJECTIVES**

The objectives of this resolution are to:

- (1) Protect human life and health;
- (2) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (3) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize flood blight areas;

## **MINUTES OF THE LEE COUNTY COMMISSION, REG. ADJ. SESSION, NOVEMBER 25, 2024**

- (4) Minimize expenditure of public money for costly flood control projects;
- (5) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (6) Minimize prolonged business interruptions; and
- (7) When asked for assistance regarding flood risk, ensure that potential home buyers are aware that a property is in an area subject to flooding.

### **ARTICLE 2**

#### **GENERAL PROVISIONS**

##### **SECTION A. LANDS TO WHICH THIS RESOLUTION APPLIES**

This resolution shall apply to all FEMA SFHAs and any additional areas designated by Lee County as floodplains or areas subject to flooding within the jurisdiction of Lee County, Alabama.

##### **SECTION B. BASIS FOR SPECIAL FLOOD HAZARD AREAS**

The SFHAs identified by FEMA in Lee County's Flood Insurance Study (FIS), dated November 2, 2011, with accompanying Flood Insurance Rate Maps (FIRMs) and other supporting data and any revision thereto, are adopted by reference and declared a part of this resolution. For those lands acquired by a municipality through annexation, the current effective FIS and data for Lee County are hereby adopted by reference. Community Flood Hazard Areas may also be regulated as SFHAs. FEMA encourages communities to adopt areas prone to flooding to be added to the FIRMs. They may include those areas known to have flooded historically or that have been defined through standard engineering analysis by a professional engineer, licensed to practice in the State of Alabama; or by governmental agencies or private organizations that are not yet incorporated into the FIS or otherwise designated by the community.

##### **SECTION C. ESTABLISHMENT OF A FLOODPLAIN DEVELOPMENT PERMIT**

A Development Permit shall be required in conformance with the provisions of this resolution PRIOR to the commencement of any development, as defined in this resolution, in identified SFHAs and any additional identified Community Flood Hazard Areas within the community.

##### **SECTION D. COMPLIANCE**

No structure or land shall hereafter be located, extended, converted or altered without full compliance with the terms of this resolution and other applicable regulations.

##### **SECTION E. ABROGATION AND GREATER RESTRICTIONS**

This resolution is not intended to repeal, abrogate, or impair any existing resolution, easements, covenants, or deed restrictions. However, where this resolution and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

##### **SECTION F. INTERPRETATION**

In the interpretation and application of this resolution all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body, and; (3) deemed neither to limit nor repeal any other powers granted under State statutes.

##### **SECTION G. WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection required by this resolution is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur; flood heights may be increased by man-made or natural causes. This resolution does not imply that land outside the SFHAs or other identified areas subject to flooding or uses permitted within such areas will be free from flooding or flood damages. This resolution shall not create liability on the part of Lee County or by any officer or employee thereof for any flood damages that result from reliance on this resolution or any administrative decision lawfully made thereunder.

##### **SECTION H. PENALTIES FOR VIOLATION**

**MINUTES OF THE LEE COUNTY COMMISSION, REG. ADJ. SESSION, NOVEMBER 25, 2024**

Violation of the provisions of this resolution or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a misdemeanor. The Code of Alabama (1975), Title 11, Chapters 19 and 45 grant local governments in Alabama the authority to administer the enforcement provisions stated within this section of the resolution.

(1) Stop Work Order. The community may issue a stop work order, which shall be served on the applicant or other responsible person.

- (a) Upon notice from the Administrator, work on any building, structure or premises that is being performed contrary to the provisions of this resolution shall immediately cease.
- (b) Such notice shall be in writing and shall be given to the owner of the property, or to his or her agent, or to the person doing the work, and shall state the conditions under which work may be resumed.

The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order must include a provision that it may be withdrawn or modified to enable the applicant or other responsible person to take the necessary remedial measures to cure such violation or violations.

(2) Notice of Violation. If the community determines that an applicant or other responsible party for the development has failed to comply with the terms and conditions of a permit, or otherwise not in accordance with the provisions of this resolution, it shall issue a written Notice of Violation, by certified return receipt mail, to such applicant or other responsible person. Where the person is engaged in activity covered by this resolution without having first secured a permit, the notice shall be served on the owner or the party in charge of the activity being conducted on the site. Therefore, any work undertaken prior to submission and approval of an official permit by Lee County or otherwise not in accordance with this resolution shall constitute a violation of this resolution and be at the permit holder's risk. The notice of violation shall contain:

- (a) The name and address of the owner or the applicant or the responsible party;
- (b) The address or other description of the site upon which the violation is occurring;
- (c) A statement specifying the nature of the violation (including failure to obtain a permit);
- (d) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit or this resolution and the date for the completion of such remedial action;
- (e) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed, and;
- (f) A statement in the Notice of Violation shall be included that the determination of violation may be appealed to the community by filing a written Notice of Appeal within ten (10) working days after the Notice of Violation. Exceptions for the deadline for this Notice include: 1) in the event the violation constitutes a danger to public health or public safety, then a 24-hour notice shall be given; 2) if there's an imminent or immediate threat to life or property, then immediate action is required.

(3) Civil penalties. Any person who violates this resolution or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 or imprisoned for not more than 30 days, or both, and in addition, shall pay all costs and expenses involved in the case: Each day such violation continues following receipt of the Notice of Violation shall be considered a

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separate offense. Nothing contained herein shall prevent Lee County from taking such other lawful actions as is necessary to prevent or remedy any violation.

- (a) Section 1316 Declaration. A Section 1316 declaration shall be used only when all other legal means included in this resolution to remedy a violation have been exhausted and the structure remains non-compliant. Once invoked, the property's flood insurance coverage will be terminated and no new or renewal policy can be issued, no NFIP insurance claim can be paid on any policy on the property, and federal disaster assistance will be denied for the property.

The declaration must be in writing (letter or citation), from the community to the property owner and to the FEMA Regional Office, and must contain the following items:

- i. The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;
- ii. A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance;
- iii. A clear statement that the public body making the declaration has authority to do so and a citation of that authority;
- iv. Evidence that the community has taken and exhausted all legal means to remedy the violation, including all Community enforcement actions, as specified in this resolution; and
- v. Notice of violation, and a statement regarding the prospective denial of insurance.

The structure will be considered a violation until such time the violation has been remedied. If a structure that has received a Section 1316 declaration is made compliant with the all the applicable provisions of this resolution, then the Section 1316 declaration can be rescinded by the community and flood insurance eligibility restored.

- (4) Administrative appeal; judicial review. Any person receiving a Notice of Violation may appeal the determination of the community, including but not limited to the issuance of a stop work order, the assessment of an administratively-imposed monetary penalty, the suspension, revocation, modification, or grant with condition of a permit by the community upon finding that the holder is in violation of permit conditions, or that the holder is in violation of any applicable ordinance or any of the community's rules and regulations, or the issuance of a notice of bond forfeiture. The Notice of Appeal must be in writing to the Floodplain Administrator and must be received within ten (10) days from the date of the Notice of Violation. A hearing on the appeal shall take place within thirty (30) days from the date of receipt of the Notice of Appeal.
- (5) All appeals shall be heard and decided by the community's designated appeals board, which shall be Lee County Commission, or their designees. The appeals board shall have the power to affirm, modify, or reject the original penalty, including the right to increase or decrease the amount of any monetary penalty and the right to add or delete remedial actions required for correction of the violation and compliance with the community's floodplain development ordinance, and any other applicable local, state, or federal requirements. Appeals cannot be in opposition to the provisions of this resolution. The decision of the appeal board shall be final.

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- (6) A judicial review can be requested by any person aggrieved by a decision or order of the community, after exhausting his/her administrative remedies. They shall have the right to appeal de novo to the Lee County Circuit Court.

**SECTION I. SAVINGS CLAUSE**

If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held to be noncompliant with 44 Code of Federal Regulation 59-78, such decision shall not affect the validity of the remaining portions of this resolution.

**ARTICLE 3**

**ADMINISTRATION**

**SECTION A. DESIGNATION OF FLOODPLAIN ADMINISTRATOR**

The Chief Building Official of Lee County is hereby appointed to administer and implement the provisions of this resolution. The Chief Building Official of Lee County shall hereto after be referred to as the Floodplain Administrator in this resolution.

**SECTION B. PERMIT PROCEDURES**

Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by the community PRIOR to any development (any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials) in the SFHAs of the community, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the elevations of the area of development and the nature, location, and dimensions of existing or proposed development.

Specifically, the following procedures and information are required for all projects in the SFHA or other designated floodplains within the jurisdiction of Lee County:

(1) **Application Stage**

Plot plans are to include:

- (a) The BFEs where provided as set forth in Article 4, Section B and C;
- (b) Boundary of the Special Flood Hazard Area and floodway(s) as delineated on the FIRM or other flood map as determined in Article 2, Section B;
- (c) Flood zone designation of the proposed development area as determined on the FIRM or other flood map as set forth in Article 2, Section B;
- (d) Elevation in relation to mean sea level (or highest adjacent grade) of the regulatory lowest floor elevation, including basement, of all proposed structures;
- (e) Elevation in relation to mean sea level to which any non-residential structure will be flood-proofed;
- (f) Design certification from a professional engineer, who is licensed to practice in the State of Alabama, or a licensed architect, who is registered to practice in the State of Alabama, that any proposed non-residential flood-proofed structure will meet the flood-proofing criteria of Article 4, Sections B(2) and E(2);
- (g) A Foundation Plan, drawn to scale, that shall include details of the proposed foundation system to ensure all provisions of this Ordinance are met. These details include, but are not limited to, the proposed method of elevation (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls) and description of any flood openings required in accordance with Article 4, Sections B(1) and B(3) when solid foundation perimeter walls are used.

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- (h) Usage details of any enclosed areas below the lowest floor shall be described.
  - (i) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
  - (j) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development including current and proposed locations of the watercourse. An engineering report shall be prepared by a professional engineer, who is licensed to practice in the State of Alabama, on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream. The affected properties shall be depicted on a map or on the plot plan.
  - (k) Certification of the plot plan by a professional engineer or surveyor, who is licensed to practice in the State of Alabama, is required.
- (2) Construction Stage
- For all new construction and substantial improvements, the permit holder shall provide to the Floodplain Administrator an as-built certification of the regulatory floor elevation or flood-proofing level using appropriate FEMA elevation or floodproofing certificate immediately after the lowest floor or flood-proofing is completed. In addition:
- (a) When flood-proofing is utilized for non-residential structures, said certification shall be prepared by professional engineer, who is licensed to practice in the State of Alabama, or architect, who is registered to practice in the State of Alabama.
  - (b) Any work undertaken prior to submission of these certifications shall be at the permit holder's risk.
  - (c) The Floodplain Administrator shall review the above referenced certification data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being allowed. Failure to submit certification or failure to make the required corrections, shall be cause to issue a Notice of Violation and/or Stop-Work Order for the project.
  - (d) The Floodplain Administrator shall make periodic inspections of projects during construction throughout the SFHAs within the jurisdiction of the community to ensure that the work is being done according to the provisions of this resolution and the terms of the permit. Members of the inspections/engineering department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of Lee County during normal business hours of the community for the purposes of inspection or other enforcement action.
  - (e) The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (3) Finished Construction
- Upon completion of construction, a FEMA elevation certificate (FEMA Form 81-31 or equivalent), which depicts all finished construction elevations, must be submitted to the Floodplain Administrator prior to issuance of a Certificate of Occupancy.
- (a) If the project includes a floodproofing measure, a FEMA floodproofing certificate must be submitted by the permit holder to the Floodplain Administrator.

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- (b) The Floodplain Administrator shall review the certificate(s) and the data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance.
- (c) In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (d) Documentation regarding completion of and compliance with the requirements stated in the permit application and with Article 3, Section B(1) of this resolution shall be provided to the local Floodplain Administrator at the completion of construction or records shall be maintained throughout the Construction Stage by inspectors for the Floodplain Administrator. Failure to provide the required documentation shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (e) All records that pertain to the administration of this resolution shall be maintained in perpetuity and made available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

**SECTION C. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR**

The Floodplain Administrator and his/her designated staff is hereby authorized and directed to enforce the provisions of this resolution. The Floodplain Administrator is further authorized to render interpretations of this resolution, which are consistent with its spirit and purpose. Duties of the Floodplain Administrator shall include, but shall not be limited to:

- (1) Require permits for all proposed construction or other development in the community, including the placement of manufactured homes, so that it may be determined whether such construction or other development is proposed within flood-prone areas. Ensure the public is aware that floodplain development permits are required for development in SFHAs.
- (2) Conduct regular inspections of the community's SFHAs for any unpermitted development and issue Stop Work Orders and Notice of Violations for any such development. Any unpermitted structure or non-structural development in the SFHA will be considered a violation until such time that the violation has been remedied.
- (3) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. Maintain such permits permanently with floodplain development permit file.
- (4) Review all permit applications of proposed development, to determine whether the proposed construction or other development will be reasonably safe from flooding and to assure compliance with this resolution.
  - (a) If the provisions of this resolution have been met, approve the permit.
  - (b) If the provisions of this resolution have not been met, request that either corrections and accurate completion of the application be made or disapprove the permit.
- (5) When BFE data or floodway data have not been provided in accordance with Article 2, Section B then the Floodplain Administrator shall obtain, review and reasonably utilize any BFE and floodway data available from a Federal, State, or other sources in order to administer the provisions of Article 4.
- (6) Verify and record the actual elevation of the lowest floor, in relation to mean sea level (or highest adjacent grade), including basement, of all new construction or substantially improved residential structures in accordance with Article 3, Section B(2).

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- (a) Review elevation certificates and require incomplete or incorrect certificates to be corrected and resubmitted for approval.
  - (b) A post-construction elevation certificate is required to be kept with the permit and certificate of occupancy in perpetuity; a pre-construction elevation certificate can be used to ensure the correct elevation for the lowest floor and machinery along with the correct number of vents that will be used.
- (7) Verify and record the actual elevation, in relation to mean sea level to which any new or substantially improved non-residential structures have been elevated or floodproofed, in accordance with Article 3, Section B, or Article 4, Sections B(2) and E(2).
- (8) When floodproofing is utilized for a non-residential structure, the Floodplain Administrator shall obtain certification of design criteria from a professional engineer, licensed to practice in the State of Alabama, or licensed architect, registered to practice in the State of Alabama, in accordance with Article 3, Section B(1) and Article 4, Section B(2) or E(2).
- (9) Notify adjacent communities and the Alabama Department of Environmental Management and the appropriate district office of the U.S. Army Corps of Engineers prior to any alteration or relocation of a watercourse. Submit evidence of such notification to FEMA and the NFIP State Coordinator's Office (Alabama Department of Economic and Community Affairs, Office of Water Resources).
- (10) For any altered or relocated watercourse, submit engineering data/analysis within six (6) months after completion of the project to FEMA and State to ensure accuracy of community flood maps through the Letter of Map Revision process. Assure flood carrying capacity of any altered or relocated watercourse is maintained following completion of the project.
- (11) Where interpretation is needed as to the exact location of boundaries of the SFHA (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this resolution.
- (12) All records pertaining to the provisions of this resolution shall be maintained, in perpetuity, at the office of the Floodplain Administrator and shall be available for public inspection when requested.
- (13) For any improvements made to existing construction located in the SFHA (as established in Article 2, Section B) ensure that a permit is obtained. Also, conduct Substantial Improvement (SI) (as defined in Article 6 of this resolution) reviews and analysis of all structural development permit applications. Maintain a record of the SI calculations and comments within the permit files in accordance with Section C(11) of this Article.
- (14) For any residential and nonresidential structures located in the SFHAs that are damaged from any source, natural hazard or man-made, conduct Substantial Damage (SD) (as defined in Article 6 of this resolution) assessments.
  - (a) The Floodplain Administrator shall ensure that permits are obtained, in accordance with this resolution, prior to any repairs commencing.
  - (b) The Floodplain Administrator should follow the procedures in its Community Substantial Damage Management Plan to help enable Lee County to adequately manage the SI/SD determination process and the permitting and inspections for repairs during a post-disaster recovery.

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- (c) Make SD determinations whenever structures within the SFHA area are damaged by any cause or origin. SD determinations shall not be waived to expedite the rebuilding process during a post-disaster recovery or for any other reason.
- (d) If the community has a large number of buildings in their SFHA that have been damaged, they should decide in advance how best to handle permitting and inspecting damaged buildings for substantial damage determinations.
- (e) If required, a moratorium may be placed on all non-disaster related construction permits until the community has sufficiently completed its SD determinations.
- (f) The SD determinations should be performed immediately after the damage-causing event or other cause of damage.
- (g) The community shall utilize methods and tools for collecting building data and performing analyses that will provide reasonable and defensible SD determinations. Those tools shall be capable of generating reports for record-keeping purposes and to provide to the applicable property owners if requested.
- (h) Maintain a record of the SD calculations within permit files in accordance with Section C(11) of this Article.
- (i) If the SD determination finds that the extent that the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred, the Floodplain Administrator shall:
  - i. Coordinate with the property owner and issue a letter to convey the SD determination.
  - ii. Determine if the damage was caused by flooding and include the cause in the letter to the property owner. Also, include whether or not the structure qualifies as a repetitive loss structure per the definitions in Article 6 of this resolution. The information can be used to determine if the claim is eligible for an Increased Cost of Compliance claim.
  - iii. Coordinate with property owners and insurance companies for any NFIP claims.
  - iv. If the repairs are to proceed, coordinate with the permit applicant to ensure a permit is obtained and inspections are conducted to ensure that all applicable provisions of this resolution are adhered to without exception or waiver.
- (j) Ensure that phased improvements and incremental repairs do not circumvent the SI/SD requirements.
- (k) Ensure that any combinations of elective improvements being made in addition to the necessary repairs to damages are included in making the SI/SD determination.
- (l) An applicant for a permit may appeal a decision, order, or determination that was made by the local official for the following:
  - i. The local official's finding or determination that the proposed work constituting a SI/SD were based on insufficient information, errors, or repair/improvement costs that should be included and/or excluded;
  - ii. The local official's finding or determination that the proposed work constituting a SI/SD were based on inappropriate valuations of costs for the proposed work, or an inappropriate method to determine the market value of the building.
- (m) It is not appropriate for a permit applicant to seek an appeal who wishes to build in a manner that is contrary to the regulations and codes included in this ordinance. In those cases, the applicant should seek a variance.

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- (n) Ensure that any building located in a floodway that constitutes a SI/SD has an engineering analysis performed in accordance with Article 4, Section C(2). If that analysis indicates any increase in the BFE, the local official must not allow the proposed work unless the structure is brought into full compliance with this resolution.
- (15) Coordinate with insurance adjusters prior to permitting any proposed work to bring any flood-damaged structure covered by a standard flood insurance policy into compliance (substantially damaged structures) to ensure eligibility for ICC funds.
- (16) Right of Entry
  - (a) After the Certificate of Occupancy has been issued for a building and the Floodplain Administrator observes or has reasonable cause to believe that renovations or retrofits have been made to the building, structure, or premises located in a SFHA that appear to be in violation of any provisions of this resolution, he/she shall have the right to seek entry into that building as described in (b) to (e) below.
  - (b) Whenever it becomes necessary to make an inspection to enforce any of the provisions of this resolution, the Floodplain Administrator may enter such building, structure or premises at all reasonable times (normal business hours for the community) to inspect the same or perform any duty imposed upon the Floodplain Administrator by this resolution.
  - (c) If such building or premises are occupied, the Floodplain Administrator shall first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he/she shall first make a reasonable effort to locate the owner or other persons having charge or control of such building or premises prior to entry.
  - (d) If entry is refused or owner cannot be located, the Floodplain Administrator shall have recourse to every remedy provided by law to secure the right of entry of the building, structure, or premises.
  - (e) When the Floodplain Administrator shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building, structure, or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Floodplain Administrator for the purpose of inspection and examination pursuant to this resolution.

**ARTICLE 4**

**PROVISIONS FOR FLOOD HAZARD REDUCTION**

**SECTION A**

**GENERAL STANDARDS**

In ALL SFHAs and flood-prone areas regulated by Lee County, the following provisions are required for all proposed development including new construction and substantial improvements:

- (1) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including but, not limited to Section 404 of the Federal Water Pollution Control Act Amendments (1972, 33 U.S.C. 1334) and the Endangered Species Act (1973, 16 U.S.C. 1531-1544). Maintain such permits permanently with floodplain development permit file.

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- (2) New construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (3) New construction and substantial improvements shall be constructed with materials resistant to flood damage below the BFE.
- (4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (5) New construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (6) Review subdivision proposals and other proposed development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed development is in a SFHA, any such proposals shall be reviewed to assure that:
  - (a) They are consistent with the need to minimize flood damage within the SFHA,
  - (b) All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage,
  - (c) All new and replacement water supply systems are to be designed to minimize or eliminate infiltration of flood waters into the systems,
  - (d) All new and replacement sanitary sewage systems are to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters,
  - (e) Onsite waste disposal systems are to be located to avoid impairment to them or contamination from them during flooding, and
  - (f) Adequate drainage provided to reduce exposure to flood hazards.
- (7) Manufactured homes shall be installed using methods and practices which minimize flood damage. They must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local requirements for resisting wind forces.
- (8) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- (9) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- (10) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (11) Any alteration, repair, reconstruction or improvement to new construction and substantial improvements which is not compliant with the provisions of this resolution, shall be undertaken only if the non-conformity is not furthered, extended or replaced.
- (12) Proposed new construction and substantial improvements that are partially located in a SFHA shall have the entire structure meet the standards of this resolution for new construction.

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- (13) Where new construction and substantial improvements located in multiple SFHAs or in a SFHA with multiple BFEs, the entire structure shall meet the standards for the most hazardous SFHA and the highest BFE.

**SECTION B. SPECIFIC TECHNICAL STANDARDS**

In ALL Special Flood Hazard Areas designated as A, AE, AH (with engineered or estimated BFE), the following provisions are required:

- (1) Residential and Non-Residential Structures - Where BFE data is available, new construction and substantial improvement of any structure or manufactured home shall have the lowest floor, including basement, elevated no lower than one (1) foot above the base flood elevation (also referred to as the design flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of Article 4, Section B(3).
- (2) Non-Residential Structures - New construction and substantial improvement of any non-residential structure located in AE or AH zones, may be floodproofed (dry) in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to at least one (1) foot above the base flood elevation (herein after referred to as the design flood elevation), with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.
- (a) A professional engineer, who is licensed to practice in the State of Alabama, or licensed architect, who is registered to practice in the State of Alabama, shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with the standards in ASCE-24 (for dry floodproofing) or other compatible standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and in Article 3, Section C(6).
- (b) A record of such certificates, which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained with the official permitting records for the structure and kept in-perpetuity.
- (c) Any non-residential functionally dependent structure (as defined in Article 6) that cannot meet the standards stated in Section B(2)(a) shall require a variance to be issued in accordance with Article 5, Section C(3) and D(1).
- (3) Enclosures for Elevated Buildings - All new construction and substantial improvements of existing structures (residential and non-residential) that include ANY fully enclosed area below the BFE, located below the lowest floor formed by the foundation and other exterior walls shall be designed so as to be an unfinished or flood resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of flood waters.
- (a) Designs for complying with this requirement must either be certified by a professional engineer, who is licensed to practice in the State of Alabama, or a licensed architect, registered to practice in the State of Alabama, or meet the following minimum criteria:
- (i) Provide a minimum of two openings for each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area subject to

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- flooding (if a structure has more than one enclosed area below the BFE, each shall have openings on exterior walls);
- (ii) Openings shall be in at least two walls of each enclosed area (includes areas separated by interior walls);
  - (iii) The bottom of all openings shall be no higher than one foot above grade;
  - (iv) Openings may be equipped with screens, louvers, valves and other coverings or devices provided that they permit the automatic entry and exit of floodwaters in both directions without impeding or blocking flow and shall be accounted for in determination of the net open area; and
  - (v) Openings meeting the requirements of (3)(a)(i) – (iv) that are installed in doors are permitted.
- (b) So as not to violate the "Lowest Floor" criteria of this resolution, the unfinished or flood resistant enclosure shall only be used for parking of vehicles, limited storage, or access to the elevated area.
  - (c) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
  - (d) All interior walls, ceilings and floors below the BFE shall be unfinished and/or constructed of flood damage-resistant materials. This practice is also referred to as "wet floodproofing". The definitions for "flood damage-resistant materials" and "wet floodproofing" are included in Article 6.
  - (e) Mechanical, electrical, or plumbing devices shall be installed not less than one foot above the BFE. The interior portion of such enclosed area(s) shall be void of utilities except for essential lighting and power, as required, that are watertight or have otherwise been floodproofed.
- (4) Standards for Manufactured Homes and Recreational Vehicles Where Base Flood Elevation Data is Available.
- (a) Require that all manufactured homes placed or substantially improved:
    - (i) Outside of a manufactured home park or subdivision,
    - (ii) In a new or substantially improved manufactured home park or subdivision,
    - (iii) In an expansion to an existing manufactured home park or subdivision, or
    - (iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood,be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot or more above the BFE and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.
  - (b) Require that all manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of Subsection (4)(a) be elevated so that either:
    - (i) The lowest floor of the manufactured home is one foot or more above the BFE; OR
    - (ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above the highest adjacent grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

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- (iii) Concrete block piers (and other foundation systems) are to be designed in accordance with the Code of Federal Regulations Title 24, Part 3285 and with the specifications in FEMA P-85: Protecting Manufactured Homes from Floods and Other Hazards – A Multi-Hazard Foundation and Installation Guide. The §3285.306 Design procedures for concrete block piers and FEMA P-85 (Table SP-1.1), specify that the maximum allowable pier height (measured from top of grade) for concrete piers to be five (5) feet.
    - (iv) The chassis and its supporting equipment are to be above the pier or other foundation. The areas below the chassis must be constructed with flood-resistant materials. All utilities and mechanical equipment must be elevated to a minimum of three (3) feet above the highest adjacent grade. Any utility and mechanical components that must be below the BFE must be made watertight to that same elevation to meet the standards in Article 4, Section A(5).
  - (c) Require that all recreational vehicles placed on sites must either:
    - (i) Be on the site for fewer than 180 consecutive days,
    - (ii) Be fully licensed and ready for highway use on its wheels or jacking system,
    - (iii) Be attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached structures or additions; OR
    - (iv) Must meet all the requirements for "New Construction", including the anchoring and elevation requirements of Article 4, Section B, provisions (4)(a) and (4)(b).
- (5) Standards for Manufactured Homes Where No Base Flood Elevation Exists.
  - (a) Require that all manufactured homes to be placed within a Zone A area on the FIRM shall be installed using methods and practices which minimize flood damage.
  - (b) Manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors.
  - (c) The manufactured home chassis must be supported by reinforced piers or other foundation elements of at least equivalent strength such that the bottom of the chassis and its supporting equipment be no less than 36 inches and up to a maximum 60 inches (five feet) above the highest adjacent grade and be securely anchored to an adequately anchored foundation system.
  - (d) The areas below the chassis must be constructed with flood-resistant materials. All utilities and mechanical equipment must be elevated to a minimum of 3 feet above the highest adjacent grade. Any utility and mechanical components that must be below the BFE must be made watertight to that same elevation to meet the standards in Article 4, Section A(5).
- (6) Require, until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A and AE on Lee County's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- (7) Accessory and Agricultural Structures – When an accessory structure meets the requirements outlined below, these structures may be wet-floodproofed and do not have to be elevated to one foot above the BFE as required in Article 4, Section B(1).

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A permit shall be required prior to construction or installation of any accessory structures and any agricultural structures built below the DFE and the following provisions apply:

- (a) Must be adequately anchored to prevent flotation, collapse, or lateral movement;
  - (b) Must be designed with an unfinished interior and constructed with flood damage-resistant materials below the DFE as described in Article 4, Section B(3);
  - (c) Must have adequate flood openings as described in Article 4, Section B(3);
  - (d) Must be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
  - (e) Must comply with the requirements for development in floodways in accordance with Article 4, Section C;
  - (f) Must elevate any mechanical and other utility equipment in or servicing the structure to or above the DFE or must be floodproofed in accordance with Article 4, Section A;
  - (g) Prohibit storage of any hazardous or toxic materials below the DFE.
  - (h) Permits for small accessory structures may be issued to provide wet floodproofing measures in accordance with the standards described in subsections (i) through (iv) below without requiring a variance. Before issuing permits for small accessory structures, the Floodplain Administrator must verify:
    - (i) Use is limited to parking of vehicles or storage;
    - (ii) Size is less than or equal to a one-story, two-car garage for all A zones;
    - (iii) Structures are a minimal investment and have a low damage potential with respect to the structure and contents;
    - (iv) Structures will not be used for human habitation;
    - (v) Structures comply with the wet floodproofing requirements in Article 4, Section B(3).
  - (i) Permits for accessory structures larger than the size allowed for in subsection (7)(h) above, shall require a variance to be granted on a case-by-case basis in accordance with Article 7, Section D(3). Variances shall not be granted for entire subdivisions for accessory structures.
  - (j) Permits for new construction of all agricultural structures shall require a variance to be granted on a case-by-case basis in accordance with Article 7, Section D(4).
- (8) Underground and Aboveground Storage (Liquid and Gas) Tanks - Tanks and tank inlets, fill openings, outlets, and vents that are located below the DFE shall be designed, constructed, installed, and anchored to resist all flood-related loads (flotation, collapse, or lateral movement resulting from hydrostatic and hydrodynamic forces) and any other loads, including the effects of buoyancy, during flooding up to and including the 100-year flood and without release of contents into floodwaters or infiltration of floodwaters into the tanks.
- (a) A permit that includes floodplain development shall be required prior to construction or installation of any underground and aboveground tanks (including their foundation and support systems) located within a special flood hazard area.
  - (b) Loads on underground tanks and aboveground tanks exposed to flooding shall be determined assuming at least 1.3 times the potential buoyant and other flood forces acting on the empty tank.
  - (c) Tanks and associated piping shall be installed to resist local scour and erosion during the 100-year flood.

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- (d) Aboveground tanks located in Zone A/AE flood hazard areas shall be either:
  - (i) Elevated to or above the DFE on platforms or structural fill,
  - (ii) Elevated to or above the DFE where attached to structures and the foundation system supporting the structures shall be designed to accommodate any increased loads resulting from the attached tanks,
  - (iii) Permitted below the DFE where the tank and its foundation are designed to resist all flood-related loads including floating debris, or
  - (iv) Permitted below the DFE where the tank and its foundation are designed to resist flood loads and are located inside a barrier designed to protect the tank from floating debris.
- (e) Aboveground tanks located in areas designated as Zone V/VE, Coastal A-Zones, and other high risk flood hazard areas (see ASCE 24-14) shall be elevated to or above the DFE on platforms that conform to the foundation requirements of ASCE 24-14, Section 4.5. Aboveground tanks shall not be permitted to be located under elevated structures or attached to structures at elevations below one foot above the DFE in these areas.
- (f) Underground tanks located in areas designated as Zone V/VE, Coastal A-Zones, and other high risk flood hazard areas (see ASCE 24-14) shall have the determination of flood-related loads take into consideration the eroded ground elevation.
- (g) Tank inlets, fill openings, outlets, and vents shall be:
  - (i) At or above the DFE or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the 100-year flood.
  - (ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the 100-year flood.
- (9) Structures and Sites for the Storage or Production of Hazardous Substances – Require that all outdoor storage sites, new construction and substantial improvements to be used for the production or storage of hazard substances (as defined in Article 7) which are located in the special flood hazard area shall be built in accordance with all applicable standards in this resolution in addition to the following requirements:
  - (a) No structures containing hazardous substances shall be permitted for construction in a floodway;
  - (b) Residential structures shall have the area in which the hazard substances are to be stored elevated or dry floodproofed a minimum of two (2) feet above the BFE;
  - (c) Non-residential structures shall be permitted to be built below the BFE in accordance with Article 4, Section B(2) such that the area where the hazard substance production or storage is located will be:
    - (i) elevated or designed and constructed to remain completely dry to at least two (2) feet above the BFE, and
    - (ii) designed to prevent pollution from the storage containers, structure, or activity during the course of the base flood.
  - (d) Any solid, liquid, or gas storage containers of hazardous substances and any associated mechanical, electrical, and conveyance equipment shall be watertight and shall be properly anchored and protected from the hydrostatic and hydrodynamic forces of flood waters and debris carried by the base flood.

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- (10) Construction of Fences - New and replacement fences may be allowed in flood hazard areas if they do not act as a flow boundary and redirect the direction of flow, collect flood debris and cause blockages, cause localized increases in flood levels, or if damaged, become debris that may cause damage to other structures.

### **SECTION C. FLOODWAYS**

Located within Special Flood Hazard Areas established in Article 2, Section B, are areas designated as floodway. A floodway may be an extremely hazardous area due to velocity floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights. Therefore, the following provisions shall apply:

- (1) The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point;
- (2) Encroachments, including fill, new construction, substantial improvements or other development are prohibited within the adopted regulatory floodway unless it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in BFEs during the occurrence of the base flood discharge. A registered professional engineer must provide supporting technical data and certification (No-Rise Certificate) to FEMA for the proposed floodway encroachment. The No-Rise Certificate must be submitted to the Floodplain Administrator with the development permit (including a Site Plan showing the current and proposed floodway alignment) for approval.
- (3) ONLY if Article 4, Section C, provisions (1) and (2) are satisfied, then any new construction or substantial improvement in a floodway shall comply with all other applicable flood hazard reduction provisions of Article 4. After satisfying the required provisions stated in this section, encroachments in floodways should be limited to the following types of projects:
  - (a) flood control and stormwater management structures;
  - (b) road improvements and repairs;
  - (c) utility easements/rights-of-way; and
  - (d) public improvements or public structures for bridging over the floodway.
- (4) Fencing shall be prohibited in floodways unless it is demonstrated that such development will not cause any increase in the BFE. Appropriate analysis and documentation shall be submitted along with the development permit for review and approval. Fences that have the potential to block or restrict the passage of floodwaters (by trapping debris or with openings too small to allow unhindered passage of water), such as stockade and wire mesh fences, shall meet the requirements of Article 4, Section C(2).

### **SECTION D. BUILDING STANDARDS FOR STREAMS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS (APPROXIMATE A-ZONES)**

Located within the SFHAs established in Article 2, Section B, where streams exist but no base flood data have been provided (Approximate A-Zones), the following provisions apply:

- (1) BFE data shall be provided for new subdivision proposals and other proposed development (including manufactured home parks and subdivisions) greater than fifty (50) lots or five (5) acres, whichever is the lesser.
- (2) When BFE data or floodway data have not been provided in accordance with Article 2, Section B then the Floodplain Administrator shall obtain, review, and reasonably utilize any scientific or historic BFE and floodway data available from a Federal, State, or other source, in order to

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administer the provisions of Article 4. ONLY if data are not available from these sources, then Article 4, Section D, provisions (4) and (5) shall apply.

- (3) All development in Zone A must meet the requirements of Article 4, Section A and Sections B(1), B(2), B(3), B(5), B(6), B(7), B(8), B(9), and B(10).
- (4) In SFHAs without BFE data, new construction and substantial improvements of existing structures shall have the lowest floor (for the lowest enclosed area; including basement) elevated no less than three (3) feet above the highest adjacent grade. As the requirements set forth in Article 4, Section B(1) and B(2) stipulate the lowest floor to be elevated no less than one foot about the BFE, then the structure for this condition shall be elevated no less than four (4) feet about the highest adjacent grade.
- (5) In the absence of a BFE, a manufactured home must also meet the elevation requirements of Article 4, Section B(4)(b)(ii) – B(4)(b)(iv) in that the structure cannot be elevated above a maximum of 60 inches (5 feet) and all utilities and mechanical equipment must be elevated a minimum of three (3) feet above the highest adjacent grade.
- (6) Enclosures for elevated buildings in Zone A areas shall comply with the standards of Article 4, Section B(3)(a). The Floodplain Administrator shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.
- (7) No encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or twenty-five feet, whichever is greater, measured from the top of the stream bank, unless certification by a registered professional engineer is provided demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

**SECTION E. STANDARDS FOR AREAS OF SHALLOW FLOODING (AO ZONES)**

Special flood hazard areas established in Article 2, Section B may include designated "AO" shallow flooding areas. These areas have base flood depths of one to three feet (1'-3') above ground, with no clearly defined channel. The following provisions apply:

- (1) All new construction and substantial improvements of residential and nonresidential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM) plus one foot of freeboard. If no depth number is specified, the lowest floor (including basement) shall be elevated at least three (3) feet above the highest adjacent grade. Openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of Article 4, Section B(3).  
The Floodplain Administrator shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.
- (2) New construction and the substantial improvement of a non-residential structure may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be water tight to the specified flood level in Article 4, Section E(1) or three (3) feet (if no depth number is specified), above highest adjacent grade, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. As the requirements set forth in Article 4, Section B(1) and B(2) stipulate the lowest floor to be elevated no less than one foot about the BFE, then the structure for this condition shall be elevated no less than four (4) feet about the highest adjacent grade. A professional engineer, who is licensed to

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practice in the State of Alabama, or licensed architect, who is registered in the State of Alabama, shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above and shall provide such certification to the official as set forth above and as required in Article 3, Section B(1) and (2).

- (3) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

### **SECTION F. STANDARDS FOR SUBDIVISIONS AND OTHER DEVELOPMENT**

All subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, shall include within the drawings, plans, and permits for such proposals the following:

- (1) BFE data;
- (2) Provisions to minimize flood damage;
- (3) Public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- (4) Adequate drainage provided to reduce exposure to flood hazards without negatively impacting adjacent properties;
- (5) Preliminary plans for review and approval of the platted subdivision which identifies the Special Flood Hazard Area, floodway boundaries, the BFE, and other areas regulated by the community;
- (6) Final subdivision plats that identify the boundary of the special flood hazard area, the floodway boundary, the BFEs, and any drainage easements to reduce the risk for flash flooding;

### **ARTICLE 5**

#### **VARIANCE PROCEDURES**

##### **SECTION A. DESIGNATION OF VARIANCE AND APPEALS BOARD**

The Appeals Board as established by the Lee County Commission of Lee County, Alabama shall hear and decide requests for appeals or variance from the requirements of this resolution.

##### **SECTION B. DUTIES OF BOARD**

The Board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this resolution. Any person aggrieved by the decision of the Lee County Commission may appeal such decision to the Circuit Court of Lee County, as provided in 11-19-20, Code of Alabama.

##### **SECTION C. CONDITIONS FOR VARIANCES**

The provisions of this resolution are minimum standards for flood loss reduction, therefore any deviation from the standards must be weighed carefully. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- (1) A variance may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of Sections C(3), C(4), F(1) and F(2) of this Article.
- (2) In the instance of a Historic Structure, a determination is required that the variance is the minimum necessary so as not to destroy the historic character and design of the building.
- (3) A variance shall be issued ONLY when there is:
  - (a) A finding of good and sufficient cause;
  - (b) A determination that failure to grant the variance would result in exceptional hardship (cannot be personal physical or financial hardship); and

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- (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or resolutions.
- (4) A variance shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Variances shall not be issued “after the fact.”

**SECTION D. VARIANCE PROCEDURES**

In reviewing requests for variance, the Appeals Board shall consider all technical evaluations, relevant factors, and standards specified in other sections of this resolution, and:

- (1) Certain facilities and structures must be located on or adjacent to water in order to perform their intended purpose which may result in practical and operational difficulties due to the physical characteristics of the property. Variances may be issued for development necessary for conducting of a functionally dependent use, provided the criteria of this Article are met, no reasonable alternative exists, the development is protected by methods that minimize flood damage during the base flood, and it creates no additional threats to public safety.
- (2) Variances shall not be issued within any designated floodway if ANY increase in flood levels during the base flood discharge would result.
- (3) Variances may be issued for the construction or substantial improvement of accessory structures provided it has been determined that the proposed structure:
  - (a) Represents minimal investment and has low damage potential (amount of physical damage, contents damage, and loss of function).
  - (b) Is larger than the size limits specified in Article 4, Section B(7)(i).
  - (c) Complies with the wet floodproofing construction requirements of Article 4, Section (B)(3).
- (4) Variances may be issued for the construction or substantial improvement of agricultural structures provided it has been determined that the proposed structure:
  - (a) Is used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, or storage of tools or equipment used in connection with these purposes or uses, and will be restricted to such exclusive uses.
  - (b) Has low damage potential (amount of physical damage, contents damage, and loss of function).
  - (c) Does not increase risks and pose a danger to public health, safety, and welfare if flooded and contents are released, including but not limited to the effects of flooding on manure storage, livestock confinement operations, liquified natural gas terminals, and production and storage of highly volatile, toxic, or water-reactive materials.
  - (d) Is an aquaculture structure that is dependent on proximity to water if located in a coastal high-hazard area (Zones V, VE, V1 30, and VO).
  - (e) Complies with the wet floodproofing construction requirements of Article 4, Section (B)(3).
- (5) The evaluation must be based on the characteristics unique to that property and not be shared by adjacent parcels. The characteristics must pertain to the land itself, not to the structure, its inhabitants, or its owners.
- (6) Variances should never be granted for multiple lots, phases of subdivisions, or entire subdivisions.
- (7) Careful consideration and evaluation should be given to the following factors:

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- (a) The danger of life and property due to flooding or erosion damage including materials that may be swept onto other lands to the injury of others.
- (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner and the community.
- (c) The safety of access to the property during flood conditions for daily traffic and emergency vehicles.
- (d) The importance of the services provided by the proposed facility to the community.
- (e) The necessity of the facility to be at a waterfront location, where applicable.
- (f) The compatibility of the proposed use with existing and anticipated development based on the community's comprehensive plan for that area.
- (g) If applicable, the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action expected at the site.
- (h) The costs associated with providing governmental services to the development during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and community infrastructure such as streets, bridges, and culverts.

Upon consideration of factors listed above, and the purpose of this resolution, the Appeals Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this resolution.

**SECTION E. VARIANCES FOR HISTORIC STRUCTURES**

Variances may be issued for the repair or rehabilitation of Historic Structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum to preserve the historic character and design of the structure.

**SECTION F. VARIANCE NOTIFICATION AND RECORDS**

- (1) Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that specifies the difference between the BFE and the elevation of the proposed lowest floor and stating that the issuance of such a variance could:
  - (a) result in flood insurance rate increases in the hundreds and possibly thousands of dollars annually depending on structure and site-specific conditions; and
  - (b) increase the risk to life and property resulting from construction below the base flood level.
- (2) The Floodplain Administrator shall maintain a record of all variance actions and appeal actions, including justification for their issuance. Report any variances to the Federal Emergency Management Agency Region 4 and the Alabama Department of Economic and Community Affairs/Office of Water Resources upon request.
- (3) A copy of the notice shall be recorded by the Floodplain Administrator to the Office of the Probate Judge or County Administrator and shall be recorded in a manner so that it appears in the chain of title (i.e., deed) of the affected parcel of land.

**ARTICLE 6**  
**DEFINITIONS**

Unless specifically defined below, words or phrases used in this resolution shall be interpreted so as to give them the meaning they have in common usage and to give this resolution its most reasonable application.

A Zone means the special flood hazard areas on a FIRM without base flood elevations determined.

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Administrator means the Administrator of the Federal Emergency Management Agency (FEMA).

Accessory Structure (also referred to as Appurtenant Structures) means a structure which is located on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. Detached garages and small sheds used for limited storage are considered accessory structures. Other examples of accessory structures include gazebos, picnic pavilions, boathouses, small pole barns, storage sheds, and similar buildings. An accessory structure specifically excludes structures used for human habitation.

Addition (to an Existing Building) means any improvement that increases the square footage of a structure. These include lateral additions added to the front, side, or rear of a structure, vertical additions added on top of a structure, and enclosures added underneath a structure. NFIP regulations for new construction apply to any addition that is considered a substantial improvement to a structure.

AE Zone means the special flood hazard areas on a FIRM with base flood elevations determined.

Agricultural Structure means a walled and roofed structure used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, including aquatic organisms. Aquaculture structures are included within this definition. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

AH Zone means area of special flood hazards on a FIRM having shallow water depths and/or unpredictable flow paths between one (1) and three (3) feet, and with water surface elevations determined.

AO Zone means an area of special flood hazards on a FIRM having shallow water depths and /or unpredictable flow paths between one (1) and three (3) feet.

Appeal means a request for a review of the Appeals Board interpretation of any provision of this resolution.

Appurtenant Structure (see definition for Accessory Structure)

AR/AE, AR/AH, AR/AO, and AR/A Zones means an area of special flood hazard on a FIRM that results from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection.

A99 Zone means an area of special flood hazard on a FIRM where enough progress has been made on a protective system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes.

Area of Future-conditions Flood Hazard means the land area that would be inundated by the 1-percent-annual-chance (100-year) flood based on future-conditions hydrology.

Area of Shallow Flooding means a designated AO, AH, AR/AO, AR/AH or VO zone on a community's FIRM with a 1 percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard (see definition for Special Flood Hazard Area)

Area of Special Flood-related Erosion Hazard means the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

Area of Special Mudslide (i.e., mudflow) Hazard area means the land within a community most likely to be subject to severe mudslides (i.e., mudflows). The area may be designated as Zone M on the FHBM. After the detailed evaluation of the special mudslide (i.e., mudflow) hazard area in preparation for publication of the FIRM, Zone M may be further refined.

Base Flood means the flood having a one percent chance of being equaled or exceeded in any given year

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(also referred to as the “one percent chance flood”).

Base Flood Elevation (BFE) means the elevation of surface water resulting from a flood that has a 1% chance of equaling or exceeding that level in any given year. The BFE is shown on the FIRM for zones AE, AH, A1–A30, AR, AR/A, AR/AE, AR/A1–A30, AR/AH, AR/AO, V1–V30 and VE. It is the regulatory requirement for the elevation of flood proofing of structures. The relationship between the BFE and a structure’s elevation determines the flood insurance premium.

Basement means any portion of a building having its floor sub grade (below ground level) on all sides.

Building (also see Structure) means a structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site; a manufactured home or a mobile home without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community’s floodplain management and building resolutions or laws. “Building” does not mean a gas or liquid storage tank or a recreational vehicle, park trailer or other similar vehicle.

Community means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or authorized native organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

Community Rating System (CRS) means a voluntary program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

Condominium Building means a type of building in the form of ownership in which each unit owner has an undivided interest in common elements of the building.

Critical Facility (aka, critical action) means facilities or activities for which even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, fire stations, police stations, storage of critical records, and similar facilities. These facilities should be given special consideration when formulating regulatory alternatives and floodplain management plans. A critical facility should not be located in a floodplain if at all possible.

Critical Feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Cumulative Substantial Improvement/Damage means any combination of reconstruction, alteration, or improvement to a building, taking place during a 5-year [or 10-year] period, in which the cumulative percentage of improvement equals or exceeds 50 percent of the current market value of the structure before the “start of construction” of the initial improvement. Any subsequent improvement project costs shall be added to the initial costs for the initial improvement project. At the end of a 5-year [or 10-year] period from the initial improvement project, an updated valuation for the structure can be used for the next time period. Damages can be from any source.

D Zone means an area in which the flood hazard is undetermined.

Dam means an artificial barrier, that has the ability to impound water, wastewater, or any liquid-borne material, for the purpose of storage or control of water.

Design Flood Elevation (DFE) means the locally adopted regulatory flood elevation. It is the minimum elevation to which a structure must be elevated or floodproofed. DFE is the sum of the base flood elevation and freeboard, based a building’s structural category. In areas designated as Zone AO on a community’s flood map, the DFE is the elevation of the highest existing grade of a building’s perimeter plus the depth number specified on the flood hazard map. In areas designated as Zone AO where a depth is not specified on the map, the depth is two feet. In all cases, the DFE must be at least as high as the base flood elevation.

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Development means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials.

Elevated Building means, for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, pilings, posts, columns, piers, or shear walls.

Elevation Certificate means a FEMA form used as an administrative tool of the NFIP to provide building elevation information necessary to ensure compliance with community floodplain management ordinances, to inform the proper insurance premium, and to support a request for a LOMA, CLOMA, LOMR-F, or CLOMR-F.

Encroachment means activities or construction within the floodway including fill, new construction, substantial improvements, and other development.

Existing Construction means, for the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before October 25, 2004 for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures”.

Existing Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and final site grading or the pouring of concrete pads) is completed before the effective date of the original floodplain management regulations adopted by the community.

Expansion to an Existing Manufactured Home Park or Subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

Fair Market Value means the price that the seller is willing to accept and the buyer is to pay on the open market and in an arm's length transaction.

Flood or Flooding means:

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - i. The overflow of inland or tidal waters.
  - ii. The unusual and rapid accumulation or runoff of surface waters from any source.
  - iii. Mudslides which are proximately caused by flooding as described in part “b.” of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually highwater level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph “a” of this definition.

Flood Damage-Resistant Material means any building product capable of withstanding direct and prolonged contact with floodwaters without sustaining significant damage. Prolonged contact is defined as at least 72 hours. Significant damage is any damage requiring more than low-cost cosmetic repair (such as painting).

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Flood Elevation Determination means a determination by the Federal Insurance Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

Flood Elevation Study means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by the Federal Insurance Administration, where the boundaries of special flood hazard areas have been designated as Zones A, M, and/or E.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (see Flood Elevation Study)

Floodplain (or Flood-Prone Area) means any land area susceptible to being inundated by water from any source (see definition of Flooding).

Floodplain Management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain Management Regulations means this resolution and other zoning resolutions, subdivision regulations, building codes, health regulations, special purpose resolutions (such as those for floodplain management, stormwater management, watershed management, grading/ earthwork, and erosion control), and other applications of police power. This term describes state or local regulations in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing means any combination of structural and nonstructural additions, changes or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

Flood Protection System means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a “special flood hazard” and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Flood-related Erosion means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

Flood-related Erosion Area or Flood-related Erosion Prone Area means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

Flood-related Erosion Area Management means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works, and flood plain management regulations.

Floodway (see definition for Regulatory Floodway)

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Floodway Fringe (or Flood Fringe) means the portion of the Special Flood Hazard Area outside of the floodway, which experiences shallower, lower-velocity floodwater than in the floodway. It serves as a temporary floodwater storage area during a flood.

Floodway Encroachment Lines mean the lines marking the limits of floodways on Federal, State and local flood plain maps.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Functionally Dependent Use means a means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Future-conditions Flood Hazard Area, or Future-conditions Floodplain (see Area of Future-conditions Flood Hazard)

Future-conditions Hydrology means the flood discharges associated with projected land-use conditions based on a community's zoning maps and/or comprehensive land-use plans and without consideration of projected future construction of flood detention structures or projected future hydraulic modifications within a stream or other waterway, such as bridge and culvert construction, fill, and excavation.

Hazardous Substance (or Material) means any substance or material that, when involved in an accident and released in sufficient quantities, poses a risk to people’s health, safety, and/or property. These substances and materials include explosives, radioactive materials, flammable liquids or solids, combustible liquids or solids, poisons, oxidizers, toxins, and corrosive materials. It includes any substance defined as a hazardous substance pursuant to 42 U.S.C. §9601(14) or listed as a hazardous waste pursuant to the Hazardous Wastes Management Act, Section 22-30-1 et seq. and the regulations promulgated thereunder.

Highest Adjacent Grade means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

Historic Structure means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:
  - i. By an approved state program as determined by the Secretary of the Interior, or
  - ii. Directly by the Secretary of the Interior in states without approved programs.

Increased Cost of Compliance (ICC) means a claim under a standard NFIP flood insurance policy, available to flood insurance policyholders who need additional funding to rebuild after a flood. It provides up to \$30,000 to help cover the increased cost of mitigation measures to bring a building into compliance with the latest state or local floodplain management ordinances. Acceptable mitigation measures are

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elevation, floodproofing, relocation, and demolition, or any combination of these measures.

Letter of Map Change (LOMC) is an official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, and Flood Insurance Studies. LOMC's are broken down into the following categories:

a. Letter of Map Amendment (LOMA)

An amendment based on technical data showing that a property was incorrectly included in a designated SFHA, was not elevated by fill (only by a natural grade elevation), and will not be inundated by the one percent chance flood. A LOMA amends the current effective FIRM and establishes that a specific property is not located in a SFHA.

b. Letter of Map Revision (LOMR)

A revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a LOMR-F, is a determination concerning whether a structure or parcel has been elevated by fill above the BFE and is, therefore, excluded from the SFHA.

c. Conditional Letter of Map Revision (CLOMR)

A formal review and comment by FEMA as to whether a proposed project complies with the minimum NFIP floodplain management criteria. A CLOMR does not revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

Levee means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee System means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest Adjacent Grade means the lowest elevation of the natural or regraded ground surface, or structural fill (or concrete slab or pavement), at the location of a structure.

Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of other provisions of this resolution. This definition applies even when the floor below ground level is not enclosed by full-height walls.

Manufactured Home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market Value (see definition for Fair Market Value)

Mean Sea Level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Mixed Use Building means a building that has both residential and non-residential uses.

National Flood Insurance Program (NFIP) is a federal program created by the United States Congress in 1968 to identify flood-prone areas nationwide and make flood insurance available for properties in participating communities. Communities must enact and enforce floodplain management regulations that meet or exceed the criteria established by FEMA in order to participate in the program. This program

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requires properties within the floodplain with a federally backed or regulated mortgage, or those that receive federal housing subsidies, to buy flood insurance.

National Geodetic Vertical Datum (NGVD) of 1929 means a national standard reference datum for elevations, formerly referred to as Mean Sea Level (MSL) of 1929. NGVD 1929 may be used as the reference datum on some Flood Insurance Rate Maps (FIRMs).

New Construction means, for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after October 25, 2004 whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

An existing building is considered to be new construction if it is substantially improved or once it has been repaired after being substantially damaged/improved.

New Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after October 25, 2004.

Non-Residential Building means, a commercial or mixed-use building where the primary use is commercial or non-habitational.

Non-residential Property means either a non-residential building, the contents within a non-residential building, or both.

North American Vertical Datum (NAVD) of 1988 means the vertical control datum established for vertical control surveying in the United States of America based upon the General Adjustment of the North American Datum of 1988. It replaces the National Geodetic Vertical Datum (NGVD) of 1929. Used by FEMA in many recent Flood Insurance Studies as the basis for measuring flood, ground, and structural elevations.

Post-FIRM means, for floodplain management purposes, a post-FIRM building is one for which construction began after the effective date of a community’s NFIP-compliant floodplain management resolution. For the purpose of determining flood insurance rates under the NFIP, a post-FIRM building is a building for which construction began on or after the effective date of an initial Flood Insurance Rate Map or after December 31, 1974, whichever is later, including any subsequent improvements to such structures.

Pre-FIRM means, for floodplain management purposes, a building for which the start of construction occurred before the effective date of the community’s NFIP-compliant floodplain management ordinance. For the purpose of determining flood insurance rates under the NFIP, a pre-FIRM building is a building for which construction began prior to the effective date of an initial Flood Insurance Rate Map or on or before December 31, 1974, whichever is later.

Recreational Vehicle means a vehicle which is:

- a. Built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection;
- c. Designed to be self-propelled or permanently towable by a light duty truck; and
- d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regular Program means the Program authorized by the Act under which risk premium rates are required for the first half of available coverage (also known as “first layer” coverage) for all new construction and

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substantial improvements started on or after the effective date of the FIRM, or after December 31, 1974, for FIRM's effective on or before that date. All buildings, the construction of which started before the effective date of the FIRM, or before January 1, 1975, for FIRMs effective before that date, are eligible for first layer coverage at either subsidized rates or risk premium rates, whichever are lower. Regardless of date of construction, risk premium rates are always required for the second layer coverage and such coverage is offered only after the Administrator has completed a risk study for the community.

Regulatory Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Remedy a Violation means to bring the structures or other development into full or partial compliance with State or local regulations or, if this is not possible, to reduce the impacts of its non-compliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provision of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

Repetitive Loss Agricultural Structure means an agricultural structure covered by a NFIP contract for flood insurance that has incurred flood-related damage on two (2) separate occasions in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event.

Repetitive Loss Property means any NFIP-insured single family or multi-family residential building for which two or more claims of more than \$1,000 were paid by the NFIP within any rolling 10-year period, since 1978. A repetitive loss property may or may not be currently insured by the NFIP.

Residential Building means a non-commercial building designed for habitation by one or more families or a mixed-use building that qualifies as a single-family, two-to-four family, or other residential building.

Residential Property means either a residential building or the contents within a residential building, or both.

Riverine means floodplain relating to, formed by, or resembling a river (including tributaries), stream, brook, etc. Riverine floodplains have readily identifiable channels.

Section 1316 means Section 1316 of the National Flood Insurance Act of 1968, as amended, which provides for the denial of flood insurance coverage for any property which the Administrator finds has been declared by a duly constituted State or local authority to be in violation of State or local floodplain management regulations. Once a duly constituted State or local authority declares a structure as being in violation, the Administrator must deny flood insurance coverage provided that the individual or office making the declaration has the authority to do so and that the law or regulations violated was, in fact, intended to discourage or otherwise restrict land development or occupancy in the flood-prone area.

Section 1316 was intended for use primarily as a backup for local enforcement actions (i.e., if a community could not force compliance through the enforcement mechanisms in its regulations, it could use Section 1316 as additional leverage) and was not intended merely as a mechanism to remove bad risks from the policy base. Section 1316 will only be implemented in instances where States or communities submit declarations specifically for that purpose.

Severe Repetitive Loss Structure means a single family property (consisting of 1 to 4 residences) that is covered under flood insurance by the NFIP and has incurred flood-related damage for which 4 or more separate claims payments have been paid under flood insurance coverage, with the amount of each claim payment exceeding \$5,000 and with cumulative amount of such claims payments exceeding \$20,000; or for which at least 2 separate claims payments have been made with the cumulative amount of such claims

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exceeding the reported value of the property.

Sheet Flow Area (see definition for Area of Shallow Flooding)

Single-family Dwelling means either (a) a residential single-family building in which the total floor area devoted to non-residential uses is less than 50 percent of the building's total floor area, or (b) a single-family residential unit within a two-to-four family building, other-residential building, business, or non-residential building, in which commercial uses within the unit are limited to less than 50 percent of the unit's total floor area.

Special Flood Hazard Area (SFHA) means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year as shown on a FHBM or FIRM as Zones A, AE, AH, AO, AR, AR/AE, AR/AO, AR/AH, AR/A, A99, or VE. The SFHA is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies.

Special Flood-related Erosion Hazard Area means the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

Special Mudslide (i.e., mudflow) Hazard Area means the land within a community most likely to be subject to severe mudslides (i.e., mudflows). The area may be designated as Zone M on the FHBM. After the detailed evaluation of the special mudslide (i.e., mudflow) hazard area in preparation for publication of the FIRM, Zone M may be further refined.

Start of Construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)) means the date the development or building permit was issued (includes substantial improvement), provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of the structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, and includes the placement of a manufactured home on a foundation.

“Permanent construction” does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building, including a liquid or gas storage tank, that is principally above ground, as well as a manufactured home. The terms "structure" and "building" are interchangeable in the NFIP. For insurance purposes, structure means:

- (1) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;
- (2) A manufactured home (“a manufactured home,” also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
- (3) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For the latter purpose, “structure” does not mean a recreational vehicle or a park trailer or other similar

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vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

Substantial Damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to it before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions (provided that said code deficiencies were not caused by neglect or lack of maintenance on the part of the current or previous owners) or;
- b. Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

Variance means a grant of relief by the (Community name) from the terms of a floodplain management regulation.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in the Code of Federal Regulations (CFR) §44, Sec. 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Watercourse means only the channel and banks of an identifiable watercourse and not the adjoining floodplain areas. The flood carrying capacity of a watercourse refers to the flood carrying capacity of the channel.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Wet floodproofing means a method of construction that involves modifying a building to allow floodwaters to enter it in order to minimize damage to the building, using flood damage-resistant materials below the DFE throughout the building, raising utilities and important contents to or above the DFE, installing and configuring electrical and mechanical systems to minimize disruptions and facilitate repairs, installing flood openings or other methods to equalize the hydrostatic pressure exerted by floodwaters, and, where required, installing pumps to gradually remove floodwater from basement areas after the flood. Wet floodproofing shall not be utilized as a method to satisfy the requirements of this resolution for bringing substantially damaged or improved structures into compliance. Wet floodproofing is not allowed in lieu of complying with the lowest floor elevation requirements for new residential buildings.

X Zones (shaded) means the areas on a FIRM subject to inundation by the flood that has a 0.2-percent chance of being equaled or exceeded during any given year, often referred to as the 500-year flood.

X Zones (unshaded) designates areas on a FIRM where the annual probability of flooding is less than 0.2 percent.

Zone of Imminent Collapse means an area subject to erosion adjacent to the shoreline of an ocean, bay, or lake and within a distance equal to 10 feet plus 5 times the average annual long-term erosion rate for the site, measured from the reference feature.

## **ARTICLE 7**

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**LEGAL STATUS PROVISIONS**

**SECTION A. SEVERABILITY**

If any section, clause, sentence, or phrase of this resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this resolution.

**SECTION B. ENFORCEABILITY OF RESOLUTION AND FUTURE REVISIONS**

The provisions within this resolution must be legally enforceable; applied uniformly throughout the community to all privately and publicly owned land within any regulated flood hazard areas; meet the minimum standards set forth in §60.3 of the Code of Federal Regulations Title 44; and the community must provide that the provisions of this resolution take precedence over any less restrictive conflicting local laws, ordinances, or codes.

If Lee County repeals its floodplain management regulations, allows its regulations to lapse, or amends its regulations so that they no longer meet the minimum requirements set forth in §60.3 of the Code of Federal Regulations Title 44, it shall be suspended from the National Flood Insurance Program (NFIP). The community eligibility shall remain terminated after suspension until copies of adequate floodplain management regulations have been received and approved by the Federal Insurance Administrator. To avoid such occurrences, Lee County will coordinate with the Alabama NFIP State Coordinator and FEMA Regional Office prior to any revisions to this resolution. Without prior approval of the Federal Insurance Administrator, the community shall not adopt and enforce revised floodplain management regulations. From time-to-time Part 60 of the Code of Federal Regulations Title 44 may be revised to advance flood risk reduction measures as experience is acquired under the NFIP and new information becomes available. Lee County agrees to revise its floodplain management resolution to comply with any such changes within six months from the effective date of any new federal regulation.

**SECTION C. EFFECTIVE DATE**

This resolution shall become effective on March 25, 2024. The Ordinance readopting that resolution was passed November 25, 2024.

County Administrative Officer Holly Leverette presented the following three Resolutions as the final American Rescue Plan Act (ARPA) allocations. Mrs. Leverette said of the \$10 million to be used for revenue replacement, with less restrictive guidelines, the Commission designated up to \$700,000 from that amount to be used for the new access to Beauregard Park. Mrs. Leverette said the majority of the work on the road is complete with the exception of turn lanes on Lee Road 400. A supplemental resolution follows to allocate the remaining \$72,500 for the Beauregard Park Road Project. Mrs. Leverette said after that deduction it leaves \$12,500 of Revenue Replacement Funds that can be used for Governmental purposes. Mrs. Leverette said the second Resolution is to allocate the leftover funds for Information Technology equipment for county staff. Commissioner Langley made a motion, seconded by Commissioner Morris, to approve the following Resolution to expend ARPA funds for the Beauregard Park Road. The motion carried on a vote of 4:1, with Commissioner LaGrand voting “No”.

**SUPPLEMENTAL RESOLUTION FOR THE EXPENDITURE OF AMERICAN RESCUE PLAN  
ACT FUNDS FOR GOVERNMENT SERVICES – BEAUREGARD PARK ROAD**

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**WHEREAS**, Lee County, Alabama (the “County”) has received American Rescue Plan Act fiscal recovery funds (“ARPA funds”) and is charged with ensuring that such funds are expended in accordance with state and federal law; and

**WHEREAS**, in accordance with the provisions of final rule published by the United States Department of Treasury dated January 6, 2022, the County has duly elected to designate a standard allowance of up to \$10,000,000 of its ARPA funds as revenue replacement (“ARPA revenue replacement funds”); and

**WHEREAS**, the County may use ARPA revenue replacement funds to fund government services; and

**WHEREAS**, the County has determined that there is a need for safe transportation and roads in the County on and around its community parks; and

**WHEREAS**, the Lee County Commission (“Commission”) has determined that the construction of a new road, roundabout, and safety fencing at the Beauregard Recreational Park (the “Project”) is a necessary, reasonable, and proportionate measure to facilitate the provision of these government services; and

**WHEREAS**, by way of resolution dated December 11, 2023, the Commission allocated up to \$206,383.81 of ARPA revenue replacement funds toward the Project; and

**WHEREAS**, the initial phase of the project was completed in 2023, and following regular settling and wear to the Project, consistent with best industry practices, the Project is in need of adding a final wearing surface; and

**WHEREAS**, the Commission has determined that covering this final phase of construction for the Project is a necessary, reasonable, and proportionate measure to facilitate the provision of these government services; and

**WHEREAS**, the County certifies that it has procured these goods and services in a manner consistent with the Public Works law and federal guidelines, including compliance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200), as applicable to ARPA revenue replacement funds.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION** as follows:

1) The County shall supplement the initial allocation up to \$72,5000 of ARPA funds, which are hereby designated as ARPA revenue replacement funds, to facilitate the provision of the government services described herein.

2) The County Administrator or Chief Financial Officer are hereby authorized to expend these funds to purchase goods or services necessary to facilitate the Project as described herein from appropriately procured vendors to facilitate the provision of these services.

3) The ARPA Program Director is charged with ensuring that ARPA revenue replacement funds allocated and expended to provide these government services will not be used in such a way as to frustrate COVID-19 mitigation guidance issued by the Centers for Disease Control, or for any other use prohibited by the Final Rule or any applicable state or federal law.

4) Expenditure of these funds, as authorized by this Resolution, shall be contingent on the continued appropriation and availability of ARPA revenue replacement funds for this

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purpose and in no event shall be used for any expenses not obligated by December 31, 2024, and expended by December 31, 2026.

**IN WITNESS WHEREOF**, the Lee County Commission has caused this Resolution to be executed in its name and on its behalf by its Chairman on the 25th day of November 2024.

Next, Mrs. Leverette presented the following Resolution for the allocation of ARPA funds for Information Services Technology equipment. Mrs. Leverette said Information Services Department has identified several areas for upgrades. Mrs. Leverette said there is a copier and scanners for the Probate Office and other computer equipment for other departments. Commissioner Cannon made a motion, seconded by Commissioner Drury to approve and authorize the Chairman to sign the following Resolution designating ARPA Funds for information technology equipment. The motion carried unanimously.

**RESOLUTION FOR THE EXPENDITURE OF AMERICAN RESCUE PLAN ACT FUNDS FOR GOVERNMENT SERVICES – INFORMATION TECHNOLOGY EQUIPMENT**

**WHEREAS**, Lee County, Alabama (the “County”) has received American Rescue Plan Act fiscal recovery funds (“ARPA funds”) and is charged with ensuring that such funds are expended in accordance with state and federal law; and

**WHEREAS**, in accordance with the provisions of final rule published by the United States Department of Treasury dated January 6, 2022, the County has duly elected to designate a standard allowance of up to \$10,000,000 of its ARPA funds as revenue replacement (“ARPA revenue replacement funds”); and

**WHEREAS**, the County may use ARPA revenue replacement funds to fund government services, including providing necessary information technology equipment for County staff; and

**WHEREAS**, the County Commission has determined that the procurement of information technology equipment to support the ongoing operations of County staff is a necessary, reasonable, and proportionate measure to facilitate the provision of these government services; and

**WHEREAS**, the County will procure any goods and services needed to support the Project in a manner consistent with the Competitive Bid Law and federal guidelines, including compliance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200), as applicable to ARPA revenue replacement funds.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION** as follows:

5) The County shall use the remaining balance of the County’s unobligated ARPA revenue replacement funds, estimated up to \$12,500.00 of ARPA funds to facilitate the provision of the government services described herein.

6) The County Administrator and Chief Financial Officer are hereby authorized to expend these funds to cover costs necessary to facilitate the Project including, but not limited to, materials purchased for portions of the work performed by County staff or goods and services from qualified contractors as described herein from appropriately procured vendors to facilitate the provision of these services.

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7) The ARPA Program Director is charged with ensuring that ARPA revenue replacement funds allocated and expended to provide these government services will not be used in such a way as to frustrate COVID-19 mitigation guidance issued by the Centers for Disease Control, or for any other use prohibited by the Final Rule or any applicable state or federal law.

8) Expenditure of these funds, as authorized by this Resolution, shall be contingent on the continued appropriation and availability of ARPA revenue replacement funds for this purpose and in no event shall be used for any expenses not obligated by December 31, 2024, and expended by December 31, 2026.

**IN WITNESS WHEREOF**, the Lee County Commission has caused this Resolution to be executed in its name and on its behalf by its Chairman on the 25th day of November 2024.

Last, a Resolution to allocate ARPA funds to support Mental Health Services in the community. Mrs. Leverette said on October 30, 2023 the Commission voted to support funding the construction of a Mental Health Facility in Lee County. On December 11, 2023 the Commission allocated up to \$4,000,000 to the East Alabama Healthcare Authority for a mental health facility, with \$2,000,000 coming from the County's ARPA funds, and \$2,000,000 from other legally available funds, which could include additional unobligated ARPA funds. Mrs. Leverette said the remaining unobligated ARPA funds total \$2,131,607.44 and recommends the Commission allocate it to the mental health facility as previously discussed. Commissioner Drury made a motion, seconded by Commissioner Cannon to approve and authorize the Chairman to sign the following Resolution in support of ARPA funds of \$2,131,607.44 be allocated to the mental health facility. The motion carried unanimously.

**SUPPLEMENTAL RESOLUTION FOR ALLOCATION OF AMERICAN RESCUE PLAN ACT FUNDS TO SUPPORT MENTAL HEALTH SERVICES IN THE COMMUNITY**

**WHEREAS**, the Lee County Commission ("Commission") recognizes the need in the community to foster and provide mental health services to its citizens; and

**WHEREAS**, Lee County, Alabama ("the County") has received American Rescue Plan Act state and local fiscal recovery funds ("ARPA funds") and is charged with ensuring that such funds are expended in accordance with state and federal law; and

**WHEREAS**, pursuant to 603(c)(3) of the ARPA, PL 117-2, March 11, 2021, 135 Stat 4, the County may transfer ARPA funds to eligible entities to carry out eligible ARPA funded projects; and

**WHEREAS**, the County may expend ARPA funds to provide support for mental health services; and

**WHEREAS**, consistent with Code of Alabama (1975) § 22-21-181, the County may provide funding to healthcare authorities funds relating to the ownership or operation of a hospital, including a mental health center, for the purposes of providing services to the community; and

**WHEREAS**, the East Alabama Healthcare Authority, a local healthcare authority organized under Code of Alabama (1975) Title 22, Subtitle 1, Chapter 21, Article 6, is

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constructing a new approximately 54,000 square foot mental health facility in the community; and

**WHEREAS**, the Commission has determined providing funding to the East Alabama Healthcare Authority to go towards the construction of the mental health facility out of which mental health services will be provided to the community (the “Mental Health Project”) is a necessary, eligible, and reasonable use of these funds; and

**WHEREAS**, by way of Resolution dated December 11, 2023, the Commission allocated up to \$4,000,000.00 to the East Alabama Healthcare Authority, \$2,000,000.00 from the County’s ARPA funds and \$2,000,000.00 of which from other legally available funds, including additional unobligated ARPA funds in the Commission’s discretion; and

**WHEREAS**, due to cost savings following the procurement of other projects using previously allocated ARPA funds, the Commission has determined it is in the County’s best interest to divert unobligated funds to the Mental Health Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION** as follows:

9) The County hereby allocates the remainder of the County’s unobligated ARPA enumerated uses funds, totaling up to \$4,131,607.44., inclusive of the original \$4,000,000.00 allocation, towards the construction of a new mental health facility by and through a subaward to the East Alabama Healthcare Authority.

10) The Chairman is hereby delegated the authority to enter into the subrecipient agreement if the agreement is consistent with this Resolution, state and federal law, the terms and conditions of the County’s ARPA award, and if, in his discretion, the terms and conditions are in the best interest of the County.

11) Upon the execution of a subrecipient agreement, the ARPA Program Manager is hereby authorized to expend ARPA funds and other funds to be identified for costs of the project in accordance with the terms of this Resolution and the subaward agreement.

12) Expenditure of ARPA funds, as authorized by this Resolution, shall be contingent on the continued appropriation and availability of ARPA funds for this purpose and in no event shall be used for any costs associated with the project that are not obligated on or before December 31, 2024, and expended on or before December 31, 2026.

**IN WITNESS WHEREOF**, the Lee County Commission has caused this Resolution to be executed in its name and on its behalf by its Chairman on the 25<sup>th</sup> day of November 2024.

Last, Mrs. Leverette asked the Commission to approve the following Resolution to amend the Program Maintenance and Support Membership Agreement with the ACCA Investing in Alabama Counties (IAC) program. Mrs. Leverette said IAC Representative Kelly Gillikin, who was in attendance, stated they will continue to assist with reporting over the next two years. Additionally, Mrs. Gillikin thanked all for their assistance including Mrs. Leverette, Mr. Hardee and Chief Financial Officer Anna-Kate Padgett. Commissioner Cannon made a motion, seconded by Commissioner Drury, to approve and authorize the Chairman to sign the following Resolution to amend the ACCA IAC Program Maintenance and Support Membership Agreement as presented. The motion carried unanimously.

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**Amendment to the Association of County Commissions of Alabama Investing in Alabama Counties Program Maintenance and Support Membership Agreement**

**WHEREAS**, the Association of County Commissions of Alabama (the “Association”) and the Lee County Commission (the “County”) previously entered into a Maintenance and Support Membership Agreement (the “Agreement”) for the administration, planning, management, and completion support in the areas of educational, intergovernmental, compliance, and technical assistance related to the use of funds received by the County from the American Rescue Plan Act of 2021 by and through the Association’s Investing in Alabama Counties (IAC) program; and,

**WHEREAS**, the County entered into the Agreement with the Association as a sole-source provider of technical and implementation support services for the administration of the County’s award under the American Rescue Plan Act’s State and Local Fiscal Recovery Funds (“SLFRF award”); and

**WHEREAS**, for the reasons previously documented by the County, the County has determined that the Association continues to be the sole-source provider of these services; and

**WHEREAS**, the Agreement is scheduled to expire on December 31, 2024; and

**WHEREAS**, for good and adequate mutual consideration, the receipt of which is hereby acknowledged, the parties desire to extend the term of the Agreement to ensure that these services continue uninterrupted through the duration of the period of performance of the County’s SLFRF award.

**The Association and the County hereby enter into this Amendment to the Maintenance and Support Membership Agreement as follows:**

The Agreement is amended to provide that the Agreement shall remain and continue in full force until December 31, 2027, unless and until terminated in writing by either party upon 90 days written notice to the other party.

All other terms and conditions of the Agreement shall remain the same.

Governmental Relations/Safety Coordinator Wendy Swann presented the Workers’ Compensation Self-Insurance Fund Longevity Resolution for Commission consideration. Mrs. Swann said it is a longevity bonus to County participants who remain active members through at least September 30, 2027. Mrs. Leverette said if the Commission decides to move in another direction, the bonus will need to be repaid. Commissioner Cannon made a motion, seconded by Commissioner Morris to approve and authorize the Chairman to sign the following Resolution for the Workers’ Compensation Self-Insurance Longevity Resolution to commit to participate in the Workers’ Compensation SIF until September 30, 2027. The motion carried unanimously.

**RESOLUTION**

**WHEREAS**, Lee County is a member of the Association of County Commissions of Alabama Workers’ Compensation Self-Insurers Fund (“the Fund”) on Oct. 1, 2024; and

**WHEREAS**, the County’s participation in the Fund has been a significant benefit to the County since becoming a member; and

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**WHEREAS**, the representation and service provided by the Fund continues to be in the best interest of Lee County and its officials and employees; and

**WHEREAS**, the Fund is providing a 2024 Longevity Bonus to those County participants who remain active members of the Fund through at least Sept. 30, 2027; and

**WHEREAS**, Lee County would benefit by voluntarily agreeing to extend its contracted annual participation in the Fund for a three-year period concluding on Sept. 30, 2027, at which time the provisions of the existing contract between Lee County and the Fund will remain in force unless altered as provided therein.

**NOW, THEREFORE, BE IT RESOLVED** by the Lee County Commission that it renews its participation in the Fund through Sept. 30, 2027, and hereby directs its Chair to immediately provide a copy of this resolution to the Fund.

**BE IT FURTHER RESOLVED**, by the Lee County Commission that, should it voluntarily withdraw from the Fund prior to Sept. 30, 2027, it agrees to return the 2027 Longevity Bonus provided by the Fund, plus five (5) percent annual interest.

Last, Mrs. Swann presented the following proposed 2025 Holiday Schedule for Commission consideration. Mrs. Swann said two holidays fall on regularly scheduled Monday Commission meeting dates, so those two meetings will need to be moved to Tuesday of that week. Commissioner Cannon made a motion, seconded by Commissioner Morris to approve the following 2025 Holiday Schedule. The motion carried unanimously.

|                             |                             |
|-----------------------------|-----------------------------|
| New Year's Day              | Wednesday, January 1, 2025  |
| Martin Luther King, Jr. Day | Monday, January 20, 2025    |
| Presidents' Day             | Monday, February 17, 2025   |
| Memorial Day                | *Monday, May 26, 2025       |
| Juneteenth Day              | Thursday, June 19, 2025     |
| Independence Day            | Friday, July 4, 2025        |
| Labor Day                   | Monday, September 1, 2025   |
| Columbus Day                | *Monday, October 13, 2025   |
| Veterans' Day               | Tuesday, November 11, 2025  |
| Thanksgiving                | Thursday, November 27, 2025 |
|                             | Friday, November 28, 2025   |
| Christmas                   | Thursday, December 25, 2025 |
|                             | Friday, December 26, 2025   |

\*Normal Commission Meeting Days

Note: Monday, May 26 meeting moved to Tuesday, May 27, 2025

Monday, October 13 meeting moved to Tuesday, Oct. 14, 2025

At approximately 5:50 p.m., Commissioner Cannon made a motion, seconded by Commissioner LaGrand, to adjourn. The motion carried unanimously.