

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

BLUE SHEET NO: 20041522-UTL

1. REQUESTED MOTION:

ACTION REQUESTED:

Authorize the Chairman, on behalf of the BOCC, to sign as the Chief Official of the Subgrant Recipient for Lee County Utilities' application for a Florida Department of Law Enforcement's Law Enforcement Terrorism Prevention Program Grant in the amount of \$120,000.

WHY ACTION IS NECESSARY:

Required by each agency's regulations.

WHAT ACTION ACCOMPLISHES:

Establishes the BOCC as being the Subgrant Recipient of the Grant.

2. DEPARTMENTAL CATEGORY: 10
COMMISSION DISTRICT #: CW

CIOB

3. MEETING DATE:

12-07-2004

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED: _____

5. REQUIREMENT/PURPOSE:

(Specify)

- STATUTE _____
- ORDINANCE _____
- ADMIN. CODE _____
- OTHER Signature _____

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER: _____
- B. DEPARTMENT: Lee County Public Works
- C. DIVISION/SECTION: Utilities Division
- BY: Rick Diaz, U.E., Utilities Director
- DATE: 11/22/04

7. BACKGROUND:

On November 11, 2003, Lee County Utilities Division (LCU) was contacted by John Wilson of the Lee County Public Safety Department that funds were being made available in the form of security improvement reimbursement grants from the Florida Department of Law Enforcement (FDLE). The origin for these funds is the U.S. Homeland Security Department. Because of grant requirements, LCU had to identify only one of its water treatment plants (actual location must be withheld due to security reasons) for security improvements. On September 27, 2004, LCU was notified by the FDLE that it had reserved \$120,000 for LCU, subject to submission of a grant application. All improvements must be completed by June 30, 2005.

Three (3) sets of documents (with two signature pages in each set) are attached for execution by the Chairman. Two (2) sets of fully executed original documents must be returned to LCU for forwarding to the FDLE prior to December 15, 2004.

Initial funding shall be provided from Account 20715148730.506410.

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MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL

(A) DEPARTMENT DIRECTOR	(B) PURCH. OR CONTRACTS	(C) HUMAN RESOURCES	(D) OTHER	(E) COUNTY ATTORNEY	(F) BUDGET SERVICES				(G) COUNTY MANAGER
<i>Janavender</i> Date: 11-22-04	N/A Date:	N/A Date:	<i>MD</i> 11-22-04 M. Crumpton Date: 11/22/04	<i>for</i> S. Coovet Date:	OA	OM	Risk	GC	<i>Janavender</i> Date: 11-22-04

10. COMMISSION ACTION:

- _____ APPROVED
- _____ DENIED
- _____ DEFERRED
- _____ OTHER

Rec. by CoAtty
Date: 11/23/04
Time: 8:05
Forwarded To:
Co. Atty
11/23/04

RECEIVED BY
COUNTY ADMIN: *CLW*
11-23-04
9:45 AM
COUNTY ADMIN *PR*
FORWARDED TO:
11-23-04
11/23

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FDLE GRANT CONTRACT #: <i>To be completed by FDLE</i>		ISSUE #: <i>To be completed by FDLE</i>
COUNTY NAME: LEE	RDSTF #: <i>To be completed by FDLE</i>	FEDERAL CFDA# 97.004
PROJECT TITLE: Security Improvements to a LCU Water Treatment Plant (OWTP). <i>Limit to 84 typed characters including spaces.</i>		
A. APPLICANT INFORMATION		
1. SUBGRANT RECIPIENT NAME: Lee County Board of County Commissioners <i>Name of agency or organization</i>		
2. CHIEF OFFICIAL OF SUBGRANT RECIPIENT: Douglas R. St. Cemy		
Title: Chairman	E-Mail Address: dist2@leegov.com	
Address: 2120 Main Street		
City: Fort Myers	Zip Code: 33901	
Area Code/Phone: 239-335-2227	Fax: 239-335-2599	
3. CHIEF FINANCIAL OFFICER OF SUBGRANT RECIPIENT: Charlie Green		
Title: Clerk of Circuit Court	E-Mail Address: cgreen@leeclerk.org	
Address: 1700 Monroe Street		
City: Fort Myers	Zip Code: 33901	
Area Code/Phone: 239-335-2646	Fax: 239-335-2283	
4. IMPLEMENTING AGENCY: Lee County Utilities Division <i>Agency responsible for implementing project activities</i>		
5. CHIEF OFFICIAL OF IMPLEMENTING AGENCY: Rick Diaz, PE		
Title: Utilities Director	E-Mail Address: diazr@leegov.com	
Address: 1500 Monroe Street, 3 rd Floor		
City: Fort Myers	Zip Code: 33901	
Area Code/Phone: 239-479-8779	Fax: 239-479-8176	
6. PROJECT DIRECTOR: Michael G. Crumpton, PE <i>Individual responsible for managing and implementing project activities</i>		
Title: Senior Engineer	E-Mail Address: mcrumpton@leegov.com	
Address: 1500 Monroe Street, 3 rd Floor		
City: Fort Myers	Zip Code: 33901	
Area Code/Phone: 239-479-8151	Fax: 239-479-8176	

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7. CONTACT PERSON: Tom Hill	
<i>If Project Director is not available, then this individual will be the contact for FDLE.</i>	
Title: Senior Utilities Manager - Plants	E-Mail Address: hillta@leegov.com
Address: 7391 College Parkway	
City: Fort Myers	Zip Code: 33907
Area Code/Phone: 239-936-0549 x 240	Fax: 239-936-0549
B. ADMINISTRATIVE DATA	
GRANT PERIOD:	Start Date: December 1, 2004 End Date: June 30, 2005
C. FISCAL DATA	
<p>1. REMIT WARRANT: Leave blank if funds are to be sent to the Chief Financial Officer listed in Section A. If you are requesting that funds be sent to an individual other than the Chief Financial Officer, enter their information in this section.</p> <p>If subgrantee is participating in the State of Florida Comptroller's Office electronic transfer program, reimbursement cannot be remitted to any other entity than the Chief Financial Officer.</p>	
Name	
Title	E-Mail Address
Address	
City	Zip Code
Area Code/Phone	Fax
<p>2. FEID # FOR SUBGRANT RECIPIENT: 59-6000702 <i>Federal Employer Identification Number</i></p>	
3. STATE AGENCY FLAIR #: N/A	4. DUN AND BRADSTREET #: 01-346-1611

D. PROJECT DESCRIPTION

Based on your approved Initial Strategic Implementation Plan (ISIP), BRIEFLY describe project activities in narrative form. Please refer to the attached ISIP provided. Limit text to this page only.

The Lee County Utilities Division (LCU) will purchase the necessary materials and equipment, plus contract with County vendors, to make security improvements to one of LCU's water treatment plants (actual name withheld for security reasons). Such necessary materials, equipment, and vendor services will include the installation of an 8 foot high security fence along the plant's river frontage, implementation of card access control to all buildings, hardening of access points to structures, and installation of close circuit television monitoring equipment. Such improvements were discussed during the USEPA mandated Vulnerability Assessment Study process.

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E. BUDGET SCHEDULE

Enter the sum of the sub-totals from each of the budget categories from the Budget Narrative (Section F) that are applicable for your project's expenditures.

Enter dollar amounts only in applicable categories and leave other areas blank. Use whole dollar amounts only.

BUDGET CATEGORY	FEDERAL (TOTAL) AMOUNT
Salaries & Benefits	\$0
Contractual Services	\$93,000
Expenses	\$0
Operating Capital Outlay	\$27,000
Indirect Costs	\$0
TOTAL	\$120,000

F. BUDGET NARRATIVE

Unit costs are to be provided for each budget category as specified in Section E. This documentation must be described and itemized. Please include subtotals and totals if applicable. Use additional pages if necessary.

Salaries and Benefits

Not Applicable

Contractual Services

Hire County approved vendors to install river perimeter security fencing, card access control system, and close circuit television monitoring system.

Name: Unknown at present

Purpose: Installation of approximately 1400 linear feet of perimeter security fencing along river frontage.

Price (Approximate): \$37,000

Name: Unknown at present

Purpose: Installation of card access control system.

Price (Quoted but not Fixed): \$31,000

Name: Unknown at present

Purpose: Installation of close circuit television monitoring system.

Price (Approximate): \$25,000

TOTAL = \$93,000

Operating Capital Outlay

5 Close Circuit Television Cameras @ \$2,500 each (Estimate) = \$12,500

1 Server for card access control and close circuit television system (3.0 GHz or faster) and related supplies (Estimate) = \$2,000

Upgraded doors and door frames for miscellaneous structures to improve security (Estimate) = \$11,000

Miscellaneous wiring and conduits for power distribution (Estimate) = \$1,500

TOTAL = \$27,000

GRAND TOTAL = \$120,000

G. CONDITIONS OF ACCEPTANCE AND AGREEMENT

Conditions of agreement requiring compliance by units of local government (subgrant recipients), implementing agencies and state agencies upon signed acceptance of the subgrant award appear in this section. Upon approval of this subgrant, the approved application and the following terms of conditions will become binding. Failure to comply with provisions of this agreement will result in required corrective action up to and including project costs being disallowed and termination of the project, as specified in Item 13 of this section.

The subgrant recipient agrees to comply with the financial and administrative requirements set forth in the current edition of the U.S. Department of Justice, Office of Justice Programs *Financial Guide* and the U. S. Department of Homeland Security, Office for Domestic Preparedness *FY 2004 Homeland Security Grant Program Guidelines* and must support the goals and objectives included in the State Homeland Security Strategy for Florida. The *Financial Guide* incorporates by reference the provisions of the Office of Management and Budget (OMB) circulars and government-wide common rules applicable to grants and cooperative agreements. The subgrant recipient agrees to comply with all federal statutes, regulations, policies, guidelines and requirements, including OMB Circulars, as applicable:

Administrative Requirements – OMB Circular A-102 “Grants and Cooperative Agreements with State and Local Governments” and OMB Circular A-110 “Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations”, 48 CFR 31.2 “Contracts With Commercial Organizations” and 45 CFR 74, Appendix E “Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals”

Cost Principles – OMB Circular A-21 “Cost Principles for Educational Institutions”, OMB Circular A-87 “Cost Principles for State, Local, and Indian Tribal Governments”, OMB Circular A-122 “Cost Principles for Non-Profit Organizations”

Audit Requirements – OMB Circular A-133 “Audits of States, Local Governments and Non-Profit Organizations”;

Statutory Authority – Public Law 108-090.

1. Reports

a. Project Performance Reports:

The subgrant recipient must submit a Semi-Annual Project Performance Report to OCJG by January 10 and July 10. The reports must report data relating to January – June and July through December. Failure to submit Performance Reports that are complete, accurate and timely may result in sanctions.

b. Financial Reports:

- (1) The subgrant recipient shall have a choice of submitting either a Monthly or a Quarterly Financial Claim Report to the OCJG. Monthly Financial Claim Reports (1-11) are due thirty-one (31) days after the end of the reporting period. Quarterly Financial Claim Reports (1-3) are due thirty-one (31) days after the end of the reporting period. In addition, if the subgrant award period is extended, additional Financial Claim Reports shall be submitted. A final Financial Claim Report and a Criminal Justice Contract (Financial) Closeout Package shall be submitted to OCJG within forty-five (45) days of the subgrant termination period. Such claim shall be distinctly identified as “final”.

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- (2) All claims for reimbursement of subgrant recipient costs shall be submitted on the Financial Claim Report Forms prescribed and provided by the Office of Criminal Justice Grants. A subgrant recipient shall submit either monthly or quarterly claims in order to report current project costs. Reports are to be submitted even when no reimbursement is being requested.
- (3) All claims for reimbursement shall be submitted in sufficient detail for proper pre-audit and post-audit.
- (4) Before the "final" claim will be processed, the subgrant recipient must submit to the OCJG all outstanding project reports and must have satisfied all special conditions. Failure to comply with the above provisions shall result in forfeiture of reimbursement.

c. Other Reports:

The subgrant recipient must submit other reports as may be reasonably required by the Department.

2. Project Closeout

Project funds that have been properly obligated by the end of the subgrant funding period will have 45 days in which to be liquidated (expended). Any funds *not* liquidated at the end of the 45-day period will lapse and revert to the Department. A subgrant funded project will *not* be closed out until the subgrant recipient has satisfied *all* closeout requirements in *one final* subgrant closeout package. A check for the full amount of any unexpended funds must accompany the closeout package.

All refunds or repayments made to the Department under this Agreement are made payable to the order of "Florida Department of Law Enforcement" and mailed to the following address:

<p>Office of Criminal Justice Grants Attention: Criminal Justice Initiatives Unit Florida Department of Law Enforcement 2331 Phillips Road Tallahassee, FL 32308</p>

3. Fiscal Control and Fund Accounting Procedures

The subgrant recipient must establish fiscal control and fund accounting procedures that assure proper disbursement and accounting of subgrant funds and required non-federal expenditures. All funds spent on this project must be disbursed according to provisions of the project budget as approved by the Department. All funds not spent according to this agreement will be subject to repayment by the subgrant recipient.

4. Allowable Costs

a. Allowance for costs incurred under the subgrant shall be determined according to the general principles of allowability and standards for selected cost items set forth in the *OJP Financial Guide*, U.S. Department of Justice *Common Rule for State And Local Governments* and federal *OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments"*, or *OMB Circular A-21, "Cost Principles for Educational Institutions"*.

b. All procedures employed in the use of federal funds for any procurement shall be according to U.S. Department of Justice *Common Rule for State and Local Governments*, or *OMB Circular A-110* and Florida law to be eligible for reimbursement.

5. Travel and Training

The cost of all travel shall be reimbursed according to local regulations. A municipality or agency of a municipality may provide for a per diem and travel expense policy which varies from provisions in Chapter 112.061§4; Florida Statutes. If a municipality does not provide a per diem and travel policy pursuant to the above subsection, it remains subject to, but not in excess of provisions in Section

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112.061, Florida Statutes.

All bills for any travel expenses shall be submitted according to provisions in Section 112.061, Florida Statutes.

6. Written Approval of Changes in this Approved Agreement

Subgrant recipients shall obtain approval from the Department for major substantive changes. These include, but are not limited to:

- a. Changes in project activities set forth in the approved agreement;
- b. Budget deviations that do not meet the following criterion. That is, a subgrant recipient may transfer funds between budget categories as long as the total amount of transfer does not exceed ten (10) percent of the total approved budget and the transfer is made to an approved budget item; or,
- c. Transfers of funds above the ten (10) percent cap shall be made only if a revised budget is approved by the Department. Transfers do not allow for increasing the quantitative number of items documented in any approved budget item, i.e., increasing the quantity of equipment items in Operating Capital Outlay or Expense categories, or staff positions in the Salaries and Benefits category.)

Under no circumstances can transfers of funds increase the total budgeted award

7. Reimbursement Subject to Available Funds

The obligation of the State of Florida to reimburse subgrant recipients for incurred costs is subject to available federal funding.

8. Advance Funding

Advance funding may be authorized for each project according to Section 216.181(16)(b), Florida Statutes, the *OJP Financial Guide*, and the U.S. Department of Justice *Common Rule for State and Local Governments*. Advance funding shall be provided to a subgrant recipient upon a written request to the OCJG justifying the need for such funds. This request, including the justification, shall be either enclosed with the subgrant application or submitted to the OCJG prior to the first request for reimbursement. Justification should address a 30/60/90-day need for cash based on the budgeted activities for the period.

9. Excusable Delays

Except with respect to defaults of consultants, the subgrant recipient will not be in default by reason of any failure in performance of this agreement according to its terms (including any failure by the subgrant recipient to make progress in the execution of work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the subgrant recipient. Such causes include but are not limited to acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the subgrant recipient.

If failure to perform is caused by failure of a consultant or third party to perform or make progress, and if such failure arises out of causes beyond the control of the subgrant recipient and the consultant, and without fault or negligence of either of them, the subgrant recipient will not be deemed in default, *unless*:

- a) Supplies or services to be furnished by the consultant were obtainable from other sources;
- b) The Department ordered the subgrant recipient in writing to procure such supplies or services from other sources; and
- c) The subgrant recipient failed to reasonably comply with such order.

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Upon request of the subgrant recipient, the Department will ascertain the facts and the extent of such failure, and if the Department determines that any failure to perform was occasioned by one or more said causes, the delivery schedule will be revised accordingly.

10. Obligation of Subgrant Recipient Funds

Subgrant recipient funds must not under any circumstances be obligated prior to the effective date or subsequent to the termination date of the grant period. **Only project costs incurred on or after the effective date and on or prior to the termination date of the subgrant recipient's project are eligible for funding under this subgrant.** A cost is incurred when the subgrant recipient's employee or consultant performs required services, or when the subgrant recipient receives goods, notwithstanding the date of order.

11. Review of Consultant Contracts

The Department shall review all consultant contracts prior to employment of a consultant when their rate exceeds \$450 (excluding travel and subsistence costs) for an eight-hour day. Review shall be based upon the contract's compliance with requirements found in the OJP *Financial Guide*, U.S. Department of Justice *Common Rule for State and Local Governments*, and in applicable state statutes. The review of the subgrant recipient agreement does not constitute approval of consultant contracts.

12. Performance of Agreement Provisions

In the event of default, non-compliance or violation of any provision of this agreement by the subgrant recipient, the subgrant recipient's consultants and suppliers, or both, the Department will impose sanctions it deems appropriate including withholding payments and cancellation, termination or suspension of the agreement in whole or in part. In such an event, the Department will notify the subgrant recipient of its decision thirty (30) days in advance of the effective date of such sanction. The subgrant recipient will be paid only for those services satisfactorily performed prior to the effective date of such sanction.

All refunds or repayments to be made to the Department under this Agreement are to be made payable to the order of Florida Department of Law Enforcement and mailed directly to the Department at the following address:

<p>Office of Criminal Justice Grants Attention: Criminal Justice Initiatives Unit Florida Department of Law Enforcement 2331 Phillips Road Tallahassee, Florida 32308</p>
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13. Access To Records

The Florida Department of Law Enforcement; the U.S. Department of Homeland Security, Office of Domestic Preparedness; and the Auditor General of the State of Florida; the U.S. Comptroller General or any of their duly authorized representatives, will have access to books, documents, papers and records of the subgrant recipient, implementing agency and contractors for the purpose of audit and examination according to the Office of Justice Programs' *Financial Guide*, as amended.

The Department reserves the right to unilaterally terminate this agreement if the subgrant recipient, implementing agency or contractor refuses to allow public access to all documents, papers, letters, or other materials subject to provisions of *Chapter 119, Florida Statutes*, and made or received by the subgrant.

or its contractor in conjunction with this agreement.

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14. Audit

- a. Subgrant recipients and Implementing Agencies that expend \$500,000 or more in a year in federal awards must have a single or program-specific audit conducted for that year. The audit must be performed in accordance with the federal OMB *Circular A-133* and other applicable federal law. The contract for this agreement must be identified with the subject audit in *The Schedule of Federal Financial Assistance*. The contract must be identified as federal funds passed-through the Florida Department of Law Enforcement and include the contract number, CFDA number, award amount, contract period, funds received and disbursed. When applicable, the subgrant recipient must submit an annual financial audit which meets the requirements of *Chapters 11.45 and 215.97, Florida Statutes*; and, *Chapters 10.550 and 10.600, Rules of the Florida Auditor General*.
- b. A complete audit report which covers any portion of the effective dates of this agreement must be submitted within 30 days after its completion, but no later than nine (9) months after the audit period. In order to be complete, the submitted report must include any management letters issued separately and management's written response to *all* findings; both audit report and management letter findings. Incomplete audit reports will not be accepted by the Department and will be returned.
- c. The subgrant recipient must have all audits completed by an independent public accountant (IPA). The IPA must be either a Certified Public Accountant or a Licensed Public Accountant.
- d. The subgrant recipient and/or Implementing agency must take appropriate corrective action within six (6) months of the issue date of the audit report in instances of noncompliance with federal laws and regulations.
- e. The subgrant recipient and/or Implementing Agency must ensure that audit working papers are made available to the Department, or its designee, upon request for a period of three (3) years from the date the audit report is issued, unless extended in writing by the Department.
- f. Subgrant recipients and/or Implementing Agencies that expend less than \$500,000 in federal awards during a fiscal year are exempt from the audit requirements of OMB *Circular A-133* for that fiscal year. In this case, written notification must be provided to the Department by the Chief Financial Officer, or designee, that the subgrant recipient is exempt. This notice must be provided to the Department no later than March 1 following the end of the fiscal year.
- g. If this agreement is closed out without an audit, the Department reserves the right to recover any *disallowed costs* identified in an audit completed after such closeout.
- h. The completed audit reports should be sent to the following address:

Office of Criminal Justice Grants
Attention: Criminal Justice Initiatives Unit
Florida Department of Law Enforcement
2331 Phillips Road
Tallahassee, Florida 32308

15. Retention of Records

The subgrant recipient must maintain all records and documents for a minimum of three (3) years from the date of the final financial statement and be available for audit and public disclosure upon request of duly authorized persons.

16. Ownership of Data and Creative Material

Ownership of material, discoveries, inventions, and results developed, produced, or discovered subordinate to this agreement is governed by the terms of the Office of Justice Programs' *Financial Guide, as amended* or OMB *Circulars A-110 or A-102, as applicable*.

17. Property Accountability

The subgrant recipient agrees to use all non-expendable property for domestic security purposes during its useful life or request Department disposition.

The subgrant recipient must establish and administer a system to protect, preserve, use, maintain and dispose of any property furnished to it by the Department or purchased pursuant to this agreement according to federal property management standards set forth in the Office of Justice Programs' *Financial Guide, as amended* or the federal OMB Circulars A-110 or A-102, as applicable. This obligation continues as long as the subgrant recipient retains the property, notwithstanding expiration of this agreement.

18. Disputes and Appeals

The Department will make its decision in writing when responding to any disputes, disagreements or questions of fact arising under this agreement and will distribute its response to all concerned parties. The subgrant recipient must proceed diligently with the performance of this agreement according to the Department's decision.

If the subgrant recipient appeals the Department's decision, it must be submitted in writing to the Department's agency clerk within *twenty-one (21) calendar days of receipt of notification*. The subgrant recipient's right to appeal the Department's decision is contained in *Chapter 120, Florida Statutes*, and in procedures set forth in *Chapters 28-5 and 9-5, Florida Administrative Code*. Failure to appeal within this time frame constitutes a waiver of proceedings under *Chapter 120, Florida Statutes*.

19. Conferences and Inspection of Work

Conferences may be held at the request of any party to this agreement. At any time, representatives of the Department and/or the U.S. Department of Homeland Security have the privilege of visiting the project site to monitor, inspect and assess work performed under this agreement.

20. Publication or Printing of Reports

The subgrant recipient must submit one copy of all reports and proposed publications resulting from the agreement twenty (20) days prior to public release. Any publications (written, visual, or sound), whether published at the subgrant recipient's or government's expense, must contain the following statement: (NOTE: This excludes press releases, newsletters, and issue analysis.)

"This project was supported by grant award number 2004-GE-T4-0010 awarded by the U.S. Department of Homeland Security, Office of Domestic Preparedness. Points of view within this document are those of the author and do not necessarily represent the official position of policies of the U.S. Department of Homeland Security."

21. Equal Employment Opportunity (EEO)

All subgrant recipients are required to comply with nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), or Victims of Crime Act (as appropriate); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E and G; and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39.

The subgrant recipient acknowledges, by completing and signing the attached EEO Certification Letter that failure to submit an acceptable Equal Employment Opportunity Plan approved by the Office for Civil Rights (if subgrant recipient is required to submit one pursuant to 28 CFR 42.302), is a violation of its certified assurances and may result in suspension of funding obligation authority. **Submission of this certification letter is a prerequisite to entering into this agreement.** This certification is a material representation of fact upon which reliance was placed when this agreement was made. If the subgrant recipient or implementing agency meet Act criteria but have not formulated, implemented and maintained such a current written EEO Program, they have *120 days* after the date of this agreement to comply with the Act or face loss of federal funds subject to the sanctions in the *Justice System*

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Improvement Act of 1979, Pub. L. 96-157, 42 U.S.C. 3701, et seq. (Reference Section 803 (a) of the Act, 42 U.S.C. 3783 (a) and CFR Section 42.207 Compliance Information; Title VI of the Civil Rights Act of 1964, as amended; and Department of Justice regulation 28 CFR Part 42, Subparts C, D, E.

If any court or administrative agency makes a finding of discrimination on the grounds of race, color, religion, national origin, gender, disability or age against a subgrant recipient of funds, the subgrant recipient must agree to forward a copy of the findings to the USDOJ Office of Justice Programs (OJP), Office for Civil Rights.

All subgrant recipients must provide the OJP Office for Civil Rights with an Equal Opportunity Plan, if required to maintain one, where the subgrant award is \$500,000 or more.

22. Americans with Disabilities Act 1990

Subgrantees must comply with the requirements of the Americans with Disabilities Act (ADA), Public Law (P.L.) 101-336, which prohibits discrimination by public and private entities on the basis of disability and requires certain accommodations be made with regard to employment (Title I), state and local government services and transportation (Title II), public accommodations (Title III), and telecommunications (Title IV). (*Reference Title II of the Americans with Disabilities Act and Department of Justice regulation 28 CFR Part 42, Part 35; and Title IX of Education Amendments of 1972 and Department of Justice Regulation 28 CFR Part 54.*)

23. Non-Procurement, Debarment and Suspension

The subgrant recipient agrees to comply with *Executive Order 12549, Debarment and Suspension (34 CFR, Part 85, Section 85.510, Participant's Responsibilities)*. These procedures require the subgrant recipient to certify it will not enter into any lower tiered covered transaction with a party that is debarred, suspended, declared ineligible or is voluntarily excluded from participating in this covered transaction, unless authorized by the Department.

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

24. Payment Contingent on Appropriation

The State of Florida's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the Florida Legislature.

25. Federal Restrictions on Lobbying

The subgrant recipient agrees to comply with *Section 319 of P.L. 101-121 set forth in "New Restrictions on Lobbying; Interim Final Rule," published in the February 26, 1990, Federal Register.*

Each person must file the most current edition of this Certification and Disclosure Form, if applicable, with each submission that initiates agency consideration of such person for award of federal contract, grant, or cooperative agreement of \$100,000 or more; or federal loan of \$150,000 or more.

This certification is a material representation of fact upon which reliance was placed when this agreement was made. Submission of this certification is a prerequisite to entering into this agreement subject to conditions and penalties imposed by *Section 1352, Title 31, United States Code*. Any person who fails to file the required certification is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure to file.

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The undersigned certifies, to the best of his or her knowledge and belief, that:

- a. No federally 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 the awarding of any federal loan, the entering into of any renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
- b. If any non-federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of congress, or an employee of a member of congress in connection with this federal contract, grant loan, or cooperative agreement, the undersigned must complete and submit the standard form, Disclosure of Lobbying Activities, according to its instructions.
- c. The undersigned will require that the language of this certification be included in award documents for all subgrant awards at all tiers and that all subgrant recipients must certify and disclose accordingly.

26. State Restrictions on Lobbying

In addition to the provisions contained herein, the expenditure of funds for the purpose of lobbying the state Legislature or a state agency is prohibited under this contract.

27. Political Activities Limitations

The subgrantee assures that it will comply with provisions of federal law which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or part by federal grants (5USC 1501, et seq.)

28. Fair Labor Standards

The subgrantee assures that it will comply with the minimum wage and maximum hour's provisions of the *Federal Fair Labor Standards Act*.

29. Environmental Protection Agency's (EPA) List of Violating Facilities

The subgrantee assures that the facilities under its ownership, lease or supervision which will be utilized in the accomplishment of the Program Purpose are not listed on the EPA's list of Violating Facilities and that it will notify the Department of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used is under consideration for listing by the EPA.

30. Flood Disaster Protection Act

The subgrantee will comply with Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, requiring that the purchase of flood insurance in communities where such insurance is available as a condition of the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified as an area having special flood hazards.

31. National Historic Preservation Act

The subgrantee will assist the Department in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 569a-1 et seq.) by (a) consulting with the State Historic Preservation Officer as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Florida Department of Law Enforcement of the existence of any such properties and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

32. The Coastal Barrier Resources Act

The subgrantee will comply and assure the compliance of all contractors with the provisions of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 USC 3501 et seq.) which prohibits the expenditure of most new Federal funds within the units of the Coastal Barrier Resources System.

33. National Environmental Policy Act (NEPA)

a. The subgrantee agrees to assist the Department in complying with the NEPA and other related federal environmental impact analyses requirements in the use of subgrant funds by the subgrantee. This applies to the following new activities whether or not they are being specifically funded with these subgrant funds. That is, it applies as long as the activity is being conducted by the subgrantee or any third party and the activity needs to be undertaken in order to use these subgrant funds:

(1) New construction;

(2) Minor renovation or remodeling of a property either (a) listed on or eligible for listing on the National Register of Historic Places or (b) located within a 100-year flood plain;

(3) A renovation, lease, or any other proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size; and

(4) Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or educational environments.

b. For any of a subgrantee's existing programs or activities that will be funded by these subgrants, the subgrantee, upon specific request from the Department and the U.S. Department of Justice (DOJ), agrees to cooperate with DOJ in any preparation by DOJ of a national or program environmental assessment of that funded program or activity.

34. Signature Authority

Both the Subgrant Recipient Authorizing Official or Designated Representative and the Implementing Agency Official, Administrator or Designated Representative who sign the Signature Page have the authority to request changes to the approved agreement. The prior mentioned individuals have authority to sign or make amendments to the Sole Source and the ADP Justification forms. The Project Director has authority to submit requests for approval of specific travel, Financial and Performance Reports, with the exception of the Closeout Package, which also requires the signature by the Chief Financial Officer of the Subgrant Recipient or authorized designee.

35. Delegation of Signature Authority

When the authorized official of a subgrant recipient or the implementing agency designates some other person signature authority for him/her, the chief officer or elected official must submit to the department a letter or resolution indicating the person given signature authority. The letter indicating delegation of signature authority must be signed by the chief officer or elected official and the person receiving signature authority. The letter must also specify the authority being delegated.

36. Personnel Changes

Upon implementation of the project, in the event there is a change in Chief Executive Officers for the Subgrantee or Implementing Agency, Project Director, or Contact Person, the Department must be notified in writing with documentation to include appropriate signatures.

37. Supplanting

The subrecipient agrees that funding under this award will be used to supplement, but not supplant, state or local funds for homeland security preparedness. Costs allocated or included in any other federally financed program must not be included.

38. Use of Funds

The subrecipient understands and agrees that it cannot use any funding under this award either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of the awarding agency.

39. Categorical Exclusions

The subrecipient understands that funding under this award is to enhance its capabilities to prevent, respond to and recover from incidents of terrorism involving chemical, biological, radiological, nuclear or explosive weapons and cyber attack. Equipment purchases for this subgrant are restricted to 18 categories that range from personal protective equipment to search and rescue equipment, to cyber security equipment and related costs. This action consequently meets the OJP's criteria for categorical exclusion as contained in Title 40, paragraph 4(b) of Appendix D to Part 61, CFR. Additionally, the proposed action is neither a phase nor a segment of a project which when viewed in its entirety would not meet the criteria for a categorical exclusion. None of the following activities will be conducted either under this action or a related third party action:

1. New construction
2. Any renovation or remodeling of a property either (a) listed on or eligible for listing on the National Register of Historic Places, or (b) located within a 100-year flood plain.
3. A renovation which will change the basic prior use of a facility or significantly change its size.
4. Research and technology whose anticipated and future application could be expected to have an effect on the environment.
5. Implementation of a program involving the use of chemicals.

40. Authorized Equipment Expenditures

The equipment, goods, and supplies ("the eligible equipment") purchased with funds provided under this agreement are for the purposes specified in "Florida's Domestic Security Strategy". Equipment purchased with these funds will be utilized in the event of emergencies, including, but not limited to, terrorism-related hazards. The subrecipient shall place the equipment throughout the State of Florida in such a manner that, in the event of an emergency, the equipment can be deployed on the scene of the emergency or be available for use at a fixed location within two (2) hours of a request for said deployment. The Florida Department of Law Enforcement (FDLE) must approve any purchases of equipment not itemized in a project's approved Initial Strategic Implementation Plan (ISIP) in advance of the purchase.

The subrecipient will, in accordance with the statewide mutual aid agreement or other emergency response purpose as specified in the "Florida Domestic Security Strategy," ensure that all equipment purchased with these funds is used to respond to any and all incidents within its regional response area as applicable for so long as this Agreement remains in effect. Prior to requesting a response, the FDLE will take prudent and appropriate action to determine that the level or intensity of the incident is such that the specialized equipment and resources are necessary to mitigate the outcome of the incident.

The subrecipient shall notify the FDLE Office of Domestic Preparedness at 2331 Phillips Road, Tallahassee, Florida 32308 one year in advance of the expiration of the equipment's posted shelf-life or normal life expectancy or when it has been expended. The subrecipient shall notify the FDLE immediately if the equipment is destroyed, lost, or stolen.

The subrecipient shall not transfer, rent, sell, lease, alienate, donate, mortgage, encumber or otherwise dispose of the eligible equipment without the prior written consent of the FDLE.

H. SIGNATURE PAGE

Submit two (2) original-signed copies of this page

IN WITNESS WHEREOF, the parties affirm they each have read and agree to the conditions set forth in this agreement, have read and understand the agreement in its entirety, and have executed this agreement by their duly authorized officers on the date, month and year set out below.

(Corrections on this page including strikeouts, whiteouts, etc. cannot be accepted.)

State of Florida Florida Department of Law Enforcement Office of Criminal Justice Grants

Signature: _____

Name and Title: Clayton H. Wilder, Community Program Administrator

Date: _____

Subgrant Recipient

Name of Governmental Unit: Lee County Board of County Commissioners
(City, County, Agency/Organization)

Signature: _____
(Chief Official of City, County, Agency/Organization)

Printed Name & Title: Douglas R. St. Cerny, Chairman

Date: _____

Implementing Agency *(Implementer of Project Activities)*

Name of Implementing Agency: Lee County Utilities Division

Signature: _____
(Chief Official of Implementing Organization)

Printed Name & Title: Rick Diaz, PE, Utilities Director

Date: 11/22/04

**Law Enforcement Terrorism Prevention Program
Florida Department of Law Enforcement**

H. SIGNATURE PAGE

Signatures must be printed on the reverse side of this page.

IN WITNESS WHEREOF, the parties affirm they each have read and agree to the conditions set forth in this agreement, have read and understand the agreement in its entirety, and have executed this agreement by their duly authorized officers on the date, month and year set out below.

(Corrections on this page including strikeouts, whiteouts, etc. cannot be accepted.)

State of Florida
Florida Department of Law Enforcement
Office of Criminal Justice Grants

Signature: _____
Name & Title: Clayton H. Wilder, Community Program Administrator
Date: _____

Subgrant Recipient

Name of Governmental Unit: Lee County Board of County Commissioners
(City, County, Agency/Organization)
Signature: _____
(Chief Official of City, County, Agency/Organization)
Printed Name & Title: Douglas R. St. Cerny, Chairman
Date: _____

Implementing Agency
(Implementing Project Activities)

Name of Implementing Agency: Lee County Utilities Division
Signature: _____
(Chief Official of Implementing Organization)
Printed Name & Title: Rick Diaz, PE, Utilities Director
Date: 11/22/09

**EQUAL EMPLOYMENT OPPORTUNITY
CERTIFICATION
(SUBGRANT RECIPIENT)**

Mr. Clayton H. Wilder
Community Program Administrator
Florida Department of Law Enforcement
Office of Criminal Justice Grants
2331 Phillips Road
Tallahassee, Florida 32308

**Re: Compliance with Equal Employment Opportunity (EEO) Program
Requirements for the Subgrant Recipient**

Dear Mr. Wilder:

I, THE UNDERSIGNED AUTHORIZED OFFICIAL, certify that according to Section 501 of the Omnibus Crime Control and Safe Streets Act of 1968 as amended, that I have read the Act Criteria set forth in the Subgrant Application Package and Instructions. I understand that IF the subgrant recipient meets this criterion, it must formulate, implement and maintain a written EEO Program relating to employment practices affecting minority persons and women. I also affirm that the subgrant recipient (Initial one of the following):

- Does meet Act Criteria and does have a current EEO Program Plan.
- Does meet Act Criteria and does not have a current EEO Program Plan.
- Does not meet Act Criteria.

I FURTHER AFFIRM that if the recipient meets the Act Criteria and does not have a current written EEO Program, federal law requires it to formulate, implement, and maintain such a program within 120 days after a subgrant application for federal assistance is approved or face loss of federal funds.

Signature of chief official:

Douglas R. St. Cerney, Chairman, Lee County Board of County Commissioners
(Print Name, Title & Agency/Organization)

(Date)