

1. **REQUESTED MOTION:**

ACTION REQUESTED: Execute United States Department of Agriculture, Natural Resources Conservation Service (NRCS) Project Agreement No. 65-4209-4-1630 for emergency watershed protection measures to relieve hazards and damages created by Hurricane Charley. NRCS will provide a not to exceed amount of \$342,500 for debris removal and disposal from canals and waterways in Lee County. Approve budget amendment in the amount of \$342,500 for NRCS – Hurricane Charley, Project No. 0767 and approve transfer from General Fund Reserves in the amount of \$114,167 for Lee County contribution.

WHY ACTION IS NECESSARY: Board approval required for all agreements and transfers from reserves.

WHAT ACTION ACCOMPLISHES: Provides funding for contract operations to removal debris from canals and waterways in Lee County resulting from Hurricane Charley.

2. **DEPARTMENTAL CATEGORY:**

COMMISSION DISTRICT #: C-W 08

3. **MEETING DATE:**

09-07-2004

4. **AGENDA:**

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

5. **REQUIREMENT/PURPOSE:**

(Specify)

- _____ STATUTE
- _____ ORDINANCE
- _____ ADMIN. CODE
- X OTHER Agreement

6. **REQUESTOR OF INFORMATION:**

- A. COMMISSIONER _____
- B. DEPARTMENT Public Works
- C. DIVISION Natural Resources
- BY: Roland E. Ottolini, P.E. *[Signature]*

7. **BACKGROUND:**

As a result of Hurricane Charley, vegetative and construction debris has collected in the canals and waterways of Lee County. Natural Resources' staff has met with NRCS representatives and completed aerial reconnaissance to determine damage levels. Locations requiring action include, but are not limited to Bayshore Creek, Billy's Creek, Bokeelia, Bum Bum Creek, Chapel Branch, Daughtrey's Creek, Durden Creek, Estero River, Gator Slough, Imperial River, Matlacha, Mullock Creek, Orange River, Phillips Creek, Pine Island, Palm Creek, Popash Creek, Powell Creek, and St. James City.

The NRCS project agreement will provide much needed funds to clean local waterways of debris which are health, safety, and welfare issues including flood and navigation hazards. This grant provides for 75% participation by NRCS with a 25% contribution by Lee County.

Expenses and revenues will be tracked through account no. 11076700100 (NRCS – Hurricane Charley) for NRCS contribution and 14076700100 for Lee County's contribution which includes in-kind services.

8. **MANAGEMENT RECOMMENDATIONS:**

9. **RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	Risk	GC	
<i>[Signature]</i> 9-2-04	<i>Sail</i> <i>9/2/04</i>	N/A	N/A	<i>[Signature]</i> 9/2/04	<i>[Signature]</i> 9/2/04	<i>[Signature]</i> 9/2/04	<i>[Signature]</i> 9/2/04	<i>[Signature]</i> 9/2/04	<i>[Signature]</i> 9-2-04

10. **COMMISSION ACTION:**

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

AS AMENDS

RECEIVED BY
COUNTY ADMIN
9-2-04
4:30 PM
COUNTY ADMIN
FORWARDED TO
9-2-04
8:15 PM

From: Elin Clemons
To: Carney, Shirley
Date: 9/7/04 2:44PM
Subject: Walk-On No. 3, Blue Sheet 20041156

Hi there! When you get our agreement with USDA, NRCS can you call me to come and pick it up? I need to FedEx it to NRCS for final signatures. Thanks.

**MEMORANDUM
FROM
THE DEPARTMENT OF
PUBLIC WORKS
Division of Natural Resources**

Date: September 3, 2004

TO: Patricia Geren
Public Resources

From: Roland Ottolini, P.E.
Director



**SUBJECT: Board of County Commissioners Meeting of September 7, 2004
Walk-On No. 3, Blue Sheet 20041156**

Due to an increased financial commitment by the United States Department of Agriculture, Natural Resources Conservation Service to Project Agreement No. 65-4209-4-1630, please amend the motion on the above referenced blue sheet to reflect the following revised amounts:

NRCS contribution is changed from \$342,500 to \$499,840
Budget amendment is changed from \$342,500 to \$499,840
Transfer from General Fund Reserves is changed from \$114,167 to \$166,613

We have attached the e-mail notification from NRCS along with revised Pages 1 and 6 of the agreement. We anticipate corrected documents from Budget Services (budget amendment and transfer) will be provided as soon as possible.

Thank you for your time and consideration.

Attachments

Elin Clemons - Updated agreement LeeBCC-NRCS EWP

From: "Merrill, Lynn - Gainesville, FL" <Lynn.Merrill@fl.usda.gov>
To: "Roland Ottolini" <OTTOLIRE@leegov.com>
Date: 9/3/2004 12:27 PM
Subject: Updated agreement LeeBCC-NRCS EWP

Roland -

We have received additional funding and have raised the amount of the agreement to \$499,480.

I have included the revised agreement. It would only be necessary to replace the first page. As before, please print two(2) copies of the subject agreement. Arrange to have both copies signed on behalf of Lee County and return both copies to this office for signature on behalf of the Service. We will make distribution of the fully executed agreement.

I have provided for faxing of signatures also if necessary. If needed send me the fax number. We'll also need Land Rights certification prior to commencement of work.

If you have any questions, please call me at (352) 338-9553. Fax (352) 338-9574

Lynn F. Merrill

Physical (FedEx) Address
USDA-NRCS
2614 NW 43rd Street
Gainesville, FL 32606

Mailing Address
USDA-NRCS
P.O. Box 141510
Gainesville, FL 32614-1510

BOARD OF COUNTY COMMISSIONERS
WALK ON AGENDA ITEMS
MEETING DATE: September 7, 2004

WO # DESCRIPTION

WO #1 **ACTION REQUESTED:**
Authorize Chairman to execute Modification #1 to Pre-Disaster Mitigation Agreement with the Department of Community Affairs to extend the agreement to September 3, 2004.
WHY ACTION IS NECESSARY:
Commission Chairman's signature is required to execute the Contract.
WHAT ACTION ACCOMPLISHES:
The Department of Community Affairs has requested this extension. (#20041145-Emergency Management)
REASON FOR WALK ON:
To meet signatory requirements due to the time restraint.

WO #2 **ACTION REQUESTED:**
Adopt an Emergency Ordinance relating to the removal of hurricane debris from public and private property by federal agencies during declared emergencies, to include the removal of damaged residences declared unsafe for habitation.
WHY ACTION IS NECESSARY:
Federal disaster recovery agencies need local approval and authorization to assist in hurricane recovery by utilizing federal resources for the removal of debris from public and private property.
WHAT ACTION ACCOMPLISHES:
Provides authorization to federal agencies to assist with the removal of hurricane debris, to include damaged residences declared unsafe for habitation. (#20041154-County Attorney)
REASON FOR WALK ON:
To provide the U.S. Government with authorization to assist in hurricane debris removal and emergency housing.

WO #3 **ACTION REQUESTED:**
Execute United States Department of Agriculture, Natural Resources Conservation Service (NRCS) Project Agreement No. 65-4209-4-1630 for emergency watershed protection measures to relieve hazards and damages created by Hurricane Charley. NRCS will provide a not to exceed amount of \$342,500 for debris removal and disposal from canals and waterways in Lee County. Approve budget amendment in the amount of \$342,500 for NRCS – Hurricane Charley, Project No. 0767 and approve transfer from General Fund Reserves in the amount of \$114,167 for Lee County contribution.
WHY ACTION IS NECESSARY:
Board approval required for all agreements and transfers from reserves.
WHAT ACTION ACCOMPLISHES:
Provides funding for contract operations to removal debris from canals and waterways in Lee County resulting from Hurricane Charley. (#20042256-Natural Resources)
REASON FOR WALK ON:
Funds will provide for emergency and necessary clean-up to the canals and waterways heavily impacted by Hurricane Charley.

BOARD: ALBION COY JUDAH JANES ST. CERNY
COMMISSION RECEPTION DESK
DONALD STILWELL, COUNTY MANAGER
WILLIAM HAMMOND, DEPUTY COUNTY MANAGER
HOLLY SCHWARTZ, ASSISTANT COUNTY MANAGER

ANTONIO MAJUL, BUDGET SERVICES
BOB GRAY, DEPUTY CO ATTORNEY
JAMES LAVENDER, PUBLIC WORKS
PUBLIC RESOURCES OFFICE
LISA PIERCE, MINUTES


DATE AND TIME DISTRIBUTED: 09-03-04 12:45 PM

Distributed by: Kathy Geren
Division of Public Resources
Phone: 335-2215

M E M O R A N D U M
FROM
THE DIVISION OF
NATURAL RESOURCES

DATE: September 2, 2004

TO: Patricia Geren
Public Resources

FROM: Roland Ottolini 

SUBJECT: Board of County Commissioners Meeting of September 7, 2004
Request for Walk-On, Blue Sheet 20041156

We respectfully request the attached document appear before the Board of County Commissioners at their meeting of September 7, 2004. Time is of the essence for execution of this agreement. Funds provided through this agreement will provide for emergency and necessary clean-up to the canals and waterways of Lee County so heavily impacted by Hurricane Charley.

Should you have any questions, do not hesitate to contact me.

Thank you for your consideration.

REQUEST FOR TRANSFER OF FUNDS

FUND NAME: General Fund DATE: 09/07/04 BATCH NO. _____

FISCAL YEAR: FY 03/04 FUND #: 00100 DOC TYPE: YB LEDGER TYPE: BA

TO: Natural Resources NRCS-Hurricane Charley Grant
 (DIVISION NAME) (PROGRAM NAME)

NOTE: PLEASE LIST THE ACCOUNT NUMBER BELOW IN THE FOLLOWING ORDER:
 FUND #-DEPT/DIV #-PROGRAM #-OBJECT CODE #-SUBFUND #-PROJECT#-COST CENTER #.
 (EXAMPLE: BB5120100100.503450)

ACCOUNT NUMBER	OBJECT NAME	DEBIT
14076700100.503490	Other Contracted Services	\$ 166,613
	TOTAL TO:	\$ 166,613

FROM: Non-Dept. Reserves
 (DIVISION NAME) (PROGRAM NAME)

ACCOUNT NUMBER	OBJECT NAME	CREDIT
GC5890100100.509910	Reserve for Contingencies	\$ 166,613
	TOTAL FROM:	\$ 166,613

EXPLANATION: To move budget from reserves into the expense line.

DIVISION DIRECTOR SIGNATURE _____ DATE _____
 DBS: APPROVAL DENIAL _____
 APPROVAL DENIAL _____
 CO. ADMIN.: APPROVAL DENIAL _____
 BCC APPROVAL DATE 9/7/04

DEPARTMENT DIRECTOR SIGNATURE Patricia Mello DATE 9/7/04
 OPERATIONS ANALYST SIGNATURE Joe Kelly DATE 9/8/04
 BUDGET OPERATIONS MANAGER SIGNATURE Donald O'Flaherty DATE 9-14-04
 CO. ADMIN. SIGNATURE John S. Albini DATE 9/14/04
 BCC CHAIRMAN SIGNATURE _____

BA NO: _____ AUTH CODE: _____ TRANS DATE: _____ REV. 05/93

COPY

WO# 3
9-7-04

RESOLUTION # 04-09-07

Amending the Fund 00100 Lee County General Fund Budget to incorporate the unanticipated receipts into Estimated Revenues and Appropriations for the fiscal year 2003-2004.

WHEREAS, in compliance with the Florida Statutes 129.06(2), it is the desire of the Board of County Commissioners of Lee County, Florida, to amend Fund 00100 Lee County General Fund budget for \$499,840 of the unanticipated revenue from Nat. Res. Conservation Service (NRCS) and an appropriation of a like amount into expenditures and;

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

ESTIMATED REVENUES

Prior Total:		\$329,827,174
Additions		
11076700100.331390.9000	NRCS-Hurricane Charley Grant	\$499,840
Amended Total Estimated Revenues		\$330,327,014

APPROPRIATIONS

Prior Total:		\$329,827,174
Additions		
11076700100.503490	Other Contracted Services	\$499,840
Amended Total Appropriations		\$330,327,014

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

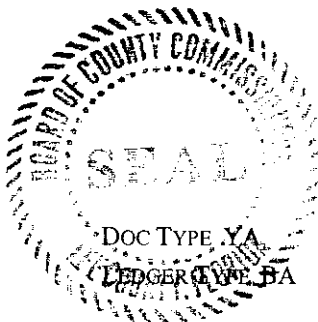
Duly voted upon and adopted in Chambers at a regular Public Hearing by the Board of County Commissioners on this 7th day of September, 2004.

ATTEST:
CHARLIE GREEN, EX-OFFICIO CLERK

BY: *Charlie Green*
DEPUTY CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

John E. Albert
CHAIRMAN



APPROVED AS TO FORM

John D. ...
OFFICE OF COUNTY ATTORNEY

WO#3
9-7-04

COPY

STATE: Florida
PROJECT: Charley 5038
AGREEMENT NO.:65-4209-4-1630

UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE
PROJECT AGREEMENT

LOCALLY LED CONTRACTING

THIS AGREEMENT is hereby entered into by and between the LEE COUNTY BCC hereinafter called the Sponsor; and the Natural Resources Conservation Service, United States Department of Agriculture, hereinafter called NRCS.

WITNESSETH THAT:

WHEREAS, under the provisions of Section 216 of Public Law 81-516, Emergency Watershed Protection Program, and Title IV of the Agricultural Credit Act of 1978, Public Law 95-334, NRCS is authorized to assist the Sponsor in relieving hazards created by natural disasters that cause a sudden impairment of a watershed, and

WHEREAS, NRCS and the Sponsor agree to install emergency watershed protection measures to relieve hazards and damages created by Hurricane Charley.

NOW, THEREFORE, in consideration of the premises and of the several promises to be faithfully performed by the parties hereto as set forth, the Sponsor and NRCS do hereby agree as follows:

A. It is agreed that the following-described work is to be constructed at an estimated cost not to exceed \$499,840.00.

Location	<u>Description</u>
Various in Lee County	Debris removal from Canals and Waterways

WO#3
9-7-04

COPY

B. THE SPONSOR WILL:

1. Contract for construction of the works of improvement described in Section A and provide for their completion within 180 days from the time that this agreement is executed and a notice to proceed is received. The Sponsor will provide NRCS a copy of each solicitation (Invitation for Bids, Request for Quotations, etc.), bid abstract, and awarded contract.
2. Provide cash contribution for any portion of the required 25% of the actual cost of constructing the emergency watershed protection measures described in Section A not provided by in-kind contribution described in B.3.
3. Provide in-kind contribution (design the project, develop specifications and drawings, let and administer contracts, provide construction materials, labor, equipment, and inspect work performed). The Sponsor shall obtain concurrence from NRCS for all in-kind construction services performed for the works of improvement. The maximum value of in-kind contribution will not exceed 25 percent of the *actual* cost of constructing the emergency watershed protection measures described in Section A. Actual cost of construction will consist of contracts awarded to contractors plus eligible Sponsor in-kind contributions of labor, materials and equipment. The Sponsor will provide records to support costs incurred by the Sponsor equal to the amount of the in-kind contribution.
4. Accept all financial and other responsibility for excess costs resulting from their failure to obtain or their delay in obtaining adequate land and water rights, permits, and licenses needed for the work described in Section A.
5. Provide certification (signed SCS-ADS-78) that real property rights have been obtained for works of improvement described in Section A supported by an attorney's opinion attached thereto. Certification shall be provided to NRCS prior to solicitation for installation of the works of improvement.
6. Take reasonable and necessary actions, including legal action, if required, to dispose of any and all contractual and administrative issues arising out of the contract(s) awarded under this agreement to include but not be limited to, disputes, claims, protests of award, source evaluation, and litigation that may result from the project, and bringing suit to collect from the contractor any moneys due in connection with the contract. Any monies collected will be distributed to the parties in the same ratio as contributions are made.
7. Comply with the requirements of the provisions included in Attachment A to this agreement. If applicable, complete the attached "Clean Air and Water Certification" included in Attachment A.
8. Hold a pre-design conference with the Sponsor, Sponsor's design engineer, and NRCS. The design conference shall set forth design parameters.
9. Prepare a design, construction specifications, and drawings in accordance with standard engineering principles, design parameters set forth in the pre-design conference, and consideration of NRCS review comments. One set of the final draft plans shall be submitted to NRCS for review and concurrence prior to solicitation. The construction

plans shall be reviewed and approved by a Professional Engineer registered in the State of Florida prior to submittal to NRCS.

10. Appoint a qualified inspector to provide continuous inspection on all critical items of the contract. Prior to solicitation of bids, prepare a quality assurance plan describing items to be inspected, equipment needed for inspection, degree of inspection (continuous or periodic), quality required, inspection procedures, and record keeping. A Quality Assurance Plan shall be submitted to NRCS for review and concurrence with the final draft plans and specifications.
11. Provide copies of site maps to appropriate Federal and State agencies for environmental review. Sponsor will notify NRCS of environmental clearance, modification of construction plans, or any unresolved concerns as well as copies of all permits, licenses, and other documents required by Federal, State, and local statutes and ordinances prior to solicitation for installation of the works of improvement.
12. Ensure that any special requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.
13. Designate an individual to serve as liaison officer between the Sponsor and NRCS, listing his or her duties, responsibilities, and authorities. Furnish this information in writing to NRCS.
14. Ensure that all contracts for design and construction services will be procured in accordance with procedures prescribed in the Code of Florida and Federal regulations applicable to the Sponsor, including the provisions contained in Attachment B to this agreement.
15. Arrange for and conduct final inspection of the works of improvement. A Professional Engineer registered in the State of Florida furnished by the Sponsor shall certify that the project was installed in accordance with contractual requirements.
16. Prepare and submit for approval an Operation and Maintenance Plan prior to completion of construction. Upon completion of the work from the Sponsor, assume responsibility for operation and maintenance of the works of improvement installed.
17. If needed, upon completion of emergency protection measures and the elimination of the threat, take action to bring the measures up to reasonable standards by other means and/or authority. Unless the measures are brought up to reasonable standards, the sponsor will not be eligible for future funding under the Emergency Watershed Protection program.
18. Provide final as-built drawings and quantities to NRCS. As-built drawings and quantities shall be certified by the engineer furnished by the Sponsor. The engineer furnished by the Sponsor shall certify final quantities.
19. Pay the contractor as provided in the contract(s). Submit billings for reimbursement to NRCS on Form SF-270, Request for Advance or Reimbursement.
20. Administer their action under this agreement in accordance with 7 CFR 3015, 7 CFR 3016, OMB Circulars A-102, A-87, A-133, and other rules referenced in 7-CFR 3015.

21. Comply with the nondiscrimination provisions of the Equal Opportunity clause and the Notice to Contracting Local Organizations of the Requirement for Certifications of Nonsegregated Facilities clause, Form SCS-AS-83, attached hereto as Attachment B.
22. Hold and save NRCS free from any and all claims or causes of action whatsoever resulting from the obligations undertaken by the Sponsor under this agreement or resulting from the work provided for in this agreement. Retain all records dealing with the award and administration of contract(s) for 3 years from the date of the sponsor's submission of the FINAL Request for Reimbursement or until final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the 3-year period, the records are to be retained until the litigation is resolved or the end of the 3-year period, whichever is longer. Make such records available to the Comptroller General of the United States or his or her duly authorized representative and accredited representatives of the U.S. Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcripts.
23. Provide 100 percent of the costs of works of improvement not eligible for federal cost share.
24. Complete all required work under this agreement, including but not limited to construction of works of improvement, final inspection, payment of all contractors, submissions of as-builts and final quantities, etc..

C. NRCS WILL:

1. Provide 75 percent of the cost of constructing the emergency watershed protection measures described in Section A.
2. Provide the value of the Sponsor in-kind contribution not to exceed 25 percent of the *actual* cost of constructing the emergency watershed protection measures described in Section A.
3. Assist Sponsor and Sponsor's engineer establish design parameters and approve same as set forth in B.8.
4. Not be substantially involved with the technical or contractual administration of this agreement, but will provide advice and counsel as needed.
5. Make payment to the Sponsor covering NRCS's share of the cost, upon receipt and approval of Form SF-270, Request for Advance or Reimbursement, with supporting documentation.
6. Upon notification of the completion of construction, NRCS shall promptly review the performance of Sponsor to determine if it has met the requirements of this agreement and fund expenditures as agreed.
7. Designate an individual to serve as liaison officer between the NRCS and the Sponsor. The NRCS engineer assigned to the project will serve in this position. The major duties, responsibilities and authorities of the liaison officer will be to review and concur with specifications and drawings for the DSR, assist in the final inspection of the works of improvement, certify along with the Sponsor's Professional Engineer when all work has been completed according to the specifications and drawings, and review the SF-

270 and supporting documents, approve, sign, and submit the SF-270 and supporting documents to NRCS for reimbursement to the Sponsor. The point of contact for other administrative issues is the District Conservationist.

8. Review and comment on Final Draft Plans and Specifications prior to solicitation.

D. IT IS MUTUALLY AGREED:

1. This agreement shall become null and void 90 calendar days after the date NRCS has executed this agreement if a solicitation for bids has not been publicly advertised or a contract has not been awarded.
2. This agreement shall be effective September 1, 2004. All work required under this agreement shall be completed by December 31, 2004.
3. That each party shall review and approve construction plans as identified in Section B.9 and C.6 of this agreement prior to solicitation of bid.
4. Upon notification from the Sponsor of the completion of construction, NRCS shall promptly review the performance of the Sponsor to determine if the requirements of this agreement have been met.
5. The furnishing of financial and other assistance by NRCS is contingent on the availability of funds appropriated by Congress from which payment may be made and shall not obligate NRCS upon failure of the Congress to appropriate funds.
6. NRCS may terminate this agreement in whole or in part when it is determined by NRCS that the Sponsors have failed to comply with any of the conditions of this agreement. NRCS shall promptly notify the Sponsor in writing of the determination and reasons for the termination, together with the effective date. Payments or recoveries made by NRCS under this termination shall be in accordance with the legal rights and liabilities of NRCS and the Sponsors.
7. This agreement may be temporarily suspended by NRCS if it determines that corrective action by the Sponsor is needed to meet the provisions of this agreement. Further, NRCS may suspend this agreement when it is evident that a termination is pending.
8. Designated Liaisons may make adjustments to and between individual projects costs without amendment so long as the total estimated amount described in A of this agreement is not exceeded.
9. This Agreement may be executed in any number of counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Receipt of a facsimile signature (followed promptly by an original executed counterpart) shall be deemed receipt of an original.

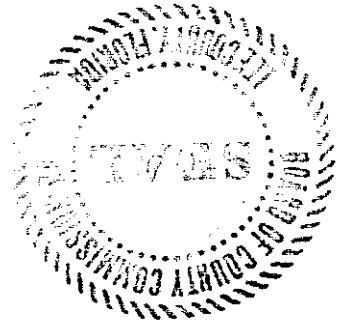
10. By signing this agreement the recipient assures the Department of Agriculture that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

11. Employees of NRCS shall participate in efforts under this agreement solely as representatives of the NRCS. To this end, they shall not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of LEE COUNTY BCC or any member of Lee County BCC. They also shall not assist Lee County BCC or any member Lee County BCC with efforts to lobby Congress, or to raise money through fundraising efforts. Further, NRCS employees shall report to their immediate supervisor any negotiations with Lee County BCC, or any member of Lee County BCC, concerning future employment and shall refrain from participation in efforts regarding such party until approved by the Agency.

Employees of the recipient shall remain its employees while carrying out their duties under this agreement and shall not be considered as Federal employees or agents of the United States for any purpose under this agreement.

E. APPROVED:


 Lee County BCC



By: John E. Albion

Title: Chairman

Date: September 7, 2004


This Action is authorized at an official meeting of the Lee Co. Commission on the 7th day of September, 2004 at Lee County State of Florida.

ATTEST: 
 (Signature)

Lisa L. Pierce, Deputy Clerk

Date: September 7, 2004

APPROVED AS TO FORM


 OFFICE OF COUNTY ATTORNEY

UNITED STATES DEPARTMENT OF AGRICULTURE

NATURAL RESOURCES CONSERVATION SERVICE

By: _____

Title: _____

Date: _____

Reviewed : _____

ATTACHMENT A – SPECIAL PROVISIONS

- I. DRUG-FREE WORKPLACE CERTIFICATION
- II. CERTIFICATION REGARDING LOBBYING
- III. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS-PRIMARY COVERED TRANSACTIONS
- IV. CLEAN AIR AND WATER CERTIFICATION
- V. ASSURANCES AND COMPLIANCE
- VI. EXAMINATION OF RECORDS

ATTACHMENT A – SPECIAL PROVISIONS

Sponsor agrees to comply with the following special provisions which are hereby incorporated into this Agreement.

I. Drug Free Workplace

By signing this Agreement, the Sponsor is providing the certification set out below. If it is later determined that the Sponsor knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the Department of Agriculture Natural Resources Conservation Service (hereinafter "Service"), in addition to other remedies available to the Federal Government, may take action under the Drug-Free Workplace Act.

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. § 812) and as further defined by regulation (21 C.F.R. §§ 1308.11 through 1308.15);

Conviction means a finding of (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal and State criminal drug statutes;

Criminal drug statute means a Federal or State criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a Sponsor directly engaged in the performance of work for which the Service is providing funding, including (i) All direct charge employees; (ii) All indirect charge employees, unless their impact or involvement is insignificant to the work performed by the Sponsor; and (iii) Temporary personnel and consultants who are directly engaged in the work performed by the Sponsor and who are on the Sponsor's payroll. This definition does not include workers not on the payroll of the Sponsor (e.g., volunteers, even if used to meet matching requirements; consultants or independent contractors not the Sponsor's payroll, or employees of subrecipients or subcontractors in covered workplaces).

CERTIFICATION.

A. The Sponsor certifies that it has or will continue provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Sponsor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about:

- (1) The danger of drug abuse in the workplace;
 - (2) The Sponsor's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the Program be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment by the Sponsor, the employee will:
- (1) Abide by the terms of the statement; and
 - (2) Notify the Sponsor in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the Service in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every Service officer or other designee on whose Sponsor activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notice. Notice shall include the identification number(s) of the Sponsor.
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted:
- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a) through (f).
- (h) Agencies shall keep the original of all disclosure reports in the official files of the agency.

B. The Sponsor may provide a list of the site(s) for the performance of work done in connection with the Program described in this Agreement.

II. Certification Regarding Lobbying (7 C.F.R. § 3018) (Applicable if this agreement exceeds \$100,000)

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sponsor, to any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, and officer or employee of Congress, or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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.

III. Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions, (7 C.F.R. § 3017)

(1) The Sponsor certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or

performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of awards, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this cooperative agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the primary Sponsor is unable to certify to any of the statements of this certification, such prospective participant shall attach an explanation to this Agreement.

IV. Clean Air and Water Certification (Applicable if this agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. § 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. § 1319(c)) and is listed by EPA, or is not otherwise exempt.)

The Sponsor signatory to this Agreement certifies as follows:

(a) Any facility to be utilized in the performance of this proposed agreement is _____, is not _____ listed on the Environmental Protection Agency List of Violating Facilities.

(b) To promptly notify the State or Regional Conservationist prior to the signing of this Agreement by the Service, of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, indicating any facility which he/she proposes to use for the performance of the agreement under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.

(c) To include substantially this certification, including this subparagraph (c), in every nonexempt subagreement.

Clean Air and Water Clause

(Applicable only if this agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. § 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. § 1319(c)) and is listed by EPA, or the agreement is not otherwise exempt.)

A. The Sponsor agrees as follows:

(1) To comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. § 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the signing of this Agreement by the Service.

(2) That no portion of the work required by this Agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Agreement was signed by the Service unless and until the EPA removes the name of such facility or facilities from such listing.

(3) To use their best efforts to comply with clean air standards and clean water standards at the facilities at which the work under this Agreement is being performed.

(4) To insert the substance of the provisions of this clause in any nonexempt subagreement, including this subparagraph A.

B. The terms used in this clause have the following meanings:

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. § 1857 et seq., as amended by Public Law 91-604).

(2) The term "Water Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq., as amended by Public Law 92-500).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. § 1857c-5(d)), an approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. § 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. § 1857c-7(d)).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standards, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. § 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. § 1317).

(5) The term "compliance" means compliance with the clean air or water standards. Compliance shall also mean compliance with the schedule or plan ordered or approved

by a court of competent jurisdiction, the Environmental Protection Agency, or any air or water pollution control issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations owned, leased or supervised by a Sponsor, to be utilized in the performance of an agreement or subagreement. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are located in one geographical area.

V. Assurance and Compliance

As a condition of the grant or cooperative agreement, the Sponsor assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 C.F.R. §§ 3015, 3016, 3017, 3018, 3019 and 3052, which are hereby incorporated in this Agreement by reference, and such other statutory provisions as are specifically set forth herein.

VI. Examination of Records

Give the Service or the Comptroller General, through any authorized representative, access to and the right to examine all records, papers, or documents related to this Agreement under the procedures set forth under Section (C)(8) of the Agreement.

Retain all records related to this Agreement for a period of three years after the completion of the terms of this Agreement in accordance with the applicable OMB Circular.

ATTACHMENT B

- I. EQUAL OPPORTUNITY (SCS-AS-83)

- II. EQUAL OPPORTUNITY (FEDERAL ASSISTED CONSTRUCTION) (SCS-AS-83)

- III. NOTICE TO CONTRACTING LOCAL ORGANIZATION OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

- IV. NOTICE TO PROSPECTIVE FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS

- V. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

- VI. CERTIFICATION OF NONSEGREGATED FACILITIES (SCS-AS-818)

- VII. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

ATTACHMENT B - SPECIAL PROVISIONS

CONSTRUCTION

I EQUAL OPPORTUNITY

The Contracting Local Organization agrees to incorporate, or cause to be incorporated, into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is paid for, in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following Equal Opportunity (Federally Assisted Construction) clause:

II EQUAL OPPORTUNITY (FEDERALLY ASSISTED CONSTRUCTION)

During the performance of this contract the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. 'The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff determination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity (Federally Assisted Construction) clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the Equal Opportunity (Federally Assisted Construction) clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.
7. The Contractor will include this Equal Opportunity (Federally Assisted Construction) clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Contracting Local Organization further agrees that it will be bound by the above Equal Opportunity (Federally Assisted Construction) clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, however, that if the Contracting Local Organization so participating is a State or local government, the above Equal Opportunity (Federally Assisted Construction) clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Contracting Local Organization agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the Equal Opportunity (Federally Assisted Construction) clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contracting Local Organization further agrees that it will refrain from entering into any contractor contract modification subject to Executive Order No. 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity (Federally Assisted Construction) clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part 11, Subpart D, of the Executive Order. In addition, the Contracting Local Organization agrees that if it fails or refuses to comply with these undertakings the administering agency may take any or all of the following actions: Cancel, terminate, or suspend, in whole or in part, this grant; refrain from extending any further assistance to the Contracting Local Organization under the program with respect to which its failure or refusal occurred until satisfactory assurance of future compliance has been received from such Contracting Local Organization; and refer the case to the Department of Justice for appropriate legal proceedings.

**III NOTICE TO CONTRACTING LOCAL ORGANIZATIONS OF
REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED
FACILITIES**

- (a) A Certification of Nonsegregated Facilities must be submitted by the Contracting Local Organization prior to any agreement for Federal financial assistance where the Contracting Local Organization will itself perform a federally assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.
- (b) The Contracting Local Organization shall notify prospective federally assisted construction contractors of the Certification of Nonsegregated Facilities required, as follows:

**IV NOTICE TO PROSPECTIVE FEDERALLY ASSISTED CONSTRUCTION
CONTRACTORS**

- (a) A Certification of Nonsegregated Facilities must be submitted prior to the award of a federally assisted construction contract exceeding \$ 10,000 which is not exempt from the provisions of the Equal Opportunity clause.
- (b) Contractors receiving federally assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

**V NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT
FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES**

- (a) A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$ 1 0,000 which is not exempt from the provisions of the Equal Opportunity clause.
- (b) Contractors receiving subcontract awards exceeding \$ 10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$ 1 0,000 and are not exempt from the provisions of the Equal Opportunity clause.

Rev. 4-70
File Code AS-14

VI CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity Clause.)

The federally assisted construction contractor certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he/she will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this section is a violation of the Equal Opportunity Clause in this contract. As used in this caption, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national of because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$ 1 0,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he/she will retain such certifications in his/her files.

NOTE-. The penalty for making false statements in offers is prescribed in 18 U.S.C. I 001.

Contractor

Signature

Title

Date

**VII STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS**

(EXECUTIVE ORDER 11246)

1. As used in these specifications:
 - a. 'Covered area' means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract act Compliance Program, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employees Quarterly Federal Tax Return, U.S. Treasury Department Form 94 1.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cub Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of die Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all groups having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000, the provisions of these specifications and the Notice which contains

the applicable goals for minority and female participation and which is set forth in the solicitations from which the contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO Clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractors or Subcontractors failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in Paragraphs 7. a. through 7. p. of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female tuition that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or Federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the *Federal Register* in notice of and such notices may be obtained from any Office of Federal Contract Compliance Programs or from Federal procurement Contracting Officers. The Contractor is expected to make substantially uniform progress toward meeting 4s goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractors obligations under these specifications, Executive Order 1 1246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractors compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor

shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites, and in all at which the Contractors employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractors obligations to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority and female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not refer-red back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in e file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process had impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities, and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractors employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under Paragraph 7.b. above.

- f. Disseminate the Contractors EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc. - specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and equal action obligations under these specifications with all employees having any responsibility for hiring, assessment, layoff, termination, or their employment decisions, including specific review of these items with on-site supervisory personnel such as Superintendents, General Fore etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contract's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractors EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipate doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minorities and female students and to minority and female recruitment and training organizations-, serving the Contractors recruitment area and employment needs. Not later than one month prior to the date for the acceptance of the applications for apprenticeship or other, training by any recruitment sources, the Contractor shall send written notification, to organizations such as the above, describing the openings, screening procedure, and tests to be used in the selection process. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractors workforce.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of the Contractors workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classification work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractors obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to ensure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisor adherence to and performance under the Contractors EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in achieving one or more of the affirmative action obligations (Paragraphs 7.a. through 7.p.). The efforts of a contractor association, joint contractor-union, contractor-community, or other share group of which the Contractor is a member and participants may be asserted as any one or more of its obligations under Paragraphs 7.a. through 7.p. of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractors minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easy understandable and retrievable form however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
14. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Paragraph 7. of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 604.8.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

ASSURANCES RELATING TO REAL PROPERTY ACQUISITION

-
- A. PURPOSE — This form is to be used by sponsor(s) to provide the assurances to the Natural Resources Conservation Service of the U.S. Department of Agriculture which is required in connection with the installation of project measures which involve Federal financial assistance furnished by the Natural Resources Conservation Service.

-
- B. PROJECT MEASURES COVERED —

Name of project Charley 5038 - Agreement No. 65-4209-4-1630

Identity of improvement or development Debris removal from canals and waterways

Location Various locations in Lee County

- C. REAL PROPERTY ACQUISITION ASSURANCE —

This assurance is applicable if real property interests were acquired for the installation of project measures, and/or if persons, businesses, or farm operations were displaced as a result of such installation; *and* this assurance was not previously provided for in the watershed, project measure, or other type of plan.

If this assurance was not previously provided, the undersigned sponsor(s) hereby assures they have complied, to the extent practicable under State law, with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601-4655), as implemented in 7 C.F.R. Part 21. Any exceptions taken from the real property acquisition requirements under the authority of 42 U.S.C. 4655 because of State law have been or is hereby furnished to the Natural Resources Conservation Service along with the opinion of the Chief Legal Officer of the State containing a full discussion of the facts and law furnished.

- D. ASSURANCE OF ADEQUACY OF REAL PROPERTY RIGHTS —

The undersigned sponsor(s) hereby assures that adequate real property rights and interests, water rights if applicable, permits and licenses required by Federal, State, and local law, ordinance or regulation, and related actions have been taken to obtain the legal right to install, operate, maintain, and inspect the above-described project measures, except for structures or improvements that are to be removed, relocated, modified, or salvaged before and/or during the installation process.

This assurance is given with the knowledge that sponsor(s) are responsible for any excess costs or other consequences in the event the real property rights are found to be inadequate during the installation process.

Furthermore, this assurance is supported by an attorney's opinion attached hereto that certifies an examination of the real property instruments and files was made and they were found to provide adequate title, right, permission and authority for the purpose(s) for which the property was acquired.

If any of the real property rights or interests were obtained by condemnation (eminent domain) proceedings, sponsor(s) further assure and agree to prosecute the proceedings to a final conclusion and pay such damages as awarded by the court.

Lee County Board of County Commissioners
(Name of Sponsor)

By: [Signature]

Title: Chairman

Date: 9/16/04



(Name of Sponsor)

By: _____

Title: _____

Date: _____

This action authorized at an official meeting of the Lee County Board

of County Commissioners on the 7th

day of September, 2004,

at Lee County

State of Florida

Attest: [Signature]
(Name) Lisa L. Pierce

Deputy Clerk
(Title)

This action authorized at an official meeting _____

_____ on _____

day of _____, 20____,

at _____

State of _____

Attest: _____
(Name)

(Title)

Bob Janes
District One

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

Diana M. Parker
County Hearing Examiner

**ATTORNEY'S OPINION ON AUTHORITY REMOVE
DEBRIS FROM CANALS AND WATERWAYS**

September 15, 2004

TO WHOM IT MAY CONCERN:

On behalf of Lee County, Florida, and consistent with the requirements of the certification provided pursuant to Assurances Relating to Real Property Acquisition (Form SCS-ADS-78), it is my opinion that Lee County, acting through its Department of Public Works, Division of Natural Resources, will, where necessary, secure or obtain appropriate rights of entry or other appropriate evidence of consent to allow the County, or its agents, to enter onto private property to remove hurricane debris from the following local canals and waterways, including, but not limited to: Bayshore Creek, Billy's Creek, Bokeelia, Bum Bum Creek, Chapel Branch, Daughtrey's Creek, Durden Creek, Estero River, Gator Slough, Imperial River, Matlacha, Mullock Creek, Orange River, Phillips Creek, Pine Island, Popash Creek, Powell Creek, and St. James City.

Very truly yours,



Kristie L. Kroslack
Assistant County Attorney

KLK/kab