

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

**Blue Sheet No. 20051450**

**1. ACTION REQUESTED/PURPOSE:** Authorize chairman to execute an agreement with Louetta Muller, Emergency Planning Services, to conduct hazardous material analyses and site visits in support of the County Hazardous Materials Emergency Response Plan. Although the amount of this contract is \$34,900.00, there are other County contracts with this vendor totaling more than \$50,000.00. Therefore, Board authorization of expenditures is required to execute this agreement.

**2. WHAT ACTION ACCOMPLISHES:** Continues agreement for emergency planning services currently provided by this private vendor for an additional two year period.

**3. MANAGEMENT RECOMMENDATION:** Staff recommends the chairman sign the agreement.

**4. Departmental Category:**

7  
**C7B**

**5. Meeting Date:**

**11-08-2005**

**6. Agenda:**

- Consent**
- Administrative Appeals**
- Public Walk-On**

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

- Statute**
- Ordinance**
- Admin. Code**
- Other**

**8. Request Initiated:**

**Commissioner** \_\_\_\_\_  
**Department** Public Safety  
**Division** Emergency Management

**By:** John P. Wilson, Director

*[Signature]*

**9. Background:** The State requires the County to update hazardous materials site surveys via the Agreement for Hazardous Material Analysis Grant (#06CP-11-09-46-01-053). The State furnishes funding through this agreement to conduct the required services. The Lee County Emergency Management Program has been using a consultant to perform this function for the past four years. The Hazardous Materials Agreement work products include site visits and an analysis of the hazards at specified sites. This updated information is provided to the Regional Planning Council and to emergency response agencies annually.

Funds are available in Account Numbers: 12080218200.503190  
 Revenue: 12080218200.334200.9001

Attachment 1 – Hazardous Materials Analysis Agreement with State of Florida  
 Attachment 2 – Agreement with Emergency Planning Services (3 copies)

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
<i>[Signature]</i>	<i>[Signature]</i>	NA		<i>[Signature]</i> 10/26/05	Analyst	Risk	Grants	Mgr.	<i>[Signature]</i>
					<i>[Signature]</i> 10/26/05	<i>[Signature]</i> 10/27/05	<i>[Signature]</i> 10/27/05	<i>[Signature]</i> 10/27/05	

**11. Commission Action:**

- Approved**
- Deferred**
- Denied**
- Other**

RECEIVED BY  
 COUNTY ADMIN:  
**10-27-05**  
**8:42**  
 COUNTY ADMIN  
 FORWARDED TO:  
10/27  
SPW

Rec. by CoAtty  
 Date: 10/26/05  
 Time: 2:50pm  
 Forwarded To:  
 Co. Mgr.  
10/27/05

**CONTRACT WITH INDEPENDENT CONTRACTOR  
FOR  
PROFESSIONAL SERVICES**

**THIS CONTRACT**, the terms and conditions of which are set forth below, is made this \_\_\_\_\_ day of \_\_\_\_\_, 2005 between the Lee County, Florida, Division of Public Safety, Emergency Management Program (hereinafter, the COUNTY), and Louetta H. Muller, Emergency Planning Services, a sole proprietorship, located at 1482 Argyle Drive in Fort Myers, Florida 33919 (hereinafter, the CONTRACTOR).

**WHEREAS**, in 1986, Congress passed the Superfund Amendments and Reauthorization Act, Title III, Emergency Planning Community Right-To-Know Act. This Act established requirements for developing emergency plans for hazardous and toxic chemicals; and

**WHEREAS**, in 1988, the Florida Legislation authorized the Florida Department of Community Affairs to collect fees from private facility owners and operators to comply with the federal act. A portion of these generated fees support county efforts to maintain emergency plan response requirements; and

**WHEREAS**, Lee Plan Policy 73:1.3 requires the County develop and maintain a hazardous materials emergency response plan that complies with applicable federal and state regulations and guidelines; and

**WHEREAS**, it is in the best interest to provide Lee County's citizens and Section 302 facility owners and operators with a cost-effective manner in performing the scope of work

according to the Agreement Between the State of Florida Department of Community Affairs and Lee County; incorporated herein by reference; and

**WHEREAS**, contractors shall conduct themselves with the professionalism and deportment expected of their discipline while performing services under this contract. Unprofessional or illegal conduct by the CONTRACTOR shall result in the COUNTY terminating this contract; and

**WHEREAS**, any dispute on a claim arising out of or related to this agreement will be first presented through the COUNTY'S representative herein to the Director of Public Safety or designee for informal resolution; and

**NOW, THEREFORE**, the parties to this contract covenant and agree to the following:

**SECTION ONE: PERFORMANCE OF SERVICES**

The CONTRACTOR shall perform a scope of professional services in accordance with the Scope of Work for Hazardous Materials Site Specific Hazards Analysis as defined in Attachment B (less item I, Task I, F.) and Attachment C of the Agreement Between the State of Florida Department of Community Affairs and Lee County (Contract Number: 06CP-11-09-46-01-053) in the first year of this contract. The scope of work for the second year of this contract will not be identified by the State of Florida until calendar year 2006. The CONTRACTOR shall revise the vulnerable population estimates based on the University of Florida BBR projections for 2005 and produce a new countywide hazardous materials vulnerability zone map.

The Lee County Division of Public Safety's Emergency Management Program will provide the CONTRACTOR with the use of the computer program to conduct hazards analyses and a supply of County letterhead paper and envelopes to prepare COUNTY approved correspondence for mail delivery. The COUNTY will provide for mail delivery through normal county business operations. A COUNTY representative from the Lee County Emergency Management Program shall approve any written correspondence to Lee County Section 302 facilities. Any telephone calls received by the COUNTY from the Lee County Section 302 facility owners or operators relating to the hazards analyses will be directed to the CONTRACTOR.

**SECTION TWO: INSURANCE**

The CONTRACTOR shall provide and maintain, at its expense, insurance requirements outlined in Guide "E." If the CONTRACTOR is a "sole proprietor" the COUNTY will waive the requirement for workers' compensation.

**SECTION THREE: COMPENSATION**

Payment for services is based upon the completion of work activities listed in SECTION ONE A. of this CONTRACT. Compensation is not to exceed (NTE) \$34,902.00 for the term of this CONTRACT unless the State's scope of work changes significantly for 2006/2007 contract. Payment for services rendered shall be according to the following schedule:

<b><u>Date</u></b>	<b><u>Amount</u></b>
December 1, 2005	\$8,725.50
March 1, 2006	\$8,725.50
October 1, 2006	\$8,725.50
March 1, 2007	\$8,725.50

The CONTRACTOR will be compensated for services solely in accordance with provisions of this section.

**SECTION FOUR: INDEPENDENT CONTRACTOR**

- A. The parties intend that an independent contractor relationship be created by this agreement, not that of employer/employee, therefore, the CONTRACTOR is not to be considered an agent or employee of the COUNTY for any purpose. Further, the CONTRACTOR is not entitled to any benefits that the COUNTY provides for its employees.
- B. The CONTRACTOR expressly assumes, as an independent contractor, the responsibility for reporting and payment of all taxes associated with the performance of this agreement. The COUNTY'S obligation is solely limited to payment of the lump sum amounts under conditions stated in Section Three A herein upon completion and acceptance of satisfactory performance.
- C. The CONTRACTOR shall be responsible for payment of Social Security taxes and all Federal, State, and local taxes and charges as may now be in effect or which may hereafter be enacted or required as charges on the compensation received from the services and activities provided under this Contract. The COUNTY shall provide the contractor with a standard IRS Form 1099.
- D. It is the parties' intention that the CONTRACTOR will be an independent contractor and not the COUNTY'S employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Florida Revenue and Taxation Law, Florida Worker's Compensation Law and Florida Unemployment Insurance Law. The CONTRACTOR will

retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONTRACTOR'S activities and responsibility hereunder. The CONTRACTOR agrees that it is a separate and independent enterprise from the public employer that it had made its own investment in its business, and this will utilize a high level of skill necessary to perform the work.

E. This agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and Lee COUNTY, and Lee COUNTY will not be liable for any obligation incurred by the CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

**SECTION FIVE: INDEMNIFICATION**

The CONTRACTOR shall be liable and agrees to be liable for and shall indemnify and hold the COUNTY harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs and attorney fees arising out of the CONTRACTOR'S errors, omissions or negligence. The COUNTY shall likewise indemnify, subject to the limitations in Florida Statutes § 768.28, the CONTRACTOR for the errors, omissions or negligence of the COUNTY, its employees or agents.

I, Louetta H. Muller, the CONTRACTOR, voluntarily agree to indemnify and hold harmless the COUNTY, Emergency Management, and any public official or employee of LEE COUNTY against any and all claims by or on behalf of any person or legal entity arising from any activity permitted by the CONTRACTOR, and will further indemnify and hold harmless the COUNTY, its Departments and employees against performance of any agreements on the CONTRACTOR'S part, or the CONTRACTOR'S

agents, employees, or licensees, and from and against all costs, attorney's fees, expenses, and liabilities incurred in or about any claim or proceeding brought thereon, all to the extent of the COUNTY'S liability under general law.

The CONTRACTOR shall indemnify and hold the COUNTY harmless from all losses, injuries or damages, and wages or overtime compensation due its employees in rendering services pursuant to this agreement, including payment of reasonable attorney's fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law.

**SECTION SIX:    TERMINATION**

This CONTRACT shall continue in force for a period of two (2) years from the date first entered above. Either party upon giving thirty (30) days written notice to the non-terminating party may terminate this entire CONTRACT, or a portion thereof. This entire CONTRACT or a portion thereto, may be terminated before all performance of service is completed with a payment owed to the CONTRACTOR only for the work actually completed or partial work turned in by the CONTRACTOR.

The CONTRACTOR shall conduct themselves with the professionalism and deportment expected of their discipline while performing services under this contract. Unprofessional or illegal conduct by the CONTRACTOR shall result in the COUNTY terminating this contract.

**SECTION SEVEN:    AMENDMENTS & MODIFICATIONS**

This CONTRACT embodies the entire understanding of the parties and there are no further agreements or understandings, written or oral, in effect between the parties, relating to

the subject matter thereof. This CONTRACT may be amended or modified only by a written statement signed by the respective parties.

IN WITNESS THEREOF the parties hereto have affixed their signatures effective the day and year first written above.

ATTEST:  
CHARLIE GREEN, CLERK

LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

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

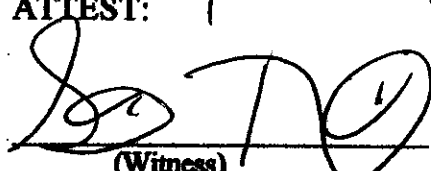
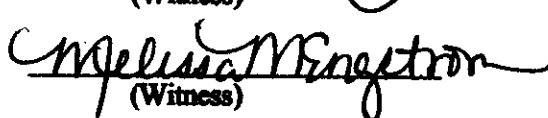
By: \_\_\_\_\_  
Chairman

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of the County Attorney

ATTEST:

EMERGENCY PLANNING SERVICES

  
(Witness)  
  
(Witness)

By: Louetta H. Muller  
Louetta H. Muller

DATE: October 5, 2005



## GUIDE "E"

### INSURANCE REQUIREMENTS FOR SERVICE

This Standard Insurance Language is to be utilized for Contracts, or Agreements meeting these circumstances. Certain conditions and/or exposures may not relieve or limit the liability of the vendor. These requirements may not be sufficient or adequate to protect the vendor's interests or liabilities, but are merely minimums.

#### Circumstances

Project is for vendors providing a service such as, but not limited to lawn maintenance, janitorial, painting, carpentry, moving, equipment service or repair.

#### Worker's Compensation

Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees may be exempted regardless of the number of employees. Individual employees may be exempted per State Law. Employees liability will have minimum limits of:  
\$100,000 per accident  
\$500,000 disease limit  
\$100,000 disease limit per employee.

#### Commercial General Liability

Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability and broad form property damage exposures with minimum limits of:  
\$100,000 bodily injury per person (BI)  
\$300,000 bodily injury per occurrence (BI)  
\$100,000 property damage (PD) or  
\$300,000 combined single limit (CSL) of BI and PD

#### Business Automobile Liability

Coverage shall apply to owned vehicles and/or hired and non-owned vehicles and employee non-ownership use with minimum limits of:  
\$100,000 bodily injury per person (BI)  
\$300,000 bodily injury per occurrence (BI)  
\$100,000 property damage (PD) or  
\$300,000 combined single limit (CSL) of BI and PD

#### Certificate of Insurance

The Lee County Board of County Commissioners is to be shown as the certificate holder and shall be added as an additional insured on the comprehensive general liability policy. Each policy shall provide a 30-day notification clause in the event of cancellation, non-renewal or adverse change.

In the event the insurance coverage expires prior to the completion of the project, a renewal certification shall be on file with Risk Management at least 15 days prior to the expiration date.

Contract Number: 06CP-11-09-46-01-053

CSFA Number 52.023

**STATE-FUNDED SUBGRANT AGREEMENT**

THIS AGREEMENT is entered into by and between the State of Florida, Department of Community Affairs, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Department"), and Lee County (hereinafter referred to as the "Recipient").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

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

B. WHEREAS, the Department has received these grant funds from the State of Florida, and has the authority to subgrant these funds to the Recipient upon the terms and conditions hereinafter set forth; and

C. WHEREAS, the Department has authority pursuant to Florida law to disburse the funds under this Agreement.

NOW, THEREFORE, the Department and the Recipient do mutually agree as follows:

(1) SCOPE OF WORK

The Recipient shall fully perform the obligations in accordance with the Financial Compensation Requirements, Attachment A of this Agreement, and the Scope of Work and Schedule of Payments, Attachment B of this Agreement.

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

Both the Recipient and the Department shall be governed by applicable State and Federal laws, rules and regulations, including but not limited to those identified in EXIBIT-1 and Attachment B.

(3) PERIOD OF AGREEMENT

This Agreement shall begin upon execution by both parties or July 1, 2005, whichever is later, and shall end June 30, 2006, unless terminated earlier in accordance with the provisions of Paragraph (12) of this Agreement.

(4) MODIFICATION OF CONTRACT

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

(5) RECORDKEEPING

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

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

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

3. Records relating to real property acquisition shall be retained for five years after closing of title.

(b) The Recipient shall maintain all records, for the Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including supporting documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Financial Compensation Requirements - Attachment A - and the Scope of Work and Schedule of Payments - Attachment B - and all other applicable laws and regulations.

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

#### **(6) AUDIT REQUIREMENTS**

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

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

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

(d) If the Recipient is a non-state entity as defined by Section 215.97, Fla. Stat., it shall comply with the following:

In the event that the Recipient expends a total amount of State financial assistance equal to or in excess of \$500,000 in any fiscal year of such Recipient, the Recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Fla. Stat.; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapters 10.550 (local government entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT-1 to this Agreement indicates State financial assistance awarded through the Department by this Agreement. In determining the State financial assistance expended in its fiscal year, the Recipient shall consider all sources of State financial assistance, including State funds received from the Department, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements.

In connection with the audit requirements addressed in this Paragraph 6(d) above, the Recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Fla. Stat. This includes submission of a reporting package as defined by Section 215.97(2)(d), Fla. Stat. and Chapters

10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

If the Recipient expends less than \$500,000 in State financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Fla. Stat., is not required. In the event that the Recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Fla. Stat., the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the Recipient's resources obtained from other than State entities). Additional information on the Florida Single Audit Act may be found at the following website: <http://www.state.fl.us/fsaa/statutes.html>.

(e) Report Submission

1. The annual financial audit report shall include all management letters and the Recipient's response to all findings, including corrective actions to be taken.
2. The annual financial audit report shall include a schedule of financial assistance specifically identifying all Agreement and other revenue by sponsoring agency and Agreement number.
3. Copies of financial reporting packages required under this Paragraph 6 shall be submitted by or on behalf of the Recipient directly to each of the following:

The Department of Community Affairs at each of the following addresses:

Department of Community Affairs  
Office of Audit Services  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

[an electronic copy shall also be submitted to the above office]  
and

Department of Community Affairs  
Division of Emergency Management  
Bureau of Compliance Planning and Support  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

The Auditor General's Office at the following address:

Auditor General's Office  
Room 401, Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

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

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

(f) In the event the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not spent in accordance with the conditions of this Agreement, the Recipient shall be held liable for reimbursement to the Department of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Department has notified the Recipient of such non-compliance.

(g) The Recipient shall have all audits completed in accordance with Section 215.97, Fla. Stat. by an independent certified public accountant (IPA) who shall either be a certified public accountant or a public accountant licensed under Chapter 473, Fla. Stat. The IPA shall state that the audit complied with the applicable provisions noted above.

#### (7) REPORTS

(a) If all required reports and copies, prescribed above, are not sent to the Department or are not completed in a manner acceptable to the Department, the Department may withhold further payments until they are completed or may take such other action as set forth in Paragraph (11) REMEDIES. "Acceptable to the Department" means that the work product was completed in accordance with the Financial Compensation Requirements - Attachment A - and the Scope of Work and Schedule of Payments - Attachment B.

(b) The Recipient shall provide such additional program updates or information as may be required by the Department.

#### (8) MONITORING

The Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors, sub-recipients and consultants who are paid from funds provided under this Agreement, to ensure that time schedules are met, the Scope of Work and Schedule of Payments is accomplished within the specified time periods, and other performance goals stated in this Agreement are achieved. Such review shall be made for each function or activity set forth in Attachment B to this Agreement.

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised and Section 215.97, Fla. Stat. (see Paragraph (6) AUDIT REQUIREMENTS, above), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the Recipient agrees to comply and cooperate with all monitoring procedures/processes deemed appropriate by the Department. In the event that the Department determines that a limited scope audit of the Recipient is appropriate, the Recipient agrees to comply with any additional instructions provided by the Department to the Recipient regarding such audit. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Comptroller or Auditor General. In addition, the Department will monitor the performance and financial management by the Recipient throughout the contract term to ensure timely completion of all tasks.

#### (9) LIABILITY

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

(b) Any Recipient who is a state agency or subdivision, as defined in Section 768.28, Fla. Stat., agrees to be fully responsible to the extent provided by Section 768.28 Fla. Stat. for its negligent acts or omissions or tortious acts which result in claims or suits against the Department, and agrees to be liable for any damages proximately caused by said acts or omissions. Nothing herein is

intended to serve as a waiver of sovereign immunity by any Recipient to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

**(10) DEFAULT**

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

(a) If any warranty or representation made by the Recipient in this Agreement or any previous Agreement with the Department shall at any time be false or misleading in any respect, or if the Recipient shall fail to keep, observe or perform any of the obligations, terms or covenants contained in this Agreement or any previous agreement with the Department and has not cured such in timely fashion, or is unable or unwilling to meet its obligations thereunder;

(b) If any material adverse change shall occur in the financial condition of the Recipient at any time during the term of this Agreement, and the Recipient fails to cure said material adverse change within thirty (30) days from the date written notice is sent by the Department.

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

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

**(11) REMEDIES**

Upon the happening of an Event of Default, then the Department may, at its option, upon thirty (30) calendar days prior written notice to the Recipient and upon the Recipient's failure to cure within said thirty (30) day period, exercise any one or more of the following remedies, either concurrently or consecutively:

(a) Terminate this Agreement, provided that the Recipient is given at least thirty (30) days prior written notice of such termination. The notice shall be effective when placed in the United States mail, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address set forth in Paragraph (13) herein;

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

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

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

1. requesting additional information from the Recipient to determine the reasons for or the extent of non-compliance or lack of performance,

2. issuing a written warning to advise that more serious measures may be taken if the situation is not corrected,

3. advising the Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or

4. requiring the Recipient to reimburse the Department for the amount of costs incurred for any items determined to be ineligible;

(e) Require that the Recipient return to the Department any funds which were used for ineligible purposes under the program laws, rules and regulations governing the use of funds under this program;

(f) Exercise any other rights or remedies which may be otherwise available under law;

(g) The pursuit of any one of the above remedies shall not preclude the Department from pursuing any other remedies contained herein or otherwise provided at law or in equity. No waiver by the Department of any right or remedy granted hereunder or failure to insist on strict performance by the Recipient shall affect or extend or act as a waiver of any other right or remedy of the Department hereunder, or affect the subsequent exercise of the same right or remedy by the Department for any further or subsequent default by the Recipient.

#### **(12) TERMINATION**

(a) The Department may terminate this Agreement for cause upon such written notice as is reasonable under the circumstances. Cause shall include, but not be limited to, misuse of funds; fraud; lack of compliance with applicable rules, laws and regulations; failure to perform in a timely manner; and refusal by the Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under Chapter 119, Fla. Stat., as amended.

(b) The Department may terminate this Agreement when it determines, in its sole discretion, that the continuation of the Agreement would not produce beneficial results commensurate with the further expenditure of funds, by providing the Recipient with thirty (30) calendar days prior written notice.

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

(d) In the event that this Agreement is terminated, the Recipient will not incur new obligations for the terminated portion of the Agreement after the Recipient has received the notification of termination. The Recipient will cancel as many outstanding obligations as possible. Costs incurred after the date of receipt of notice of the termination will be disallowed. Notwithstanding the above, the Recipient shall not be relieved of liability to the Department by virtue of any breach of Agreement by the Recipient. The Department may, to the extent authorized by law, withhold any payments to the Recipient for purpose of set-off until such time as the exact amount of damages due the Department from the Recipient is determined.

#### **(13) NOTICE AND CONTACT**

(a) All notices provided under or pursuant to this Agreement shall be in writing, either by hand delivery, or first class, certified mail, return receipt requested, to the representative identified below at the address set forth below and said notification attached to the original of this Agreement.

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

Mr. Timothy Date  
Department of Community Affairs  
Division of Emergency Management  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100  
Telephone: (850) 410-1272  
Fax: (850) 488-1739  
Email: tim.date@dca.state.fl.us

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

**(14) SUBCONTRACTS**

If the Recipient subcontracts any or all of the work required under this Agreement, within thirty (30) days after execution of the subcontract by the Recipient, a copy of the executed subcontract must be forwarded to the Department. The Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Department and Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

For each subcontract, the Recipient shall provide a written statement to the Department as to whether that subcontractor is a minority vendor.

**(15) TERMS AND CONDITIONS**

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

**(16) ATTACHMENTS**

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

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

(c) This Agreement has the following attachments:

Exhibit 1 - Funding Sources  
Attachment A - Financial Compensation Requirements  
Attachment B - Scope of Work and Schedule of Payments  
Attachment C - County Facilities Listing  
Attachment D - Financial Invoice  
Attachment E - Warranties and Representations

**(17) FUNDING/CONSIDERATION**

This is a fixed fee agreement. As consideration for performance of work rendered under this Agreement, the Department agrees to pay a fixed fee of up to \$10,344.00. Payment will be made in accordance with the provisions of the Financial Compensation Requirements, Attachment A of this Agreement, and the Scope of Work and Schedule of Payments, Attachment B of this Agreement.



The sole intent of this Agreement is to provide financial assistance to the Recipient to support the conduct of site-specific hazards analyses and hazardous materials emergency management activities. It is therefore required that all expenditures paid from this fund be directly related to hazardous materials preparedness, response, recovery or mitigation activities. Contract funds are not required to be expended within the contract period. Any payments received after termination of the Agreement shall be considered payments for work performed pursuant to the Agreement.

If the necessary funds are not available to fund this Agreement as a result of action by Congress, the state Legislature, the Office of the Comptroller or the Office of Management and Budgeting, all obligations on the part of the Department to make any further payment of funds hereunder shall terminate, and the Recipient shall submit its closeout report within thirty (30) days of receipt of notice from the Department.

#### **(18) REPAYMENTS**

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

Department of Community Affairs  
Cashier  
Finance and Accounting  
2555 Shumard Oak Boulevard  
Tallahassee FL 32399-2100

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

#### **(19) VENDOR PAYMENTS**

Pursuant to Section 215.422, Fla. Stat., the Department shall issue payments to vendors within 40 days after receipt of an acceptable invoice and receipt, inspection, and acceptance of goods and/or services provided in accordance with the terms and conditions of the Agreement. Failure to issue the warrant within 40 days shall result in the Department paying interest at a rate as established pursuant to Section 55.03(1) Fla. Stat. The interest penalty shall be paid within 15 days after issuing the warrant.

Vendors experiencing problems obtaining timely payment(s) from a state agency may receive assistance by contacting the Vendor Ombudsman at (850) 488-2924 or by calling the State Comptroller's Hotline at 1-800-848-3792.

#### **(20) STANDARD CONDITIONS**

(a) The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Recipient in this Agreement, in any subsequent submission or response to Department request, or in any submission or response to fulfill the requirements of this Agreement, and such information, representations, and materials are incorporated by reference. The lack of accuracy thereof or any material changes shall, at the option of the Department and with thirty (30) days written notice to the Recipient, cause the termination of this Agreement and the release of the Department from all its obligations to the Recipient.

(b) This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall lie in Leon County. If any provision hereof is in conflict with any applicable statute or rule, or is otherwise unenforceable, then such provision shall be deemed

null and void to the extent of such conflict, and shall be deemed severable, but shall not invalidate any other provision of this Agreement.

(c) Any power of approval or disapproval granted to the Department under the terms of this Agreement shall survive the terms and life of this Agreement as a whole.

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

(e) The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), if applicable, which prohibits discrimination by public and private entities on the basis of disability in the areas of employment, public accommodations, transportation, State and local government services, and in telecommunications.

(f) 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 or on the discriminatory vendor list.

(g) An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide 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 award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

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

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

(j) The Department of Community Affairs reserves the right to unilaterally cancel this Agreement for refusal by the Recipient to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Fla. Stat., and made or received by the Recipient in conjunction with this Agreement.

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

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

**(21) STATE LOBBYING PROHIBITION**

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

**(22) COPYRIGHT, PATENT AND TRADEMARK**

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

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

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

(c) Within thirty (30) days of execution of this Agreement, the Recipient shall disclose all intellectual properties relevant to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists. The Department shall then, under Paragraph (b), have the right to all patents and copyrights which accrue during performance of the Agreement.

**(23) LEGAL AUTHORIZATION**

The Recipient certifies with respect to this Agreement that it possesses the legal authority to receive the funds to be provided under this Agreement and that, if applicable, its governing body has authorized, by resolution or otherwise, the execution and acceptance of this Agreement with all covenants and assurances contained herein. The Recipient also certifies that the undersigned possesses the authority to legally execute and bind Recipient to the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed by their undersigned officials as duly authorized.

Recipient: LEE COUNTY

BY: 

Name and title: Douglas St. Cerny, Chairman

Date: 8/02/05

SAMAS # \_\_\_\_\_ FEID# 59-6000702

STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

BY: 

Name and Title: W. Craig Fugate, Director  
Division of Emergency Management

Date: 8/29/05

APPROVED AS TO FORM

  
OFFICE OF COUNTY ATTORNEY

**EXHIBIT – 1**

**STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:**

**SUBJECT TO SECTION 215.97, FLORIDA STATUTES:**

Department of Community Affairs, Florida Hazardous Materials Planning and Prevention Program, Catalog of State Financial Assistance Number 52.023 in the amount of \$10,344.00.

**COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

1. Emergency Planning and Community Right-to-Know Act (EPCRA), Title III of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. s. 11001, et seq. (SARA).
2. Florida Hazardous Materials Emergency Response and Community Right-to-Know Act of 1988, Chapter 252, Part II, Florida Statutes

**REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY**

## **Attachment A**

### **FINANCIAL COMPENSATION REQUIREMENTS**

A. Upon execution of this Agreement, the Recipient shall be compensated for tasks completed in accordance with the Scope of Work and Schedule of Payments, which are incorporated in this Agreement as Attachment B, except as provided herein.

B. Each request for payment shall be initiated by the Department upon receipt of an acceptable Financial Invoice (Attachment D) that is supported by a product that meets the requirements of this Agreement. The Recipient's authorized official shall sign the Financial Invoice. The Recipient shall submit a Financial Invoice for payment that is commensurate with the percentage of hazards analyses submitted. The payment of the percentages of the fixed fee amount will be made on a performance basis in accordance with the percentage of work tasks submitted, except that the final 25 percent will not be released until the final work product is completed, submitted, and approved by the Department.

C. In the event that the Recipient submits less than fifty (50) percent of the completed hazards analyses on November 1, 2005 or less than the final fifty (50) percent of the completed hazards analyses on February 1, 2006, then the payment due may be reduced by an amount commensurate with the number of omitted hazards analyses and the number of days late, if any.

D. If the Department finds that the Recipient is not in compliance with the terms of this Agreement, or is not in compliance with any other grant program administered by the Department, then without waiving its right to terminate this Agreement, the Department may, with written notice, withhold payment until the Recipient is in compliance with and is performing satisfactorily under this Agreement or the applicable requirement of any other grant program administered by the Department. The notice will be sent by Certified Mail, with return receipt requested, to the designated contact person. Noncompliance under this section includes, but is not limited to, the Recipient's failure to submit timely, accurate and complete products required under this Agreement.

**End Attachment A**

## Attachment B

### SCOPE OF WORK AND SCHEDULE OF PAYMENTS

#### PURPOSE

Submission of completed hazards analyses that comply with the hazardous materials site-specific hazards analysis criteria outlined in this Attachment. The primary guidance document is the "Technical Guidance for Hazards Analysis." All hazards analyses shall be consistent with the provisions of this document. Any variation from the procedures outlined in this document must be requested in writing by certified mail, return receipt requested and approved by the Department.

#### I. SCOPE OF WORK

##### TASK 1: Coordination of Activities

The following includes, but is not limited to, activities to be performed under this Agreement:

- A. Submit to the Department by August 15, 2005 the Recipient's contact person's name, address, telephone number, E-mail address and the name of the software utilized to develop the hazards analyses.
- B. Submit to the Department by August 15, 2005 one completed sample hazards analysis for review of consistency with the established planning criteria.
- C. Of the facilities listed on Attachment C, fifty (50) percent of the completed hazards analyses, shall be submitted to the Department by no later than November 1, 2005 and the final fifty (50) percent of the completed hazards analyses shall be submitted to the Department by no later than February 1, 2006 except that later dates may be agreed upon in writing by both parties to this Agreement. Absent any extenuating circumstances and except as otherwise provided in this Agreement, work submitted after February 1, 2006 will not be accepted, reviewed or compensated. The Department will be the sole authority for determining extenuating circumstances and granting extensions to the work submission deadline.
- D. Within the period of the Agreement, participation in a technical assistance training session provided by the Department. The Department reserves the right to waive this requirement.
- E. Within the period of the Agreement, submit a list of facilities believed to have present Extremely Hazardous Substances (EHSs) as designated by the Environmental Protection Agency (EPA) in quantities at or above the Threshold Planning Quantity (TPQ), but have not reported to the State Emergency Response Commission (SERC).
- F. Ensure that the Hazards Analysis information is reflected in the county Local Mitigation Strategy.

## **TASK 2: Review and Update of Hazards Analyses**

- A. Review and update hazards analyses for all facilities listed in Attachment C, which have reported to the SERC that they have present those specific EHSs designated by the EPA in quantities at or above the TPQ. It is required that each Attachment C facility be contacted by on-site visit to ensure accuracy of hazards analysis. Each facility hazards analysis must include, but is not limited to, the following items:**

### **1. Facility Information**

#### **a. Facility name and address**

Provide both physical address (no Post Office Box) and mailing address, if different. Identify any discrepancies regarding facility name and/or address compared to the Attachment C listing.

#### **b. Facility Identification**

SERC Code and geographic coordinates (latitude and longitude).

#### **c. Facility Emergency Coordinator**

Provide the name, title and telephone number (include 24-hour) of the designated facility emergency coordinator.

#### **d. Transportation Routes**

List the main routes used within the County to transport chemicals to and from the facility.

#### **e. Evacuation Routes**

Based on wind direction from the North, South, East and West, identify the route(s) from the facility to exit the Vulnerable Zone (VZ).

#### **f. Historical Accident Record**

Describe any past releases or incidents that have occurred at each facility. Include date, time, chemical name, quantity and number of persons injured or killed (This information is available from the facility). If it is determined that a facility does not have a historical accident record, that shall be noted.

### **2. Hazard Identification**

#### **a. Chemical identities**

Provide proper chemical name, CAS number and natural physical state (according to exhibit C of the Technical Guidance for Hazards Analysis) of each EHS present at any time up to one year prior to the site visit.

#### **b. Maximum quantity on-site**

Express in exact pounds (not range codes) the maximum quantity of each EHS the facility has on-site at any time up to one year prior to the site visit.



**c. Amount in largest container or interconnected containers**

Express in pounds the amount of each EHS stored in the largest container or interconnected containers (this is the release amount used to determine the Vulnerable Zone).

**d. Type and design of storage container or vessel**

Indicate the storage method of each EHS, i.e., drum, cylinder, tank, and their respective capacities (It is helpful to indicate system types such as manifold versus vacuum as well).

**e. Nature of the hazard**

Describe the type of hazard most likely to accompany a spill or release of each EHS, i.e., fire, explosion.

**3. Vulnerability Analysis**

**a. Extent of the Vulnerable Zone**

Identify the estimated geographical area that may be subject to concentrations of an airborne EHS at levels that could cause irreversible acute health effects or death to human populations within the area following an accidental release. Plot that geographical area on a map indicating the Vulnerable Zone for each EHS present at the facility at or above the TPQ. Enter the facility name, SERC code, chemical(s) name and vulnerable zone(s) radius on vulnerable zone map(s).

**b. Estimate Facility Population**

Provide an estimate of the maximum number of employees present at the facility at any given time, i.e. if the facility is unmanned except for routine maintenance by only one person then, the number of employees present at any given time shall be noted as one.

**c. Critical Facilities**

Identify each critical facility and each facility's maximum expected occupancy, within each VZ, which are essential to emergency response or house special needs populations (schools, day cares, public safety facilities, hospitals, etc.). If there are no critical facilities within the VZ, that shall be noted.

**d. Estimated Exposed Population**

Provide an estimate of the maximum possible population (including facility employees, general population and critical facilities etc.) within the VZ(s) that would be affected in a worst case release for each EHS on site.

**4. Risk Analysis**

**a. Probability of release**

Rate the probability of release as Low, Moderate, or High based on observations at the facility. Considerations should include history of previous incidents and current conditions and controls at the facility.

**b. Severity of consequences of human injury**

Rate the severity of consequences if an actual release were to occur.

**c. Severity of consequences of damage to property**

Rate the potential damage to the facility, nearby buildings and infrastructure if an actual release were to occur.

**d. Severity of consequences of environmental exposure**

Rate the potential damage to the surrounding environmentally sensitive areas, natural habitat and wildlife if an actual release were to occur.

**B. Identify those facilities in Attachment C for which a hazards analysis was not submitted. Supporting documentation must be provided with a list to account for the facilities for which a hazards analysis was not completed. In addition to the SERC Code Identification, supporting documentation should indicate:**

1. Facility has closed or is no longer in business.
2. Facility is not physically located in the County (indicate appropriate County location, if known).
3. Facility does not have EHSs on-site or EHSs are below TPQ. These facilities require:
  - a. A Statement of Determination from the facility representative for the previous reporting year; or
  - b. A letter from the facility representative fully explaining why the EHSs are not now present at or above TPQ and a date when the EHSs were removed from the facility.

**TASK 3: On-Site Visits**

- A. Conduct a detailed on-site visit, within the period of this Agreement, of all the facilities listed in Attachment C, to confirm the accuracy and completeness of information in the hazards analysis (Task 2).
- B. Submit a compact disk or diskette with a high-resolution digital image that is date stamped within the period of this Agreement, of the EHS(s) on site at all applicable facilities listed on Attachment C. The recipient may expend funds from this grant to purchase a digital camera with the capability to perform the requirements listed above when a comparable camera is not available. Upon request, the Department may approve an alternate verifiable format.
- C. Submit a site plan map with the SERC code number and in sufficient detail to identify:
  1. Location of major building(s)
  2. Location and identification of EHS container(s)
  3. Location of major street(s) and entrance(s)
  4. North arrow and scale, if determined, or not to scale
- D. Provide the date of the on-site visit.

**TASK 4: Submission, Distribution and Notification of the Approved Hazards Analyses**

- A. Upon Department approval of all required hazards analyses, one (1) copy of each approved hazards analysis (hard copy and/or electronic format) shall be submitted to the Department. A complete copy of each approved hazards analysis shall be sent to the Local Emergency Planning Committee and a copy of the transmittal letter shall be submitted to the Department.
- B. Upon Department approval of all required hazards analyses, notify all facilities (for which a hazards analysis was required) and response agencies of the availability of the hazards analyses information, make that information available upon request and submit proof of said notification to the Department.

**II. SCHEDULE OF PAYMENTS**

- A. The first payment of fifteen (15) percent of the fixed fee amount is payable upon receipt of an acceptable financial invoice (Attachment D), receipt of the Recipient's contact person's name, address, telephone number, E-mail address, name of software utilized to develop the hazards analyses and receipt of one completed sample hazards analysis due on or before August 15, 2005.
- B. A second payment of thirty (30) percent of the fixed fee amount is payable upon receipt of an acceptable financial invoice (Attachment D) and the completed hazards analyses due on or before November 1, 2005. A third payment of thirty (30) percent of the fixed fee amount is payable upon receipt of an acceptable financial invoice (Attachment D) and the completed hazards analyses due on or before February 1, 2006. If less than the required amount of hazards analyses are submitted on the due dates, payments may be made on a performance basis that is commensurable with the percentage of hazards analyses submitted.
- C. A final payment equal to Twenty-five (25) percent of the fixed fee amount may be released upon receipt of an acceptable financial invoice (Attachment D) and upon Department approval of all required hazards analyses.

**End Attachment B**

# ATTACHMENT C - LEE COUNTY SECTION 302 FACILITIES

LEPC/SERC Code	Physical Address	Mailing Address	Facility Representative
9	LEE COUNTY UTILITIES - OLGA WATER PLANT 1450 WERNER DRIVE ALVA FL 33920	LEE COUNTY UTILITIES 1500 MONROE STREET FORT MYERS FL 33901-	LENNY SWORD 239-694-4038
9	COMCAST OF THE SOUTH - 28517 26102 BONITA GRANDE DRIVE BONITA SPRINGS FL 34135	COMCAST CABLE COMMUNICATIONS - 1 1500 MARKET STREET PHILADELPHIA PA 19102	ROBERT JOHNSON 239-432-1835
9	EAST PENN MANUFACTURING - TAYLOR AND CROWE BATTERY 10940 K NINE DRIVE BONITA SPRINGS FL 34135-	EAST PENN MANUFACTURING COMPANY POST OFFICE BOX 147 LYON STATION PA 19536-0147	SCOTT STEVENS 941-949-0333
9	GARGIULO - BHN RESEARCH 16750 BONITA BEACH ROAD BONITA SPRINGS FL 34135	GARGIULO 15000 OLD US HIGHWAY 41 NORTH NAPLES FL 34110-	DAVID LOPEZ 941-353-0300
9	HUNTERS RIDGE UTILITIES 12500 HUNTERS RIDGE DRIVE BONITA SPRINGS FL 34135	BBA DEVELOPMENT CORPORATION 12500 HUNTERS RIDGE DRIVE BONITA SPRINGS FL 34135	GERALD SCOTT 239-947-0911
9	RESOURCE CONSERVATION SYSTEMS - BONITA SPRINGS 22500 OAKWILDE BOULEVARD BONITA SPRINGS FL 34135	RESOURCE CONSERVATION SYSTEMS 25300 BERNWOOD DRIVE UNIT 7 BONITA SPRINGS FL 34135	RICK GUYTON 239-267-8629
9	SPRINT COMMUNICATIONS - NORTH CAPE CORAL CENTRAL OFFIC 906 COUNTRY CLUB BOULEVARD CAPE CORAL FL 33990-	SPRINT COMMUNICATIONS 6480 SPRINT PARKWAY - MAIL STOP 5B872 OVERLAND PARK KS 66251-	JENNIFER SCARPINO 407-889-1531
9	FARM OP - FARM 2 21000 SIX LS FARM ROAD ESTERO FL 33928-	FARM OP POST OFFICE BOX 3088 IMMOKALEE FL 34143-	JASON SHIVELER 239-949-6734
9	GERMAIN ARENA 11000 EVERBLADES PARKWAY ESTERO FL 33928	K T B FLORIDA SPORTS ARENA 11000 EVERBLADES PARKWAY ESTERO FL 33928	STEVE ST JOHN 239-948-7825

L/EPC/SERC Code	Physical Address	Mailing Address	Facility Representative
9 10408	LEE COUNTY UTILITIES - PINEWOODS WTP 11950 CORKSCREW ROAD ESTERO FL 33928-	LEE COUNTY UTILITIES 1500 MONROE STREET FORT MYERS FL 33901-	DAMON HARDY 239-992-1319
9 22286	CITY OF CAPE CORAL - R O PLANT 3300 SOUTHWEST 20 AVENUE FORT MYERS FL 33914-	CITY OF CAPE CORAL POST OFFICE BOX 150027 CAPE CORAL FL 33915-0027	SHAWN KOPKO 239-574-0877
9 2115	CITY OF FORT MYERS - CENTRAL AWWT FACILITY 1501 RALEIGH STREET FORT MYERS FL 33901-	CITY OF FORT MYERS POST OFFICE DRAWER 2217 FORT MYERS FL 33902-2217	OPERATIONS BUILDING 239-332-6872
9 2116	CITY OF FORT MYERS - SOUTH AWWT FACILITY 1618 SOUTH DRIVE FORT MYERS FL 33902	CITY OF FORT MYERS POST OFFICE DRAWER 2217 FORT MYERS FL 33902-2217	OPERATIONS BUILDING 239-278-7267
9 24670	CITY OF FORT MYERS - WTP 2751 JACKSONVILLE STREET FORT MYERS FL 33916-	CITY OF FORT MYERS POST OFFICE DRAWER 2217 FORT MYERS FL 33902-2217	BYRON WEIGHTMAN 239-332-6876
9 20681	COVANTA LEE 10500 BUCKINGHAM ROAD FORT MYERS FL 33905-	COVANTA LEE 10500 BUCKINGHAM ROAD FORT MYERS FL 33905-	JODY HOWARD 239-337-2200
9 2151	DEPARTMENT OF CHILDREN AND FAMILIES - GULF COAST CENTE 5820 BUCKINGHAM ROAD FORT MYERS FL 33905	DEPARTMENT OF CHILDREN AND FAMILIES 1317 WINEWOOD BOULEVARD, BLDG I, RM 20 TALLAHASSEE FL 32399-0700	DAVID PHELPS 239-303-9907
9 7849	FIDDLESTICKS COUNTRY CLUB 15527 FIDDLESTICKS BOULEVARD, SOUTHEAST FORT MYERS FL 33912	FIDDLESTICKS COUNTRY CLUB 15391 CANNONGATE DRIVE SOUTHEAST FORT MYERS FL 33912	TIM PEREZ 239-768-2332
9 7324	FLORIDA FREEZER LP 7952 INTERSTATE COURT NORTHEAST FORT MYERS FL 33917	FLORIDA FREEZER LP 7952 INTERSTATE COURT NORTHEAST NORTH FORT MYER FL 33917	MARK SKIBA 239-340-3209
9 2192	FLORIDA POWER AND LIGHT - FORT MYERS POWER PLANT 10650 STATE ROAD 80 FORT MYERS FL 33905-	FLORIDA POWER AND LIGHT 700 UNIVERSE BOULEVARD JUNO BEACH FL 33408-	BERNARD TIBBLE 239-693-4300

LEPC/SERC Code	Physical Address	Mailing Address	Facility Representative
9	FORT MYERS NEWS PRESS 2442 MARTIN LUTHER KING BOULEVARD FORT MYERS FL 33901-398	FORT MYERS NEWS PRESS 2442 MARTIN LUTHER KING BOULEVARD FORT MYERS FL 33901-	MATT PARADISO 239-335-0272
9	GOLF TURF APPLICATIONS - KELLY GREENS COUNTY CLUB 12300 KELLY GREENS BOULEVARD FORT MYERS FL 33908	GOLF TURF APPLICATIONS 2333 RIVER REACH DRIVE NAPLES FL 34104-	RICHARD MCCOY 239-643-5677
9	GOLF TURF APPLICATIONS - SAN CARLOS GOLF CLUB 7420 CONSTITUTION CIRCLE FORT MYERS FL 33912	GOLF TURF APPLICATIONS 2333 RIVER REACH DRIVE NAPLES FL 34104-	RICHARD MCCOY 239-643-5677
9	JAMAICA BAY WEST 15235 SOUTH TAMIAAMI TRAIL FORT MYERS FL 33908	JAMAICA BAY WEST 15235 SOUTH TAMIAAMI TRAIL FORT MYERS FL 33908	TERRY WALKER 239-481-1343
9	LEE COUNTY UTILITIES - COLLEGE PARKWAY WTP 7401 COLLEGE PARKWAY FORT MYERS FL 33907	LEE COUNTY UTILITIES 1500 MONROE STREET FORT MYERS FL 33901-	VAL SIKORA 239-267-1151
9	LEE COUNTY UTILITIES - FIESTA VILLAGE WWTP 1366 SAN SOUCI FORT MYERS FL 33919	LEE COUNTY UTILITIES 1500 MONROE STREET FORT MYERS FL 33901-	DENNIS LANG 239-481-1953
9	LEE COUNTY UTILITIES - GATEWAY SERVICES DISTRICT WWTP 13240 COMMERCE LAKE DRIVE FORT MYERS FL 33913	LEE COUNTY UTILITIES 1500 MONROE STREET FORT MYERS FL 33901-	EDWARD ELLYATT 239-768-3392
9	LEE COUNTY UTILITIES - GREEN MEADOWS WTP 13001 ALICO ROAD FORT MYERS FL 33913-	LEE COUNTY UTILITIES 1500 MONROE STREET FORT MYERS FL 33901-	VAL SIKORA 239-267-1151
9	LEE COUNTY UTILITIES - SAN CARLOS WWTP 18078 CYPRESS POINT ROAD FORT MYERS FL 33912	LEE COUNTY UTILITIES 1500 MONROE STREET FORT MYERS FL 33901-	JERRY JOINSON 239-267-0387
9	LEE MEMORIAL HEALTH SYSTEM - CLEVELAND AVENUE 2776 CLEVELAND AVENUE FORT MYERS FL 33901	LEE MEMORIAL HEALTH SYSTEM POST OFFICE DRAWER 2218 FORT MYERS FL 33902-2218	ADMINISTRATOR ON CALL 941-332-1111

LEPC/SERC Code	Physical Address	Mailing Address	Facility Representative
9 30436	NEW CINGULAR WIRELESS - FORT MYERS 33526 4290 COLONIAL BOULEVARD, 2ND FLOOR FORT MYERS FL 33912	NEW CINGULAR WIRELESS PCS, LLC POST OFFICE BOX 97061 REDMOND WA 98073	DEBI SHUMAN 863-738-0200
9 28890	PALL AEROPOWER - FORT MYERS 4245 EVANS AVENUE FORT MYERS FL 33901-	PALL AEROPOWER CORPORATION 10540 RIDGE ROAD, SUITE 201 NEW PORT RICHEY FL 34654-5198	CHIP HOWISON 727-849-9999
9 29296	PROGRESS TELECOM - EPIK - FL019 3881 EDWARDS STREET FORT MYERS FL 33916-	PROGRESS TELECOM, LLC 100 SECOND AVENUE SOUTH SUITE 400 S SAINT PETERSBUR FL 33701	NETWORK CONTROL CENT 8777826621
9 31930	PROGRESS TELECOM - FT MYERS 3939 EDWARDS AVENUE FORT MYERS FL 33916	PROGRESS TELECOM, LLC 100 SECOND AVENUE SOUTH SUITE 400 S SAINT PETERSBUR FL 33701	PROGRESS TELECOM NOC 8777826621
9 30630	REDDY ICE - 338 13320 METRO PARKWAY FORT MYERS FL 33912	REDDY ICE GROUP 8750 NORTH CENTRAL EXPRESSWAY SUITE 1800 DALLAS TX 75231	BILL NEWBERRY 214-526-6740
9 32011	RESOURCE CONSERVATION SYSTEMS - FORT MYERS 12365 PALM BEACH BOULEVARD FORT MYERS FL 33905	RESOURCE CONSERVATION SYSTEMS 25300 BERNWOOD DRIVE UNIT 7 BONITA SPRINGS FL 34135	RICK GUYTON 239-267-8629
9 51137	SAFE START - FORT MYERS 3459 DR MARTIN LUTHER KING JR BOULEVARD FORT MYERS FL 33916-	SAFE START INC 12045 34 STREET NORTH SAINT PETERSBUR FL 33716	BRAD BROOKS 239-543-5965
9 22567	SPRINT COMMUNICATIONS - FORT MYERS WHISKEY CREEK REMO 5780 WINKLER ROAD FORT MYERS FL 33919-263	SPRINT COMMUNICATIONS 6480 SPRINT PARKWAY - MAIL STOP 5B872 OVERLAND PARK KS 66251-	JENNIFER SCARPINO 407-889-1531
9 15973	SPRINT COMMUNICATIONS - SOUTH FORT MYERS CENTRAL OFFIC 3825 CLEVELAND AVENUE SOUTH FORT MYERS FL 33901-	SPRINT COMMUNICATIONS 6480 SPRINT PARKWAY - MAIL STOP 5B872 OVERLAND PARK KS 66251-	JENNIFER SCARPINO 407-889-1531
9 2297	F U A - LEHIGH WTP 305 COOLIDGE AVENUE LEHIGH ACRES FL 33936	FLORIDA GOVERNMENTAL UTILITY AUTHORITY 315 CALHOUN STREET SUITE 860 TALLAHASSEE FL 32301-	GARY FERNBERG 239-368-1766

LEPC/SERC Code	Physical Address	Mailing Address	Facility Representative
9 2182	LEE COUNTY UTILITIES - WATERWAY ESTATES WTP 4271 ST CLAIR AVENUE NORTH FORT MYERS FL 33903-	LEE COUNTY UTILITIES 1500 MONROE STREET FORT MYERS FL 33901-	JOHN GIBSON 239-997-1861
9 15970	SPRINT COMMUNICATIONS - NORTH FORT MYERS SUNCOAST CNT 7826 NORTH HART ROAD NORTH FORT MYERS FL 33917-	SPRINT COMMUNICATIONS 6480 SPRINT PARKWAY - MAIL STOP 5B872 OVERLAND PARK KS 66251-	JENNIFER SCARPINO 407-889-1531
9 29598	LEE COUNTY UTILITIES - PINE ISLAND WWTP 6928 STRINGFELLOW ROAD SAINT JAMES CITY FL 33956-	LEE COUNTY UTILITIES 1500 MONROE STREET FORT MYERS FL 33901-	MARIO BEAUCHAMP 239-282-0025
9 2254	ISLAND WATER ASSOCIATION - R O PLANT 3651 SANIBEL CAPTIVA ROAD SANIBEL FL 33957	ISLAND WATER ASSOCIATION 3651 SANIBEL CAPTIVA ROAD SANIBEL FL 33957	PHILIP M NOE 239-472-2113



**Attachment D  
FINANCIAL INVOICE  
FOR  
HAZARDOUS MATERIALS HAZARDS ANALYSIS UPDATE**

---

RECIPIENT: Lee County

AGREEMENT # \_\_\_\_\_

	AMOUNT REQUESTED BY THE RECIPIENT	AMOUNT APPROVED BY THE DEPARTMENT
1. Contact and Sample (15% Max.)	\$ _____	\$ _____
2. Hazards Analyses (30% Max.) (50% completed/submitted)	\$ _____	\$ _____
3. Hazards Analyses (30% Max.) (50% completed/submitted)	\$ _____	\$ _____
4. Final Work Product Completed (25%)	\$ _____	\$ _____
 TOTAL AMOUNT	 \$ _____	 \$ _____

(To be completed by  
the Department)

I certify that to the best of my knowledge and belief the billed costs are in accordance with the terms of the Agreement.

\_\_\_\_\_  
Signature of Authorized Official/Title

\_\_\_\_\_  
Date

<p>TOTAL AMOUNT TO BE PAID AS OF _____</p> <p>THIS INVOICE \$ _____</p> <p>AUTHORIZED BY _____</p> <p>(To be completed by the Department)</p>
---

## Attachment E

### Warranties and Representations

#### Financial Management

Recipient's financial management system shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of this project or program in accordance with Paragraph (7) and Paragraph (12) of this Agreement.

(2) If applicable, records that identify adequately the source and application of funds for all federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, un-obligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipient shall adequately safeguard all such assets and assure that they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) If applicable, written procedures to minimize the time elapsing between the transfer of funds to the Recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) If applicable, written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records, including cost accounting records that are supported by source documentation.

#### Competition

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

#### Codes of Conduct

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent

conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub-agreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

#### **Business Hours**

The Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from at least 9:00 am to 5:00 pm, Monday through Friday.

#### **Licensing and Permitting**

All subcontractors or employees hired by the Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Recipient.

**End Attachment E**