SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM

SUBJECT: Modification to State Homeland Security Hazardous Materials Grant Agreement

DEPARTMENT: Fiscal Services **DIVISION:** Administration - Fiscal Services

AUTHORIZED BY: Lisa Spriggs **CONTACT:** Jennifer Bero **EXT:** 7125

MOTION/RECOMMENDATION:
Approve and authorize the Chairperson to execute the Modification of 2006-07 State Homeland Security Hazardous Materials Grant Agreement in acceptance of revisions to the expiration and reimbursement dates.

County-wide Jennifer Bero

BACKGROUND:

During their meeting held June 12, 2007, the Board of County Commissioners approved the FY 2006/07 State Homeland Security Hazardous Materials Grant Agreement in acceptance of $38,412 in grant funds. These funds are used for sustainment and maintenance of hazardous materials and response equipment and training. The agreement is due to expire on January 31, 2008.

The State wishes to extend the expiration and reimbursement dates of the agreement to May 31, 2008, allowing additional time for reimbursement requests to be submitted and processed. For the extension to be received, the Board must approve and authorize the Chairperson to execute a Modification to the original agreement.

STAFF RECOMMENDATION:

Staff recommends the Board approve and authorize the Chairperson to execute the Modification of 2006-07 State Homeland Security Hazardous Materials Grant Agreement in acceptance of revisions to the expiration and reimbursement dates.

ATTACHMENTS:

1. Modification Form
2. Agreement

Additionally Reviewed By:
☑ County Attorney Review (Arnold Schneider)

MODIFICATION OF 2006-2007 STATE HOMELAND SECURITY GRANT PROGRAM SUBRECEIPIENT AGREEMENT FOR EXPENDITURE OF LOCAL GOVERNMENT UNIT FUNDING FOR FLORIDA TYPE II HAZARDOUS MATERIALS/WMD TEAMS FM 241

THIS MODIFICATION is made and entered into this _____day of January, 2008 by and between the State of Florida, Department of Financial Services, Division of State Fire Marshal (the "Department") and the Seminole County Board of County Commissioners ("Subrecipient"), to modify the 2006-2007 State Homeland Security Grant Program Subrecipient Agreement for Expenditure of Local Government Unit Funding for Florida Hazardous Materials/WMD Teams ("the Agreement"), executed on June 12, 2007.

WHEREAS, the Department and Subrecipient entered into the Agreement; and

WHEREAS, section 6 of the Agreement requires that any modifications thereto shall only be made by a written instrument of equal dignity to the Agreement; and

WHEREAS, the Agreement presently provides that Subrecipient's final request for grant reimbursement be submitted to the Department by no later than December 31, 2007 and further provides that said Agreement itself shall expire on January 31, 2008; and

WHEREAS, Department and Subrecipient desire to modify the Agreement by extending the expiration date and the permitted final date for submission of requests for reimbursement as set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. This Modification shall be effective upon the last date of execution by both parties hereto.

2. Section 3(b) is hereby modified to read as follows:

"All requests for reimbursement shall be submitted in accordance with this Agreement within thirty days following Subrecipient's expenditure of funds, but in no event later than ~~December 31, 2007~~ May 31, 2008. Requests received subsequent to May 31, 2008 shall not be reimbursed at the discretion of the Department."

3. Section 5 of the Agreement is hereby amended to read as follows:

" **Term and Renewal.** This Agreement shall begin upon execution and end on ~~January 31, 2008~~ May 31, 2008. This Agreement may be renewed for a maximum of three years up to a period equal to the term of the original Agreement, whichever is longer, at the option of the Department. The renewal price or method for determining a renewal price, is set for thin the Agreement price, attached hereto. No other costs for the renewal may be charged. Any renewal is subject to the same terms and conditions as the original Agreement and shall be contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds."

4. All provisions not in conflict with this Modification remain in full force and effect, and are to be performed at the level specified in the Agreement.

5. All provisions of the Agreement being modified and any attachments thereto in conflict with this Modification shall be and are hereby changed to conform to this Modification, as of the effective date of this modification.

IN WITNESS WHEREOF, the parties hereto have executed this document as set forth below.

SEMINOLE COUNTY BOARD OF COUNTY COMMISSIONERS

_____

By: Brenda Carey, Chairman

Date:_____

ATTEST:

_____

MARYANNE MORSE
Clerk to the Board of County Commissioners,
Seminole County, Florida

Approved as to form and legality:

_____

County Attorney

DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF STATE FIRE MARSHAL

_____

By: Les Hallman, Director

Date:_____

2006-2007 STATE HOMELAND SECURITY GRANT PROGRAM SHSGP SUB-RECIPIENT AGREEMENT FOR EXPENDITURE OF LOCAL GOVERNMENT UNIT FUNDING FOR FLORIDA TYPE II HAZARDOUS MATERIALS/WMD TEAMS

THIS AGREEMENT ("Agreement") is entered into by and between the State of Florida, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0300 (hereinafter referred to as "Department") or its successor, and the Seminole County Board of County Commissioners (hereinafter referred to as "Subrecipient"), effective as of the last date executed below.

WITNESSETH THAT:

WHEREAS, the Department has determined that it is in need of certain services as described herein; and

WHEREAS, the Subrecipient, a governmental agency, represents that it has the expertise and ability to faithfully perform such services.

NOW THEREFORE, in consideration of the services to be performed and payments to be made, together with the mutual covenants and conditions hereinafter set forth, the parties agree as follows:

1. Services and Deliverables. The Subrecipient agrees to render the following services or other units of deliverables as directed by the Department:

1(a) Readiness and response to activation orders for deployment by the State Emergency Operations Center, State Fire Marshal or Regional Domestic Security Task Force;

1(b) Purchase equipment specifically identified and approved by the Florida Domestic Security Equipment Committee. Exceptions to the approved equipment list must be approved in writing by the Equipment Committee prior to purchase.

2. Delivery Schedule. The services or other units of deliverables specified in Paragraph one (1) above shall be delivered or otherwise rendered on behalf of the Department in accordance with the following schedule:

2(a) Readiness shall be on a continuous basis; and

2(b) Upon notification by the State Emergency Operations Center, State Fire Marshal, or Regional Domestic Security Task Force, the Subrecipient shall respond to any and all incidents either within its regional response area, or as designated within the State Emergency Response Plan, with all eligible equipment, and any and all other resources which it has, for so long as this Agreement remains in effect, or as may be agreed upon under the Florida Strategy. It is understood by both parties that local emergencies and equipment operability will dictate the availability of the Subrecipient to respond.

2(c) To ensure uniformity of funded teams, purchase specifically identified equipment as stipulated by the Florida Domestic Security Equipment Committee. Exceptions to the approved equipment list is to be approved by the Equipment Committee in writing prior to purchase.

2(d) Use sustainment funding only for equipment that was previously purchased with ODP funds.

2(e) Compliance with requirements of a Weapons of Mass Destruction Capable Hazardous Materials Resource, as defined by the Florida Domestic Security Strategy shall be on a continuous basis.

3. Payment.

3(a) Subject to the terms and conditions established by this Agreement and the billing procedures established by the Department, the Department agrees to pay the Subrecipient a maximum of $38,412.00; of which $13,580.00 shall be used for the sustainment and maintenance of hazardous material equipment previously purchased with ODP funds, and $24,832.00 shall be used for training in Office of Grants & Training (OGT) approved hazardous material training courses. If additional money becomes available through the grant process, the amount set forth in this Agreement may be increased or decreased upon the written approval of both contract managers, to be used for the purposes set forth in paragraph one (1) above, and subject to the terms and conditions established by this Agreement.

3(b) All requests for reimbursement shall be submitted in accordance with this Agreement within thirty days following the Subrecipient's expenditure of funds, but in no event later than December 31, 2007.

3(c) Vendor Rights. Vendors providing goods and services to an agency should be aware of the following time-frames. Upon receipt, an agency has five (5) working days to inspect and approve the goods and services, unless the bid specifications, purchase orders or Agreement specifies otherwise. An agency has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved. The Department is to approve the invoice in the state financial system within 20 days.

If a payment is not available within 40 days, a separate interest penalty, computed at the rate determined by the State of Florida Chief Financial Officer pursuant to Section 215.422, Florida Statutes, will be due and payable, in addition to the invoice amount, to the vendor. To obtain the applicable interest rate, please refer to http://www.dbf.state.fl.us/interest.html. The interest penalty provision applies after a 35 day time period to health care Subrecipients, as defined by rule. Interest penalties of less than one (1) dollar will not be enforced unless the vendor requests payment. Invoices which have to be returned to a vendor because of vendor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the agency with the proper tax payer identification information documentation to be submitted before the prompt payment standards are to be applied.

A Vendor Ombudsman has been established with the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be reached at (850) 413-5516.

3(d) Taxes. The Department is exempted from payment of Florida state sales and use taxes and Federal Excise Tax. Unless personally exempt by law, the Subrecipient shall not be exempted from paying Florida state sales and use taxes to the appropriate governmental agencies or for payment by the Subrecipient to suppliers for taxes on materials used to fulfill its obligations with the Department. The Subrecipient shall not use the Department's exemption number in securing such materials. The Subrecipient shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.

3(f) Any expense incurred by the Subrecipient for travel must be authorized by the Department in advance. Travel expenses will be reimbursed to the Subrecipient at a rate not to exceed that which is payable to state employees for travel and per diem as prescribed by Section

112.061, Florida Statutes, and shall be submitted in accordance with said section. All other expenses, including expenses for the gathering and presentation of exhibits, must be authorized by the Department in advance.

3(g) Payment Processing. All charges for services rendered or for reimbursement of expenses authorized by the Department in accordance with Paragraphs 3 and 4 shall be submitted to the Department in sufficient detail for a proper pre-audit and post-audit to be performed. All payments for professional services and authorized expenses, including travel expenses, will be paid to the Subrecipient only upon the timely and satisfactory completion of all services and other units of deliverable such as reports, findings and drafts, which are required by Paragraphs 1 and 2 above and upon the written acceptance of said services and units of deliverables such as reports, findings and drafts by the Department's designated contract manager. Interim payments may be made by the Department at its discretion under extenuating circumstances if the completion of services and other units of deliverables to date has first been accepted in writing by the Department's contract manager.

3(h) Contingency. If the terms of this Agreement extend beyond the current fiscal year, the State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

4. Termination.

4(a) The Department may cancel this Agreement at any time for any reason upon the submission of a thirty (30) day prior written notice. If the Department cancels the Agreement the Subrecipient shall be paid only the amount due for deliverables which have been received and accepted by the Department and deliverables due within the time period stated in number 2 above. The Subrecipient shall be entitled to no damages beyond what is provided in this paragraph. Notwithstanding the above, the Subrecipient shall not be relieved of liability to the Department for damages sustained by the Department by virtue of any termination or breach of this Agreement by the Subrecipient. In the event this Agreement is terminated, the Subrecipient shall be reimbursed through the date of services rendered subject to any such damages.

4(b) This Agreement shall terminate upon the Subrecipient's satisfactory completion of the services and other units of deliverables described or referenced in Paragraphs 1 and 2 by the Department and upon satisfactory performance evaluations of the Subrecipient by the Department. The Department may unilaterally terminate this Agreement in the event that the Department requests in writing that the Subrecipient allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, which are made or received by the Subrecipient in conjunction with this Agreement, and the Subrecipient refuses to allow such access. Subrecipient shall comply with the record keeping standards of the Rules of the Department of State, Division of Library and Information Services, Florida Administrative Code Chapter 1B-24 and –26, and the Federally Funded Grant Agreement 07DS-5N-13-00-16-217, which can be accessed on the Department's website at http://www.fldfs.com/SFM. If, in the judgment of the Department, the Subrecipient for any reason fails to fulfill in a timely manner all obligations under this Agreement, the Department shall have the right to terminate this Agreement by giving at least five days written notice by registered mail to the Subrecipient of such termination, including the effective date of termination. The Department shall not be deemed to assume any liability for the acts, omissions to act or negligence of the Subrecipient, its agents, servants, and employees, nor shall the Subrecipient disclaim its own negligence to the Department or any third party.

4(c) The Department may terminate this Agreement if the Subrecipient commits any material breach of this Agreement, fails to timely deliver a material deliverable, employs an

unauthorized alien in the performance of the work; discontinues the performance of the work; fails to resume work that has been discontinued within a reasonable time after notice to do so; becomes insolvent or is declared bankrupt; makes an assignment for the benefit of creditors without the approval of Department; makes or has made an intentional material misrepresentation or omission in any materials provided to Department; fails to maintain the required insurance; fails to provide the Department access to all documents, papers, letters, or other material subject to statutory provisions relating to the examination and inspection of public records that are made or received by Department in conjunction with this Agreement. Should the Subrecipient default under the Agreement which default is not cured within ten days of notice provided by the Department, the Subrecipient shall be liable to the Department for any expenses that the Department may incur in securing a substitute Subrecipient to assume completion of those services.

5. Term and Renewal. This Agreement shall begin upon execution and end on January 31, 2008. This Agreement may be renewed for a maximum of three years or up to a period equal to the term of the original Agreement, whichever is longer, at the option of the Department. The renewal price, or method for determining a renewal price, is set forth in the Agreement price, attached hereto. No other costs for the renewal may be charged. Any renewal is subject to the same terms and conditions as the original Agreement and shall be contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds.

6. Agreement Modification. This Agreement may be amended only by a written agreement between both parties subject to the provisions of Chapter 287, Florida Statutes, or as set forth in paragraph 3(a) above.

7. Federally-Funded Subgrant Agreement. The funds for this Agreement are provided through a Subgrant Agreement between the Department and the Division of Emergency Services; Contract Number: 07DS-5N-13-00-16-217. The Subgrant Agreement can be accessed through the Department's website at http://www.fldfs.com/SFM. The subrecipient agrees to be bound by all of the provisions of the Subgrant Agreement referenced in this paragraph.

8. Reports

8(a) At a minimum, the Subrecipient shall provide the Department with quarterly reports, and with a close-out report. These reports shall include the current status and progress by the subrecipient in completing the work described in paragraphs 1, 2 and 3, of this Agreement, in addition to such other information as requested by the Department.

8(b) Quarterly reports are due to be received by the Department no later than twenty (20) days after the end of each quarter of the program year and shall continue to be submitted each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 21, June 20, September 20 and December 21.

8(c) The close-out report is due fifty (50) days after termination of this Agreement or upon completion of the activities contained in this Agreement, whichever first occurs.

8(d) If any required report and copies, prescribed above, is not sent to the Department or is not completed in a manner acceptable to the Department, the Department may withhold further payments until it is completed or may take other action. The phrase "acceptable to the Department" means that the work product was completed in accordance with paragraphs 1, 2 and 3 of this Agreement.

8(e) The Subrecipient shall provide such additional program updates, reports or information as may be required by the Department.

9. Monitoring The Department shall monitor the performance of the Subrecipient under this Agreement to ensure that all of the conditions of this Agreement are met. Such review shall be made for each function or activity set forth in paragraphs 1, 2, and 3 of this Agreement, and reported in the quarterly report.

Monitoring procedures may include, but not be limited to, on-site visits by Department staff and/or other procedures. By entering into this Agreement, the Subrecipient agrees to comply and cooperate with all monitoring procedures/processes deemed appropriate by the Department. The Subrecipient 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 Subrecipient throughout the contract term to ensure timely completion of all tasks.

10. Subagreements. All services agreed upon are to be performed solely by the Subrecipient and may not be subcontracted or assigned without the prior written consent of the Department. If permission is granted, the subcontract agreement must include (i) a provision binding the subcontractor to the terms of this Agreement, (ii) a provision binding the subcontractor to all applicable state and federal laws and regulations, and (iii) a provision whereby the subcontractor agrees to hold the Division of Emergency Management and the Department 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. Each subcontractor's progress in performing its work under this Agreement shall be documented in the quarterly report submitted by the Subrecipient.

11. Liability

11(a) Unless Subrecipient is a State agency or subdivision, as defined in Section 768.28, Florida Statutes, the Subrecipient shall be solely responsible to parties with whom it shall deal in carrying out the terms of this Agreement, and shall hold the Department and the Division of Emergency Management 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, Subrecipient agrees that it is not an employee or agent of the Department or the Division of Emergency Management, but is an independent contractor.

11(b) Any Subrecipient who is a state agency or subdivision, as defined in Section 768.28, Florida Statutes, agrees to be fully responsible to the extent provided by Section 768.28, Florida Statutes, for its negligent acts or omissions or tortuous acts which result in claims or suits against the Department or Division of Emergency Management, 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 Subrecipient 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.

12. Miscellaneous. This instrument and any referenced or attached addendum embodies the entire agreement of the parties. There are no other provisions, terms, conditions, or obligations. This Agreement supersedes all previous oral or written communications, representations or agreements on this subject. If there is any conflict between this Agreement and any referenced or attached addendum, the terms and conditions of this Agreement shall take precedence and govern. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In all cases, venue shall be in Leon County, Florida. Subrecipient is an independent

contractor, and is not an employee or agent of the Department. The respective obligations of the parties which by their nature would continue beyond the termination or expiration of any attachment or this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and limitations of liability, shall survive termination or expiration. If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision and shall remain in full force and effect.

13. Statutory Notices. The Department shall consider the employment by any subcontractor or Subrecipient of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this Agreement. An entity or affiliate who has been placed on the public entity crimes list or the discriminatory vendor list may not submit a bid on a subcontract or Subrecipient agreement to provide any goods or services to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity pursuant to limitations under Chapter 287, Florida Statutes. Nothing herein shall be construed as waiving the sovereign immunity of the State of Florida. The Department shall not be deemed to assume any liability for the acts, omissions to act or negligence of the Subrecipient, its agents, servants, and employees, nor shall the Subrecipient disclaim its own negligence to the Department or any third party.

14. Compliance with Federal, State and Local Laws. Subrecipient and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, worker's compensation, licenses and registration requirements.

15. Electronic Accessibility. When the Subrecipient is to develop, procure, maintain, or use electronic and information technology, they shall ensure that the electronic and information technology allows employees and members of the public with disabilities to have access to and use of information and data that is comparable to the access to and use of information and data by employees who are not individuals with disabilities. These require, e.g., screen enlargement and voice output, or have built-in screen reader or, that the products support assistive technology; increase in volume and/or alter the tonal quality or increase the signal-to-noise ratio; if speech input one alternative input mode also; not require fine motor control or simultaneous actions. See 36 CFR Part 1194 based on Section 508 of the Rehabilitation Act Amendments, 29 USC Sec. 794. (See http://www.section508.gov/)

16. Contract Administration.

16 (a) The Department contract manager is John Deiorio, II located at 11655 Northwest Gainesville Road, Ocala, Florida 34482-1486.

16 (b) The Subrecipient contract manager is Chief Malcolm Trigg located at 150 Bush Blvd., Sanford, Florida 3773

16 (c) All written and verbal approvals referenced in this Agreement must be obtained from the parties' contract administrators or designees. Notices required to be in writing must be delivered or sent to the intended recipient by hand delivery, certified mail or receipted courier and shall be deemed received on the date received or the date of the certification or receipt.

17. Compliance with CFO Memorandum No. 4: Subrecipient shall assure compliance itself and by its Subcontractors, with CFO Memorandum No. 4 (2005-06), effective June 30, 2006; including but not limited to the following provisions:

17(a) State financial assistance under this Agreement shall be in compliance with laws, rules and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures at http://www.fldfs.com/aadir/reference%5Fguide/ .

17(b) Those subject to this Agreement may charge only allowable costs resulting from obligations incurred during the term of the Agreement.

17(c) Any balances of unobligated cash that have been advanced or paid that is not authorized to be retained for direct program costs in a subsequent period must be refunded to the State.

17(d) Agreements with vendors must be procured in a manner that ensures a fair and reasonable price to the State and in compliance with applicable rules and regulations, including, but not limited to sections 287.057 and 216.3475, F.S.

IN WITNESS WHEREOF, the Department of Financial Services and the Seminole County Board of County Commissioners, by their duly authorized representatives, have executed this Agreement.

SUBRECIPIENT:
SEMINOLE COUNTY BOARD OF
COUNTY COMMISSIONERS

By: Carlton D. Henley

Title: Chairman

Date: 6/12/07

DEPT OF FINANCIAL SERVICES

James Cassady, Chief of Staff

Date: 8-28-07

ATTEST:

MARYANNE MORSE
Clerk to the Board of County Commissioners,
Seminole County, Florida