

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Flood Mitigation Subgrant Agreement / Time Extension Modification #1

**DEPARTMENT:** Planning & Development **DIVISION:** Building & Fire Prevention

**AUTHORIZED BY:** Don Fisher  **CONTACT:** Thomas Forbes **EXT.** 7218

|   |
|---|
| <b>Agenda Date</b> 08/26/03 <b>Regular</b> <input type="checkbox"/> <b>Consent</b> <input checked="" type="checkbox"/> <b>Work Session</b> <input type="checkbox"/> <b>Briefing</b> <input type="checkbox"/><br><b>Public Hearing – 1:30</b> <input type="checkbox"/> <b>Public Hearing – 7:00</b> <input type="checkbox"/> |
|---|

**MOTION/RECOMMENDATION:**

It is recommended that Time Extension Modification #1 as provided by the State of Florida Department of Community Affairs be approved to provide the homeowner with sufficient time to complete the project.

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**BACKGROUND:**

In June 2003, the BOCC approved the revisions to the Federally Funded Flood Mitigation Subgrant, which has since been approved and executed by the State of Florida Department of Community Affairs. At this time the applicant has submitted for a time extension modification through the State of Florida DCA. This modification agreement was provided by the State for approval by the BOCC and subsequent signature.

|                        |
|------------------------|
| Reviewed by:           |
| Co Atty: <u>DFC</u>    |
| DFS: _____             |
| Other: _____           |
| DCM: <u>SS</u>         |
| CM: <u>DF</u>          |
| File No. <u>cpdb01</u> |

Contract Number: 03FM-52-06-69-01-088  
CFDA Number: 83.536

**MODIFICATION NUMBER ONE  
FLOOD MITIGATION ASSISTANCE PROJECT AGREEMENT**

This Modification Number One is made and entered into by and between the Florida Department of Community Affairs ("the Department") and Seminole County ("the Recipient") to extend the agreement between them dated July 30, 2003, and numbered DCA Contract No. 03FM-52-06-69-01-088 ("the Agreement").

WHEREAS, the Agreement will expire September 30, 2003; and

WHEREAS, the parties agree to extend the Agreement, effective from its expiration, and to extend the Agreement to June 30, 2004, in order for the Recipient to complete the Scopes of Work, and close-out the projects, as set forth in Attachments A and Revised Attachments A, respectively; and

NOW, THEREFORE, the parties agree to extend the Agreement as though it will not expire, and agree to modify the Agreement as follows:

1. Paragraph (3) of the Agreement is hereby deleted in its entirety, and the following paragraph substituted in its place and stead for all intents and purposes:

This Agreement shall begin upon the date last signed and shall end June 30, 2004, unless terminated earlier in accordance with the provisions of paragraph (9) of this Agreement.

2. Except as modified herein, all other provisions of the Agreement shall stay in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Modification to be executed by their duly authorized undersigned officials on the dates set forth below.

**SEMINOLE COUNTY**

**DEPARTMENT OF COMMUNITY  
AFFAIRS**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Title: \_\_\_\_\_

W. Craig Fugate, Director  
Division of Emergency Management

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

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



STATE OF FLORIDA

# DEPARTMENT OF COMMUNITY AFFAIRS

*"Dedicated to making Florida a better place to call home"*

JEB BUSH  
Governor

STEVEN M. SEIBERT  
Secretary

August 11, 2003

Mr. Thomas Forbes, Deputy Building Official  
Seminole County  
Building and Fire Inspection Division  
1101 East First Street  
Sanford, Florida 32773

**Re: Contract# 03FM-52-06-69-01-088  
FMA-PJ-04FL-2001-016 Alan and Irene Wright  
Time Extension Modification #1**

Dear Mr. Forbes:

Enclosed are four copies of Modification Agreement #1 for a time extension for the above referenced project between Seminole County and the Department of Community Affairs. The official representative, as listed below, will need to sign the signature page of each modification agreement. All four copies of the modification should then be sent to DCA for full execution. One fully executed modification will be returned to the County for its files.

***Official Representative:***

County: Chairman of Board of Commissioners

If there is an official that is not listed above who is authorized to sign the modification for the County, then please provide a copy of the county's resolution or charter that specifically identifies the person or position that is authorized to sign.

If you have questions regarding this modification or who is authorized to sign it, please call Fredericka Hamilton at 850/922-4077.

Sincerely,

Charles H. Speights  
Community Program Administrator

CHS:fjh

Enclosures

2 5 5 5 SHUMARD OAK BOULEVARD • TALLAHASSEE , FLORIDA 32399-2100

Phone: (850) 488-8466/Suncom 278-8466 FAX: (850) 921-0781/Suncom 291-0781

Internet address: <http://www.dca.state.fl.us>

CRITICAL STATE CONCERN FIELD OFFICE  
2796 Overseas Highway, Suite 212  
Marathon, FL 33050-2227  
(305) 289-2402

COMMUNITY PLANNING  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100  
(850) 488-2356

EMERGENCY MANAGEMENT  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100  
(850) 413-9969

HOUSING & COMMUNITY DEVELOPMENT  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100  
(850) 488-7956

**MODIFICATION NUMBER ONE  
FLOOD MITIGATION ASSISTANCE PROJECT AGREEMENT**

This Modification Number One is made and entered into by and between the Florida Department of Community Affairs (“the Department”) and Seminole County (“the Recipient”) to extend the agreement between them dated July 30, 2003, and numbered DCA Contract No. 03FM-52-06-69-01-088 (“the Agreement”).

WHEREAS, the Agreement will expire September 30, 2003; and

WHEREAS, the parties agree to extend the Agreement, effective from its expiration, and to extend the Agreement to June 30, 2004, in order for the Recipient to complete the Scopes of Work, and close-out the projects, as set forth in Attachments A and Revised Attachments A, respectively; and

NOW, THEREFORE, the parties agree to extend the Agreement as though it will not expire, and agree to modify the Agreement as follows:

1. Paragraph (3) of the Agreement is hereby deleted in its entirety, and the following paragraph substituted in its place and stead for all intents and purposes:

This Agreement shall begin upon the date last signed and shall end June 30, 2004, unless terminated earlier in accordance with the provisions of paragraph (9) of this Agreement.

2. Except as modified herein, all other provisions of the Agreement shall stay in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Modification to be executed by their duly authorized undersigned officials on the dates set forth below.

**SEMINOLE COUNTY**

**DEPARTMENT OF COMMUNITY  
AFFAIRS**

BY: \_\_\_\_\_  
Title: \_\_\_\_\_

BY: \_\_\_\_\_  
W. Craig Fugate, Director  
Division of Emergency Management

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

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

Contract Number: 03FM-52-06-69-01-088  
CFDA Number: 83.536

**FEDERALLY FUNDED FLOOD MITIGATION 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 Seminole County, (hereinafter referred to as the "Recipient").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING FACTS:

A. WHEREAS, the National Flood Insurance Act of 1968 (P. L. 90-448, 42 U.S.C. §§4001-4129) authorizes the Federal Emergency Management Agency ("FEMA") to provide financial assistance for eligible projects under the Flood Mitigation Assistance Program ("FMAP"); and

B. WHEREAS, the FMAP may provide assistance to states and communities to implement programs to decrease the risk of damage to structures that may be insured under the National Flood Insurance Program; and

C. WHEREAS, the Recipient represents that it participates in the National Flood Insurance Program, and that it is fully qualified and eligible to receive these grant funds to provide the services identified herein; and

D. WHEREAS, the Department has received these grant funds from the federal government, and has the authority to subgrant these funds to the Recipient upon the terms and conditions hereinafter set forth; and

E. 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:

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 Budget and Scope of Work, Attachment A 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 Attachment B.

(3) PERIOD OF AGREEMENT.

This Agreement shall begin upon execution by both parties, and shall end on September 30, 2003, unless terminated earlier in accordance with the provisions of paragraph (9) of this Agreement or extended by a document of equal dignity herewith.

(4) MODIFICATION OF CONTRACT: REPAYMENTS

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.

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 § 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.

(5) RECORDKEEPING

(a) As applicable, Recipient's performance under this Agreement shall be subject to the federal "Common Rule: Uniform Administrative Requirements for State and Local Governments" (53 Federal Register 8034) or OMB Circular No. A-110, "Grants and Agreements with Institutions of High Education, Hospitals, and Other Nonprofit Organizations," and either OMB Circular No. A-87, "Cost Principles for State and Local Governments," OMB Circular No. A-21, "Cost Principles for Educational Institutions," or OMB Circular No. A-122, "Cost Principles for Nonprofit Organizations." If this Agreement is made with a commercial (for-profit) organization on a cost-reimbursement basis, the Recipient shall be subject to Federal Acquisition Regulations 31.2 and 931.2.

(b) The Recipient shall retain sufficient records demonstrating its compliance with the terms of 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 three 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 three year period and extends beyond the three 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 three years after final disposition.

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

(c) All records, including supporting documentation of all program costs, shall be sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

(d) 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.

(e) Any additional terms and conditions pertaining to recordkeeping are set forth in Attachment C.

(6) REPORTS

(a) At a minimum, the Recipient shall provide the Department with quarterly reports, and with a close-out report.



(b) Quarterly reports are due to be received by the Department no later than 30 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 June 30 and September 30.

(c) The close-out report is due 60 days after termination of this Agreement or upon completion of the activities contained in this Agreement.

(d) 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 (9). The Department may terminate the Agreement with a Recipient if reports are not received within 30 days after written notice by the Department. "Acceptable to the Department" means that the work product was completed in accordance with generally accepted principles and is consistent with the Budget and Scope of Work.

(e) Upon reasonable notice, the Recipient shall provide such additional program updates or information as may be required by the Department.

(f) The Recipient shall provide additional reports and information as identified in Attachment D.

(7) MONITORING.

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised (see "AUDIT REQUIREMENTS" below), 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 any 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.

(8) LIABILITY.

(a) Unless Recipient is a State agency or subdivision, the Recipient shall be solely responsible to parties with whom it shall deal in carrying out the terms of this agreement, and shall save 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.

(9) DEFAULT; REMEDIES; TERMINATION.

(a) 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, or 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 herein, 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:

1. 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 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;

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

3. If any reports required by this Agreement have not been submitted to the Department or have been submitted with incorrect, incomplete or insufficient information:

4. If the Recipient has failed to perform and complete in timely fashion any of the services required under the Budget and Scope of Work attached hereto as Attachment A.

(b) 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 timely cure, exercise any one or more of the following remedies, either concurrently or consecutively, and the pursuit of any one of the following remedies shall not preclude the Department from pursuing any other remedies contained herein or otherwise provided at law or in equity:

1. 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 (10) herein;

2. Commence an appropriate legal or equitable action to enforce performance of this Agreement;

3. Withhold or suspend payment of all or any part of a request for payment;

4. Exercise any corrective or remedial actions, to include but not be limited to, requesting additional information from the Recipient to determine the reasons for or the extent of non-compliance or lack of performance, issuing a written warning to advise that more serious measures may be taken if the situation is not corrected, advising the Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or requiring

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

5. Exercise any other rights or remedies which may be otherwise available under law;

(c) 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.

(d) Suspension or termination constitutes final agency action under Chapter 120, Fla. Stat., as amended. Notification of suspension or termination shall include notice of administrative hearing rights and time frames.

(e) In addition to any other remedies, if upon final inspection, final audit, or other review by the Department, FEMA or other authority determines that the disbursements to the Recipient under this Agreement exceed the eligible costs, the Recipient shall refund to the Department the sum by which the total disbursements exceed the eligible costs within forty-five (45) days from the date the Recipient is notified of such determination.

(f) This Agreement may be terminated by the written mutual consent of the parties. Such termination shall not affect the rights, interests, duties or responsibilities of either of the parties, or any allowable costs accrued as of the date of receipt of the notice of termination.

(g) 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.

(10) 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. Charles H. Speights, Community Program Administrator  
Bureau of Recovery and Mitigation  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100  
Telephone:(850) 413-9960  
Fax: (850) 410-1582  
Email: charles.speights@dca.state.fl.us

(c) The name and address of the Representative of the Recipient responsible for the administration of this Agreement is:

Building Division  
1101 East First Street  
Sanford, Florida 32773  
Telephone: 407-665-7335  
Fax: 407-665-7407

(d) 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 (10)(a) above.

(11) OTHER PROVISIONS.

(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) 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. 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 or on the discriminatory vendor list 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 or discriminatory vendor list.

(g) With respect to any Recipient which is not a local government or state agency, and which receives funds under this Agreement from the federal government, by signing this Agreement, the Recipient certifies, to the best of its knowledge and belief, that it and its principals:



1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;

2. have not, within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph 11(g)2. of this certification; and

4. have not within a three-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Recipient is unable to certify to any of the statements in this certification, such Recipient shall attach an explanation to this Agreement.

(12) 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 State or local government or a non-profit organization as defined in OMB Circular A-133, as revised, and in the event that the Recipient expends \$300,000 or more in Federal awards in its fiscal year, the Recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. EXHIBIT 1 to this Agreement indicates Federal resources awarded through the Department by this Agreement. In determining the Federal awards expended in its fiscal year, the Recipient shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the Recipient conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this paragraph.

In connection with the audit requirements addressed in Paragraph 12 (d) above, the Recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

If the Recipient expends less than \$300,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the Recipient expends less than \$300,000 in Federal awards in its

fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such audit must be paid from Recipient resources obtained from other than Federal entities).

(e) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by subparagraph (d) above shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, 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

and

Department of Community Affairs  
Bureau of Recovery and Mitigation  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320(d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 East 10<sup>th</sup> Street  
Jeffersonville, IN 47132

Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

(f) Pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any management letter issued by the auditor, to the Department at each of the following addresses:

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

and

Department of Community Affairs  
Bureau of Recovery and Mitigation  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

(g) 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.

(h) 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.

(i) The Recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of five years from the date the audit report is issued, and shall allow the Department, or its designee, the 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, the Comptroller, or Auditor General upon request for a period of three years from the date the audit report is issued, unless extended in writing by the Department.

(j) 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.

(k) The Recipient shall retain all financial records, supporting documents, statistical records, and any other documents pertinent to this contract for a period of five years after the date of submission of the final expenditures report. However, if litigation or an audit has been initiated prior to the expiration of the five-year period, the records shall be retained until the litigation or audit findings have been resolved.

(l) The Recipient shall have all audits completed 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.

(13) SUBCONTRACTS.

(a) If the Recipient subcontracts any or all of the work required under this Agreement, a copy of the executed subcontract must be forwarded to the Department within thirty (30) days after execution of the subcontract. The Recipient agrees to include in the subcontract that (i) the subcontractor is bound by all applicable state and federal laws and regulations, and (ii) 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.

(14) TERMS AND CONDITIONS.

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

(15) 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

Attachment A      Scope of Work and Budget

Attachment B      Program Statutes and Regulations

Attachment C-1     Request for Advance or Reimbursement Form

Attachment C-2     Summary of Documentation Form

Attachment D      Project Progress Form

(16) FUNDING/CONSIDERATION

(a) This is a cost-reimbursement Agreement. The Recipient shall be reimbursed for costs incurred in the satisfactory performance of work hereunder in an amount not to exceed \$145,725.00 subject to the availability of funds.

(b) The Recipient will assure through a sub-agreement with the homeowner that the homeowner agrees to pay, as its non-federal share of the eligible costs; an amount which is at least \$48,575.00 or Twenty-five Percent (25%) of the eligible costs under this Agreement. In addition, Recipient may require the homeowner to pay the additional \$145,725.00 initially and reimburse the homeowner for those funds.

(c) Any advance payment under this Agreement is further subject to s. 216.181(16), Florida Statutes. The amount which may be advanced may not exceed the expected cash needs of the Recipient within the first three (3) months, based upon the funds being equally disbursed throughout the contract term. For a federally funded contract, any advance payment is also subject to federal OMB Circulars A-87, A-110, A-122 and the Cash Management Improvement Act of 1990. If an advance payment is requested, the budget data on which the request is based and a justification statement shall be included in this Agreement as Attachment C1. Attachment C1 will specify the amount of advance payment needed and provide an explanation of the necessity for and proposed use of these funds.

1.   X   No advance payment is requested.
2.            An advance payment of \$            is requested.

(d) After the initial advance, if any, payment shall be made on a reimbursement basis as needed. The Recipient agrees to expend funds in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(17) STANDARD CONDITIONS.

The Recipient agrees to be bound by the following standard conditions:

(a) The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, subject to any modification in accordance with Chapter 216, Fla. Stat. or the Florida Constitution, or as provided in §252.37(4), Fla. Stat.

(b) If otherwise allowed under this Agreement, the Agreement may be renewed on a yearly basis for a period of up to two (2) years after the initial agreement or for a period no longer than the term of the original agreement, whichever period is longer, specifying the terms under which the cost may change as determined in the invitation to bid, request for proposals, or pertinent statutes or regulations.

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

(d) If otherwise allowed under this Agreement, all bills for any travel expenses shall be submitted in accordance with Section 112.061, Fla. Stat.

(e) 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.



(f) 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.

(g) 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.

(18) LOBBYING PROHIBITION.

(a) 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.

(b) The Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any

Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

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

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

This certification is a material representative of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(19) COPYRIGHT, PATENT AND TRADEMARK


If applicable to this Agreement, refer to Attachment E for terms and conditions relating to copyrights, patents and trademarks.

(20) 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: SEMINOLE COUNTY

BY:   
Grant Maloy, Vice Chairman

Date: 6-27-03

ATTEST: 

BY: Monty Rose, Clerk of Court

SAMAS # \_\_\_\_\_ FID# \_\_\_\_\_

STATE OF FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS

BY: 

Name and Title: W. Craig Fugate, Director

Date: 7-2-03

EXHIBIT - 1

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

Federal Program: *Federal Emergency Management Agency*  
Catalog of Federal Domestic Assistance Number: 83.536  
Amount of Federal Funding: *\$145,725.00*

COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

*The Flood Mitigation Assistance Program is authorized by Sections 1366 and 1367 (42 U.S.C) of the National Flood Insurance Reform Act of 1994. (NFIRA). This program provides assistance to States and Communities for activities that will reduce the risk of flood damage to structures insurable under the National Flood Insurance Program.*

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

*Not Applicable*

MATCHING RESOURCES FOR FEDERAL PROGRAMS:

*Not Applicable*

SUBJECT TO SECTION 215.97. FLORIDA STATUTES:

*Not Applicable*

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

*Not Applicable*

NOTE: Section .400(d) of OMB Circular A-133, as revised, and Section 215.97(5)(a), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the recipient.

## Attachment A

### BUDGET AND SCOPE OF WORK

The Recipient will be responsible for the implementation and completion of the project in accordance with Attachment A in a manner acceptable to the Department, and in accordance with all applicable legal requirements. The contract documents for any project undertaken by the Recipient, and any land use permitted by or engaged in by the Recipient, shall be consistent with the local government Comprehensive Plan. The Recipient shall ensure that any development or development order complies with all applicable planning, permitting and building requirements. The Recipient shall ensure that the project owner shall engage such competent engineering, building, and other technical and professional assistance as may be needed to ensure that the project complies with the contract documents.

For each structure receiving assistance under this Agreement, the Recipient shall first provide the following information to the Agency and to the Department:

1. Documentation for all repetitive losses, showing the number of claims, the amount of each claim, the amount of payment on each claim, and the date of each such payment;
2. The date of initial construction for the structure;
3. The elevation of the lowest floor of the structure;
4. The flood zone where the structure is located;
5. The base flood elevation of the structure;
6. The appraised value of the structure;
7. Estimates of the cost of work on the structure by the contractor, which shall separate eligible from ineligible costs;
8. Estimates of the square footage of the structure before and after the completion of the work;
9. Estimates of damage to any substantially damaged structure; and
10. Proposed elevation height for any substantially damaged structure.

Time shall be of the essence of this Agreement and of the performance of all conditions under it. Subject to any modification extending the time for the performance of this Agreement approved by the Department or by FEMA, the date for the completion of the project shall be September 30, 2003. The supporting documents set forth in the Payment Procedure/Budget section below shall be submitted to the Department no later than sixty (60) days after the date of the last modification extending the Agreement. The Recipient shall submit the completed documentation to the Department no later than sixty (60) days from the completion of all work, or the date the project passes final inspection, whichever is later. The time for the performance of this Agreement may be extended for cause by the Department. If any extension request is denied, the Recipient shall be reimbursed for eligible project costs incurred up to the latest approved date for completion. Failure to complete any project will be adequate cause for the termination of funding under for that project.

### PAYMENT PROCEDURE/BUDGET

The Department shall disburse the eligible costs to the Recipient in accordance with the following procedures:

- A. The Recipient will be reimbursed for that portion of its eligible costs corresponding to the federal share of such costs once the Recipient has delivered the following documents to the Department:
  1. A Request for Advance or Reimbursement Form conforming to the sample attached to this Agreement as Attachment C-1;
  2. A Summary of Documentation Form conforming to the sample attached to this Agreement as Attachment C-2, which shall be supported by original documents such as contract documents, invoices, purchase orders, change orders and the like; and
  3. A letter certifying that the reported costs were incurred in the performance of eligible work.
  
- B. The Department may, in its discretion, withhold its portion of the non federal share of funding under this Agreement from the Recipient if the Department has reason to expect a subsequent unfavorable determination by the Federal Emergency Management Agency that a previous disbursement of funds under this Agreement was improper.
  
- C. The Department may advance funds under this Agreement to the Recipient if the Recipient meets the following conditions:
  1. The Recipient shall demonstrate to the Department that the Recipient has procedures in place to ensure that funds are disbursed to project vendors, contractors, and subcontractors without unnecessary delay;
  2. The Recipient shall submit a statement specifying the amount of funds requested and justifying the advance and the proposed use of the funds, together with budget information supporting the request;
  3. The Recipient shall submit a completed Request for Advance or Reimbursement Form; and
  4. The Recipient shall pay over to the Department any interest earned on advances for remittance to the Federal Emergency Management Agency as often as practicable, and in any event not later than ten (10) business days after the close of each calendar quarter.
  
- D. The Department shall disburse the final payment to the Recipient upon the performance of the following conditions:
  1. The owner of the project shall have completed the project, and the Recipient shall have certified to its completion and final inspection;
  2. The Recipient shall have submitted the documentation specified in this Payment Procedure; and
  3. The Recipient shall have requested final reimbursement.

Attachment A (continued)

Property Owner: Alan and Irene Wright

Property Address: 2656 Shad Lane  
Geneva, Florida 32732

The recipient shall require the property owner to perform tasks associated with demolishing the existing structure and rebuilding a new single family structure above base flood elevation as further described in the Recipient's Flood Mitigation Assistance Program application. That application is hereby incorporated by reference.

The structure is located in an AE-Zone and at a minimum when completed the new structure must: Meet the A-Zone requirements; including having the lowest floor at a minimum of 12 feet, NGVD (BFE + 2); any enclosed area below the BFE must have a minimum of 2 hydrostatic openings to allow for automatic entry/exit of flood waters and all construction materials below base flood elevation must be constructed with flood resistant materials. These areas should not be partitioned into separate rooms or finished off. Electrical and mechanical equipment shall not be located below BFE except for essential lighting which must be on a separate ground fault circuit. The Department of Community Affairs (DCA) shall reimburse eligible costs for this project up to \$145,725.00.

1. Funding Summary

Federal Share: \$145,725.00 (75%)

Local Share: \$ 48,575.00 (25%) – (to be supplied by Owner)

Project Cost: \$194,300.00

2. Eligible Expenditures

The following categories are generally considered eligible for reimbursement under the FMA. Only reasonable eligible expenses may be reimbursed. The Recipient shall provide the Department with a detailed listing of project expenditures, and classify them according to the listed categories, as part of any request for payment. Any expenditures that do not clearly fall under the specified categories shall be submitted to the Department for review and determination of funding eligibility under the FMA.

Preliminary cost estimates for this project have been provided to the Department, and those costs that are eligible have been incorporated into the categories below.

The amounts set forth below are estimates, and the Recipient may allow the Property Owner to exceed the estimates and be reimbursed for 75% of expenditures in a category, provided that the total reimbursement shall not exceed \$145,725.00.

Attachment A (continued)

Budget and Scope of Work

|                          | Federal (75%)    | Non-Federal (25%) |
|--------------------------|------------------|-------------------|
| A. Permitting/Fees       | \$ 3,750.00      | \$ 1,250.00       |
| B. Planning/Design       | \$ 5,625.00      | \$ 1,875.00       |
| C. Site Preparation      | \$ 4,500.00      | \$ 1,500.00       |
| D. Demolition/Rebuild    | \$124,600.00     | \$41,200.00       |
| E. System Replacement    | \$ 7,500.00      | \$ 2,500.00       |
| F. Landscape Replacement | <u>\$ 750.00</u> | <u>\$ 250.00</u>  |
| <b>TOTAL:</b>            | \$145,725.00     | \$48,575.00       |



Attachment B

Program Statutes and Regulations

National Flood Insurance Program, Public Law 90-448, as amended (42 U.S.C. §§4001-4129)

44 C.F.R. Parts 13 and 78

- (1) OMB Circular No. A-110
- (2) OMB Circular No. A-87
- (3) OMB Circular No. A-21
- (4) OMB Circular No. A-122
- (5) OMB Circular No. A-133
- (6) Federal Acquisition Regulations 312 and 931.2
- (7) American's With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.)
- (8) Cash Management Improvement Act of 1990
- (9) Immigration and Nationality Act Section 274A(e)
- (10) Chapter 119 Florida Statute
- (11) Chapter 216 Florida Statute
- (12) Chapter 768.28 Florida Statute

Attachment C-1  
Request for Advance or Reimbursement Form

**FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS  
DIVISION OF EMERGENCY MANAGEMENT**

Request for Advance or Reimbursement of  
Flood Mitigation Assistance Program Funds

SUBGRANTEE NAME: Seminole County

ADDRESS: 1101 East First Street

CITY, STATE, ZIP CODE: Sanford, Florida 32773

PAYMENT No: \_\_\_\_\_ FMA No: 2001-016 DCA Agreement No: 03FM -52-06-69-01

PROJECT TYPE: Modified Elevation Total Contract Amount: \$145,725.00

POINT OF CONTACT NAME : Thomas Forbes

POINT OF CONTACT PHONE No. : 407-665-7335 FAX No. : 407-665-7407

HOMEOWNER: Alan and Irene Wright  
HOMEOWNER ADDRESS: 2656 Shad Lane  
CITY, STATE, ZIP CODE: Geneva, Florida 32732

| Project Amount<br>100% | FEMA<br>75% | Non-Federal<br>Match<br>25% | Previous<br>Payments | Current<br>Request | Balance of<br>Remaining<br>Funds |
|------------------------|-------------|-----------------------------|----------------------|--------------------|----------------------------------|
|                        |             |                             |                      |                    |                                  |
|                        |             |                             |                      |                    |                                  |

TOTAL CURRENT REQUEST \$

I certify that to the best of my knowledge and belief the above accounts are correct, and that all disbursements were made in accordance with all conditions of the DCA agreement and payment is due and has not been previously requested for these amounts.

SUBGRANTEE SIGNATURE

NAME AND TITLE

DATE \_\_\_\_\_

|  |       |
|--|-------|
| TO BE COMPLETED BY DEPARTMENT OF COMMUNITY AFFAIRS                     |       |
| APPROVED PROJECT TOTAL \$  | _____ |
| ADMINISTRATIVE COST \$   | _____ |
| APPROVED FOR PAYMENT \$  | _____ |
| _____<br>W. CRAIG FUGATE, DIRECTOR<br>DIVISION OF EMERGENCY MANAGEMENT |       |
| DATE _____   |       |

Attachment C-2  
Summary of Documentation Form

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS  
DIVISION OF EMERGENCY MANAGEMENT

SUMMARY OF DOCUMENTATION IN SUPPORT OF AMOUNT  
CLAIMED FOR ELIGIBLE DISASTER WORK UNDER THE  
FLOOD MITIGATION ASSISTANCE PROGRAM

Applicant Seminole County

Disaster No.

DCA Agreement No. 03FM-52-06-69-01

FEMA Tracking # FMA-PJ-04FL-2001016

| Applicant's Reference No.<br>(Warrant, Voucher, Claim<br>Check, or Schedule No.) | Date of delivery of<br>articles, completion of<br>work or performance<br>services. | <u>DOCUMENTATION</u><br>List Documentation (Applicant's payroll, material out of applicant's stock,<br>applicant owned equipment and name of vendor or contractor) by category and<br>line item in the approved project application and give a brief description of the<br>articles or services. | Applicant's<br>Eligible Costs<br>100% |
|--|--|--|---------------------------------------|
|  |  |  |                                       |
| <b>TOTAL</b>   |  |  |                                       |

Attachment D  
Project Progress Form

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS  
DIVISION OF EMERGENCY MANAGEMENT

PROJECT PROGRESS FORM

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SUBGRANTEE: Seminole County Project Number #: FMA-PJ-04FL-2001016  
PROJECT LOCATION: Geneva, Florida DCA ID #: 03FM-52-06-69-0174-02  
DISASTER NUMBER: QUARTER ENDING:

---

Percentage of Work Completed (may be confirmed by state inspectors): \_\_\_\_\_ %

Project Proceeding on Schedule:  Yes  No

Describe milestones achieved during this quarter:

Provide a schedule for the remainder of work to project completion:

Describe problems or circumstances affecting completion date, milestones, scope of work, and cost:

Cost Status:  Cost Unchanged  Under Budget  Over Budget

Additional Comments/Elaboration:

NOTE: Department of Community Affairs (DCA) staff may perform interim inspections and/or audits at any time. Events may occur between quarterly reports which have significant impact upon your project(s), such as anticipated overruns, changes in scope of work, etc. Please contact DCA as soon as these conditions become known, otherwise you may be found non-compliant with your subgrant award.

Name and Phone Number of Person Completing This Form \_\_\_\_\_

Attachment E  
Copyright, Patent and Trademark

- (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 occur during performance of the Agreement.