

CITY OF HOLLY HILL, FLORIDA

CITY COMMISSION

AGENDA • OCTOBER 12, 2021

City Commission Chamber

Regular City Commission Meeting

6:00 PM

CITY HALL
1065 RIDGEWOOD AVENUE
HOLLY HILL, FL 32117

City Clerk's office: (386) 248-9441 - Fax: (386) 248-9448



City Commission Chamber
City Hall
1065 Ridgewood Avenue
Holly Hill, FL 32117

CITY COMMISSION MEMBERS

Mayor
Chris Via

District 1 - Commissioner
John Penny

District 3 - Commissioner
John C. Danio

District 2 - Commissioner
Penny Currie

District 4 - Commissioner
Roy Johnson

CITY MANAGER
Joseph Forte

CITY CLERK
Valerie Manning

1. CALL TO ORDER

- a. Roll Call
- b. Invocation by City Commissioner Roy Johnson
- c. Pledge of Allegiance

2. PUBLIC COMMENTS**3. APPROVAL OF MINUTES**

- 1. Minutes - September 28, 2021 Regular City Commission, CRA and Second Public Hearing on Budget Meeting
(Requested by Valerie Manning, City Clerk)

4. CONSENT AGENDA - ITEMS (1 - 3)

The action proposed is stated for each item on the Consent Agenda. Unless a City Commissioner removes an item from the Consent Agenda, no discussion on individual items will occur and a single motion will approve all items. Is there anyone in the audience who wishes to speak on any item on the Consent Agenda?

- 1. Memorandum of Understanding (MOU) is Made by and Between FINDER Software Solutions, LLC, Hereinafter Referred to as “FSS”, and the Holly Hill Police Department for the Usage of the FINDER Database System for FY 2021-2022
(Requested by Jeff Miller, Police)
- 2. FDOT Grant 2022 Speed / Aggressive Driving Enforcement Program Project Number : SC-2022-00040 FDOT Contract
(Requested by Jeff Miller, Police)
- 3. Florida DHSMV MOU for DAVID System 2022
(Requested by Jeff Miller, Police)

5. REGULAR AGENDA

- 1. Resolution -2021-R-83 A Resolution of the City of Holly Hill, Florida, Amending the Fiscal Year 2021-2022 Annual Operating Budget, Appropriating Project Carry Over Funds for the Purchase of a Fire Truck from the Fiscal Year 2020-2021 to the Fiscal Year 2021-20221 Budget; Setting Forth Revenues and Expenditures; Providing for Severability; and Providing for an Effective Date.
(Requested by Stella Gurnee, Finance)
- 2. Fountainhead Reqeestions for Time Extention to Rolling Option
(Requested by Joseph Forte, City Manager)
- 3. Fountainhead Land Lease (Renewal)
(Requested by Joseph Forte, City Manager)

6. PUBLIC HEARING

1. Ordinance -2021-O-3043 SECOND READING - an Ordinance of the City of Holly Hill, Volusia County, Florida, Annexing by Voluntary Petition Approximately 1.23 Acres Identified as Parcel Number 4244-01-07-0081 Contiguous to the City of Holly Hill; Redefining Boundaries of the City of Holly Hill to Include Said Property and the Adjacent Right-Of-Way of 8Th Street; Directing the City Clerk to File the Ordinance with the Clerk of the Circuit Court, with the Chief Administrative Officer of Volusia County and with the Department of State; Providing for Conflicting Ordinances; Providing for Severability; and Providing for an Effective Date.

(Requested by Brian Walker, Board of Planning and Appeals)

7. COMMUNICATIONS

- A. City Manager & Staff Comments
- B. City Attorney Comments
- C. City Commission Comments
- D. Mayor's Comments

8. ADJOURNMENT

Website Address – www.hollyhillfl.org (City Clerk)

NOTICE – If any person decides to appeal any decision of the City Commission at this meeting, he/she will need a record of the proceedings and, for that purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The City does not prepare or provide such a record.



For special accommodations, please notify the City Clerk's Office at least 72 hours in advance. (386) 248-9441



Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the City Clerk's Office.

In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Commission proceedings should contact the City Clerk's Office no later than three (3) days prior to the proceedings.



**STAFF REPORT
CITY OF HOLLY HILL, FLORIDA**

3.1

**City Commission
Agenda Item**

MEETING DATE: October 12, 2021
FROM: Valerie Manning
SUBJECT: Minutes - September 28, 2021 Regular City Commission, CRA and
Second Public Hearing on Budget Meeting
NUMBER: (ID # 3494)
APPLICANT:
PLANNER:

DISCUSSION:

Minutes from September 28, 2021 regular City Commission, CRA and Second Public Hearing
on Budget meeting.

MOTION:

Approve minutes as submitted by staff.

- Minutes - September 28, 2021 Regular CC mtg, CRA and Second Public Hearing on
Budget meeting (PDF)



CITY OF HOLLY HILL, FLORIDA

CITY COMMISSION

MINUTES • SEPTEMBER 28, 2021

City Commission Chamber Second Public Hearing Budget & Millage Rate Mtg

6:00 PM

CITY HALL
1065 RIDGEWOOD AVENUE
HOLLY HILL, FL 32117

City Clerk's office: (386) 248-9441 - Fax: (386) 248-9448

1. CALL TO ORDER

a. Roll Call

Attendee Name	Title	Status	Arrived
Chris Via	Mayor	Present	
John Penny	District 1 - Commissioner	Present	
Penny Currie	District 2 - Commissioner	Present	
John C. Danio	District 3 - Commissioner	Present	
Roy Johnson	District 4 - Commissioner	Present	

b. Invocation by City Commissioner John Danio

c. Pledge of Allegiance

2. PUBLIC HEARINGS - BUDGET & MILLAGE RATE - SECOND HEARINGS

1. -2021-R-72 Resolution

PUBLIC HEARING - SECOND READING - a Resolution of the City Commission of the City of Holly Hill, Volusia County, Florida, Adopting the Final Levying of Ad Valorem Taxes for the City of Holly Hill for Fiscal Year 2021-2022; Providing for Severability; and Providing for an Effective Date.

(Requested by Stella Gurnee, Finance)

Mayor Via opened public participation.

Heidi Heller, Holly Hill spoke.

Mayor Via closed public participation.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Penny Currie, District 2 - Commissioner
SECONDER:	John Penny, District 1 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

RESOLUTION

2021-R-72

PUBLIC HEARING - SECOND READING - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, VOLUSIA COUNTY, FLORIDA,

ADOPTING THE FINAL LEVYING OF AD VALOREM TAXES FOR THE CITY OF HOLLY HILL FOR FISCAL YEAR 2021-2022; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

RESOLUTION 2021-R-72

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, VOLUSIA COUNTY, FLORIDA, ADOPTING THE FINAL LEVYING OF AD VALOREM TAXES FOR THE CITY OF HOLLY HILL FOR THE FISCAL YEAR 2021-2022; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The City of Holly Hill of Volusia County, Florida, on September 13, 2021, adopted a Fiscal year 2021-2022 tentative millage rate following a public hearing as required by Florida Statute 200.065; and

WHEREAS, The City of Holly Hill of Volusia County, Florida, on September 28, 2021, adopted a Fiscal year 2021-2022 final millage rate following a public hearing as required by Florida Statute 200.065; and

WHEREAS, the City of Holly Hill of Volusia County Florida, held a public hearing as required by Florida Statute 200.065; and

WHEREAS, the gross taxable value for operating purposes not exempt from taxation Volusia County has been certified by the County Property Appraiser to the City of Holly Hill as \$737,719,097.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA:

SECTION 1. The FY 2021-2022 final operating millage is 6.25 mills, which is greater than the rolled-back rate of 6.0034 mills by 4.11%

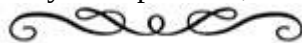
SECTION 2. The Final Public Hearing was held on September 28, 2021 at 6:00pm.

SECTION 3. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

APPROVED AND AUTHENTICATED on this 28th day of SEPTEMBER, 2021 for final reading.

Enacted and approved this 28th day of September, 2021, in Holly Hill



2. -2021-R-73 Resolution

PUBLIC HEARING - SECOND READING - a Resolution of the City Commission of the City of Holly Hill, Volusia County, Florida, Adopting the Final Budget for the City of Holly Hill for the Fiscal Year 2021-2022; Providing for Severability; and Providing for an Effective Date.

(Requested by Stella Gurnee, Finance)

Mayor Via opened public participation. No one spoke.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Roy Johnson, District 4 - Commissioner
SECONDER:	John C. Danio, District 3 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

RESOLUTION

2021-R-73

PUBLIC HEARING - SECOND READING - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, VOLUSIA COUNTY, FLORIDA, ADOPTING THE FINAL BUDGET FOR THE CITY OF HOLLY HILL FOR THE FISCAL YEAR 2021-2022; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

RESOLUTION 2021-R-73

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, VOLUSIA COUNTY, FLORIDA, ADOPTING THE FINAL BUDGET FOR THE CITY OF HOLLY HILL FOR THE FISCAL YEAR 2021 - 2022; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The City of Holly Hill of Volusia County, Florida, on September 13, 2021, held a public hearing for the tentative budget as required by Florida Statute 200.065; and

WHEREAS, The City of Holly Hill of Volusia County, Florida, on September 28, 2021, held a public hearing for the final budget as required by Florida Statute 200.065; and

WHEREAS, the City of Holly Hill of Volusia County Florida, set forth the appropriations and revenue estimate for the Budget for Fiscal Year 2021-2022.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA:

SECTION 1. That the City Commission of the City of Holly Hill, Florida pursuant to the Charter of the City of Holly Hill and Chapter 166, Florida Statutes, does hereby adopt the Final General, Enterprise and all other related Fund Budgets, which are attached hereto

and incorporated herein as Exhibit “A”, which may later be amended by the City Commission.

SECTION 2. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 3. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

APPROVED AND AUTHENTICATED on this 28th day of SEPTEMBER, 2021 for final reading.

Enacted and approved this 28th day of September, 2021, in Holly Hill



3. RECESS THE CC MTG & CONVENE AS THE CRA

4. CRA AGENDA

1. -2021-R-74 Resolution

CRA Mtg - a Resolution of the City of Holly Hill, Community Redevelopment Agency, Florida, Authorizing the City Manager to Execute the 1st Amendment to the Development Agreement with Martens Charities, LLC; and Providing for Severability; and Providing for an Effective Date.

(Requested by Joseph Forte, City Manager)

Mayor Via opened public participation.

Heidi Heller, Holly Hill spoke.

Mayor Via closed public participation.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Penny Currie, District 2 - Commissioner
SECONDER:	John C. Danio, District 3 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

RESOLUTION

2021-R-74

CRA MTG - A RESOLUTION OF THE CITY OF HOLLY HILL, COMMUNITY REDEVELOPMENT AGENCY, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE 1ST AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH MARTENS CHARITIES, LLC; AND PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

A RESOLUTION OF THE CITY OF HOLLY HILL, COMMUNITY REDEVELOPMENT AGENCY, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE 1ST AMENDMENT TO THE DEVELOPMENT

AGREEMENT WITH MARTENS CHARITIES, LLC; AND PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Holly Hill (CRA) is the owner of Hollyland Park located at 1082 Ridgewood Avenue, Holly Hill, Florida 32117; and

WHEREAS, Martens Charities, LLC (Developer) desires to develop Pictona at Holly Hill, Phase 2, in a portion of Hollyland Park, hereinafter described in Exhibit "A" and Exhibit "B" attached hereto (Property) to build and operate additional Pickleball Recreational Facilities and other improvements as hereinafter described (Project); and

WHEREAS, the CRA and the Developer desire to develop Phase 2 on the Property for the Project; and

WHEREAS, the CRA and the Developer have executed simultaneously herewith the 1st Amendment to the Incentive Agreement providing for the financial incentives to be provided by the City CRA fund; and

WHEREAS, this attached 1st Amendment to the agreement shall provide the terms and conditions of the development of the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF HOLLY HILL, COMMUNITY REDEVELOPMENT AGENCY, FLORIDA:

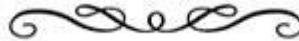
SECTION 1. That the Community redevelopment Agency approves the Development Agreement and the City Manager of the City of Holly Hill is authorized to execute the 1st Amendment to the Development Agreement.

SECTION 2. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 3. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption by the City of Holly Hill, Community redevelopment Agency.

APPROVED AND AUTHENTICATED on this 28th day of SEPTEMBER, 2021.

Enacted and approved this 28th day of September, 2021, in Holly Hill



2. -2021-R-75

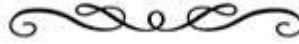
CRA Mtg - a Resolution of the Community Redevelopment Agency of the City of Holly Hill, Florida, Authorizing the City Manager to Execute the 1st Amendment to the Incentive Agreement with the Martens Charities, LLC (Developer); Providing for Severability; and Providing for an Effective Date.

(Requested by Valerie Manning, City Clerk)

Mayor Via opened public participation. No one spoke.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John Penny, District 1 - Commissioner
SECONDER:	Penny Currie, District 2 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

Enacted and approved this 28th day of September, 2021, in Holly Hill



3. -2021-R-82

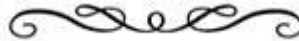
A Resolution of the Community Redevelopment Agency of the City of Holly Hill, Florida, Expressing Support for the Echo Grant Application for Pictona at Holly Hill, Phase 2, at Hollyland Park Located at 1066 Ridgewood Avenue, Holly Hill, Florida 32117; Providing for Severability; and Providing for an Effective Date.

(Requested by Valerie Manning, City Clerk)

Mayor Via opened public participation. No one spoke.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Roy Johnson, District 4 - Commissioner
SECONDER:	Penny Currie, District 2 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

Enacted and approved this 28th day of September, 2021, in Holly Hill



5. **ADJOURN AS THE CRA & RECONVENE THE CC MTG**

6. **PRESENTATION**

1.

Retirement Proclamation for Police Chief Stephen K. Aldrich

(Requested by Valerie Manning, City Clerk)

RESULT:	NO VOTE NEEDED
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7. **PUBLIC COMMENTS**

The following individuals spoke to the Mayor and City Commissioners:

Gilles Blais, Holly Hill; Jim Legary, Holly Hill; Ray Plate, Holly Hill; and Heidi Heller, Holly Hill.

8. APPROVAL OF MINUTES

1. -DOC-2021-63

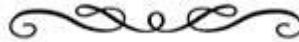
Minutes - September 13, 2021 Regular City Commission and First Public Hearings on Budget Meeting

(Requested by Valerie Manning, City Clerk)

Mayor Via opened public participation. No one spoke.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John C. Danio, District 3 - Commissioner
SECONDER:	Roy Johnson, District 4 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

Enacted and approved this 28th day of September, 2021, in Holly Hill



9. CONSENT AGENDA - ITEMS (1 - 5)

Mayor Via asked if anyone in the audience wished to speak on any item on the Consent Agenda or if any member of the Commission would like to pull an item for further discussion.

Commissioner Penny stated that he would like to pull Consent Agenda Item No. 1, Resolution 2021-R-76, for further discussion.

1. -2021-R-76 Resolution

A Resolution of the City Commission of the City of Holly Hill, Florida, Authorizing the City Manager to Sign a Lease Agreement Between the City and the Volusia Flagler YMCA; Establishing the Terms of This Agreement; Providing for Severability; and Providing for an Effective Date.

(Requested by Joseph Forte, City Manager)

Mayor Via opened public participation.

Jim Legary, Holly Hill.

Mayor Via closed public participation.

Commissioner Penny made a motion to APPROVE RESOLUTION 2021-R-76, YMCA LEASE AGREEMENT WITH THE FOLLOWING AMENDMENTS TO THE LEASE AGREEMENT - THE POOL SHALL REMAIN OPEN TWELVE (12) MONTHS OUT OF THE YEAR; THE POOL SCHEDULE MAY BE ADJUSTED ON MEMBER USAGE; THE POOL MUST BE OPEN AT A MINIMUM OF 5 HOURS PER DAY, EVERY DAY THE YMCA IS OPEN; IF THE POOL DOES NOT REMAIN OPEN

FIVE HOURS PER DAY, THE CITY WILL DEDUCT \$150.00 EACH DAY IT IS NOT OPEN, FROM THE NEXT QUARTERLY PAYMENT; seconded by Commissioner Currie.

PASSED, 5-0.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John Penny, District 1 - Commissioner
SECONDER:	Penny Currie, District 2 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

**RESOLUTION
2021-R-76**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, AUTHORIZING THE CITY MANAGER TO SIGN A LEASE AGREEMENT BETWEEN THE CITY AND THE VOLUSIA FLAGLER YMCA; ESTABLISHING THE TERMS OF THIS AGREEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, AUTHORIZING THE CITY MANAGER TO SIGN A LEASE AGREEMENT BETWEEN THE CITY AND THE VOLUSIA/FLAGLER YMCA; ESTABLISHING THE TERMS OF THIS AGREEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Holly Hill desires to continue its relationship with the Volusia/Flagler YMCA to provide recreational programs at the FACILITY located at 1046 Daytona Avenue; and

WHEREAS, the YMCA has a nationally recognized reputation and long-term history of providing quality community recreation programs.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA:

SECTION 1. That the City Commission approve the attached agreement and the City Manager is hereby authorized to sign the lease agreement, attached hereto, so that the Volusia/Flagler YMCA may continue to perform as a recreation provider at the Daytona Avenue FACILITY.

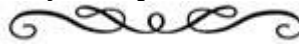
SECTION 2. That the term of this agreement shall commence on October 1, 2021 and end on September 30, 2022.

SECTION 3. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

APPROVED AND AUTHENTICATED on this 28th day of SEPTEMBER, 2021.

Enacted and approved this 28th day of September, 2021, in Holly Hill



2. -2021-R-77 Resolution

A Resolution of the City Commission of the City of Holly Hill, Florida, Authorizing the City Manager to Enter into an Agreement with Mead and Hunt, Inc., to Provide Professional Services for the Project, “WTP Clearwell Transfer Pumping System Rehabilitation and Replacement” Not to Exceed \$78,416.00; Providing for Severability; and Providing an Effective Date.

(Requested by Antoine Khoury, Public Works)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Roy Johnson, District 4 - Commissioner
SECONDER:	John Penny, District 1 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

RESOLUTION

2021-R-77

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MEAD AND HUNT, INC., TO PROVIDE PROFESSIONAL SERVICES FOR THE PROJECT, “WTP CLEARWELL TRANSFER PUMPING SYSTEM REHABILITATION AND REPLACEMENT” NOT TO EXCEED \$78,416.00; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MEAD AND HUNT, INC., TO PROVIDE PROFESSIONAL SERVICES FOR THE PROJECT, “WTP CLEARWELL TRANSFER PUMPING SYSTEM REHABILITATION AND REPLACEMENT” NOT TO EXCEED \$78,416.00; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, City staff have determined that WTP Clearwell Transfer Pumping System is in need of refurbishing and replacement of some old parts and wiring; and

WHEREAS, the City has a continuing services agreement with and has received a proposal from Mead and Hunt, Inc., to perform the engineering services for this project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION

OF THE CITY OF HOLLY HILL, FLORIDA:

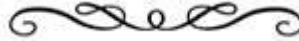
SECTION 1. That the City Commission of the City of Holly Hill does hereby authorize the City Manager to enter into an agreement with Mead and Hunt, Inc., to provide professional services for the project, “WTP Clearwell Transfer Pumping System Rehabilitation and Replacement” not to exceed \$74,827.00.

SECTION 2. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 3. This Resolution shall take effect immediately upon its adoption.

APPROVED AND AUTHENTICATED on this 28th day of SEPTEMBER, 2021.

Enacted and approved this 28th day of September, 2021, in Holly Hill

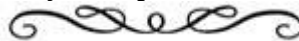


3.

Annual Consumer Price Increase for Solid Waste Collection (Waste Pro)
(Requested by Antoine Khoury, Public Works)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Roy Johnson, District 4 - Commissioner
SECONDER:	John Penny, District 1 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

Enacted and approved this 28th day of September, 2021, in Holly Hill

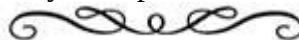


4.

Property & Liability Insurance for FY 2022
(Requested by Stella Gurnee, Finance)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Roy Johnson, District 4 - Commissioner
SECONDER:	John Penny, District 1 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

Enacted and approved this 28th day of September, 2021, in Holly Hill



5.

2021-2022 VOCA Agreement Victims of Crime Act (VOCA) VOCA-2021-2022 Holly Hill Police Department

(Requested by Jeff Miller, Police)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Roy Johnson, District 4 - Commissioner
SECONDER:	John Penny, District 1 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

Enacted and approved this 28th day of September, 2021, in Holly Hill



10. REGULAR AGENDA

1. -2021-R-78 Resolution

A Resolution of the City Commission of the City of Holly Hill, Florida, Authorizing the City Manager to Execute the 1st Amendment to the Development Agreement with Martens Charities, LLC; and Providing for Severability; and Providing for an Effective Date.

(Requested by Joseph Forte, City Manager)

Mayor Via opened public participation. No one spoke.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Penny Currie, District 2 - Commissioner
SECONDER:	Roy Johnson, District 4 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

RESOLUTION

2021-R-78

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE 1ST AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH MARTENS CHARITIES, LLC; AND PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE 1ST AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH MARTENS CHARITIES, LLC; AND PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Holly Hill (City) is the owner of Hollyland Park located

at 1082 Ridgewood Avenue, Holly Hill, Florida 32117; and

WHEREAS, Martens Charities, LLC (Developer) desires to develop Pictona at Holly Hill, Phase 2, in a portion of Hollyland Park, hereinafter described in Exhibit "A" and Exhibit "B" attached hereto (Property) to build and operate additional Pickleball Recreational Facilities and other improvements as hereinafter described (Project); and

WHEREAS, the City and the Developer desire to develop Phase 2 on the Property for the Project; and

WHEREAS, the City and the Developer have executed simultaneously herewith the 1st Amendment to the Incentive Agreement providing for the financial incentives to be provided by the City CRA fund; and

WHEREAS, this attached 1st Amendment to the agreement shall provide the terms and conditions of the development of the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA:

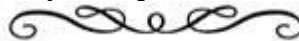
SECTION 1. That the City Commission approves the Development Agreement and the City Manager of the City of Holly Hill is authorized to execute the 1st Amendment to the Development Agreement.

SECTION 2. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 3. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

APPROVED AND AUTHENTICATED on this 28th day of SEPTEMBER, 2021.

Enacted and approved this 28th day of September, 2021, in Holly Hill



2. -2021-R-79 Resolution

A Resolution of the City Commission of the City of Holly Hill, Florida, Authorizing the City Manager to Execute the 1st Amendment to the Management Agreement with Pictona at Holly Hill; Providing for Severability; and Providing for an Effective Date.

(Requested by Joseph Forte, City Manager)

Mayor Via opened public participation. No one spoke.

The Commission discussed subparagraph 2 and suggested adding the following language to the First Amendment to the Management Agreement to read as follows: "**a minimum of once every month** with the date and time to be coordinated with Pictona."

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Penny Currie, District 2 - Commissioner
SECONDER:	John C. Danio, District 3 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

RESOLUTION**2021-R-79**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE 1ST AMENDMENT TO THE MANAGEMENT AGREEMENT WITH PICTONA AT HOLLY HILL; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE 1ST AMENDMENT TO THE MANAGEMENT AGREEMENT WITH PICTONA AT HOLLY HILL; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Holly Hill (City) is the owner of Hollyland Park located at 1066 Ridgewood Avenue, Holly Hill, Florida 32117; and

WHEREAS, Pictona at Holly Hill desires to manage and operate Phase 2 of the Facility in the designated portion of Hollyland Park hereinafter described in Exhibit “A” and Exhibit “B” attached hereto (Property); and

WHEREAS, the City desires to contract with Pictona at Holly Hill to manage and operate the Facility; and

WHEREAS, this amendment shall provide the terms and conditions of the development of the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA:

SECTION 1. That the City Commission approves the 1st Amendment to the Management Agreement and the City Manager of the City of Holly Hill is authorized to execute the Management Agreement.

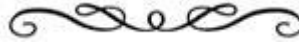
SECTION 2. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 3. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

APPROVED AND AUTHENTICATED on this 28th day of SEPTEMBER,

2021.

Enacted and approved this 28th day of September, 2021, in Holly Hill



3. -2021-R-80 Resolution

A Resolution of the City Commission of the City of Holly Hill, Florida, Authorizing the City Manager to Execute the 1st Amendment to the Incentive Agreement with the Martens Charities, LLC (Developer); Providing for Severability; and Providing for an Effective Date.

(Requested by Joseph Forte, City Manager)

Mayor Via opened public participation. No one spoke.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Penny Currie, District 2 - Commissioner
SECONDER:	Roy Johnson, District 4 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

RESOLUTION

2021-R-80

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE 1ST AMENDMENT TO THE INCENTIVE AGREEMENT WITH THE MARTENS CHARITIES, LLC (DEVELOPER); PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE 1ST AMENDMENT TO THE INCENTIVE AGREEMENT WITH THE MARTENS CHARITIES, LLC (Developer); AND PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Holly Hill (City) is the owner of Hollyland Park located at 1082 Ridgewood Avenue, Holly Hill, Florida 32117; and

WHEREAS, Martens Charities, LLC (Developer) desires to develop a portion of Hollyland Park hereinafter described in Exhibit "A" attached hereto (Property) to build and operate additional Pickleball Courts and Educational and Training Facility and other improvements as hereinafter described (Project); and

WHEREAS, the City and the Developer desire to develop the Property for the Project; and

WHEREAS, the City and the Developer have executed simultaneously herewith a 1st Amendment to the Development Agreement providing for the construction of the property;

and

WHEREAS, this 1st Amendment to the Incentive Agreement shall continue the terms and conditions of the original Incentives being funded through reimbursement from the City's CRA fund.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA:

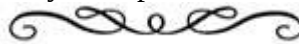
SECTION 1. That the City Commission approves the Amendment to the Incentive Agreement and the City Manager of the City of Holly Hill is authorized to execute the Incentive Agreement.

SECTION 2. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 3. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

APPROVED AND AUTHENTICATED on this 28th day of SEPTEMBER, 2021.

Enacted and approved this 28th day of September, 2021, in Holly Hill



4. -2021-R-81 Resolution

A Resolution of the City of Holly Hill, Florida, Expressing Support for the Echo Grant Application for Pictona at Holly Hill, Phase 2, at Hollyland Park Located at 1066 Ridgewood Avenue, Holly Hill, Florida 32117; Providing for Severability; and Providing for an Effective Date.

(Requested by Joseph Forte, City Manager)

Mayor Via opened public participation. No one spoke.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Penny Currie, District 2 - Commissioner
SECONDER:	John C. Danio, District 3 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

RESOLUTION

2021-R-81

A RESOLUTION OF THE CITY OF HOLLY HILL, FLORIDA, EXPRESSING SUPPORT FOR THE ECHO GRANT APPLICATION FOR PICTONA AT HOLLY HILL, PHASE 2, AT HOLLYLAND PARK LOCATED AT 1066 RIDGEWOOD AVENUE, HOLLY HILL, FLORIDA 32117; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

A RESOLUTION OF THE CITY OF HOLLY HILL, FLORIDA, EXPRESSING SUPPORT FOR THE ECHO GRANT APPLICATION FOR PICTONA AT HOLLY HILL, PHASE 2, AT HOLLYLAND PARK LOCATED AT 1066 RIDGEWOOD AVENUE, HOLLY HILL, FLORIDA 32117; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, In 2020, the voters of Volusia County approved the Volusia ECHO initiative which provides grants to not-for-profits, municipalities and county departments; and

WHEREAS, The program provides grant funds for projects that enhance the quality of life in Volusia County by insuring the availability of Environmental, Cultural, Historical and Outdoor recreational opportunities; and

WHEREAS, City staff has reviewed and prepared the grant application for the fiscal year 2021-2022; and

WHEREAS, the proposed project for the ECHO Application known as Pictona At Holly Hill, Phase II is to be constructed at 1066 Ridgewood Avenue; Holly Hill, Florida 32117; and

WHEREAS, the total cost of Phase 2 is \$5,000,000.00 of which we are asking for \$2,500,000.00 in ECHO funds. The 1:1% match is comprised of \$1,000,000.00 of unencumbered cash, in the Community Development Fund for FY 2021-2022; \$1,500,000.00 contributions from Martens Charities, and

WHEREAS, should the total project costs exceed the budgeted amount, said funds shall be paid out of the existing contingency in the CRA fund or through additional contributions from Martens Charities.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF HOLLY HILL, FLORIDA:

SECTION 1. That the City Commission of the City of Holly Hill does hereby support the ECHO Grant Application for Pictona At Holly Hill, Phase 2, located at 1066 Ridgewood Avenue, Holly Hill, FL 32117.

SECTION 2. If any section, sentence, clause or phrase of this Resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall in no way affect the remaining portions of this Resolution.

SECTION 3. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. This Resolution shall become effective immediately upon its adoption.

APPROVED AND AUTHENTICATED on this 28th day of SEPTEMBER, 2021.

Enacted and approved this 28th day of September, 2021, in Holly Hill



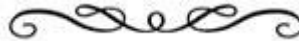
5. -2021-O-3043 Ordinance

SECOND READING - an Ordinance of the City of Holly Hill, Volusia County, Florida, Annexing by Voluntary Petition Approximately 1.23 Acres Identified as Parcel Number 4244-01-07-0081 Contiguous to the City of Holly Hill; Redefining Boundaries of the City of Holly Hill to Include Said Property and the Adjacent Right-Of-Way of 8Th Street; Directing the City Clerk to File the Ordinance with the Clerk of the Circuit Court, with the Chief Administrative Officer of Volusia County and with the Department of State; Providing for Conflicting Ordinances; Providing for Severability; and Providing for an Effective Date.

(Requested by Brian Walker, Board of Planning and Appeals)

Mayor Via opened public participation. No one spoke.

RESULT:	APPROVED AT 1ST READING [UNANIMOUS] Next: 10/12/2021 6:00 PM
MOVER:	Roy Johnson, District 4 - Commissioner
SECONDER:	Penny Currie, District 2 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson



11. PUBLIC HEARINGS - NONE

12. COMMUNICATIONS

A. City Manager & Staff Comments

Mr. Forte mentioned the YMCA and that there would be a Fountainhead agenda item coming forward on the next agenda.

B. City Attorney Comments

None.

C. City Commission Comments

Commissioner Penny mentioned that the wayfinding signs looks nice behind City Hall; the YMCA needs to have a board of directors like the other surrounding YMCA's; the event that took place at the Boys and Girls Club tonight was nice.

Commissioner Johnson suggested everyone begin to concentrate on the widening of LPGA Blvd., again; Volusia County Fair is taking place this year; looking forward to the Christmas parade this year and that he will be attending the TPO meeting coming up.

D. Mayor's Comments

Mayor Via informed the Commission that himself, Mr. Forte and Chief Miller will be attending a meeting in Daytona at the Ocean Center regarding the Truck Task Force tomorrow night; spoke briefly about the annual Golf Tournament put on by the Chamber of Commerce last Saturday, good turnout. Reminded everyone that the National Night Out will be on Tuesday, Oct. 5th in front of City Hall and that on Saturday, Oct. 2 at 11:15 AM the groundbreaking ceremony will be taking place at Pictona for Pictona Phase II, everyone is welcome to attend.

13. ADJOURNMENT

The meeting adjourned at approximately 7:35 PM.



**STAFF REPORT
CITY OF HOLLY HILL, FLORIDA**

4.1

**City Commission
Agenda Item**

MEETING DATE: October 12, 2021
FROM: Jeff Miller
SUBJECT: Memorandum of Understanding (MOU) is Made by and Between
FINDER Software Solutions, LLC, Hereinafter Referred to as
“FSS”, and the Holly Hill Police Department for the Usage of
the FINDER Database System for FY 2021-2022
NUMBER: (ID # 3488)
APPLICANT:
PLANNER:

DISCUSSION:

The Holly Hill Police Department currently uses several different databases to gather information on suspects and stolen pieces of property. One of the databases that is currently used is the FINDER Information Database, which is frequently used to track potential suspects and pawned stolen property.

The FINDER database has been developed and operated by the Center for Law Enforcement Technology, Training, and Research. Annually, the Center for Law Enforcement Technology, Training, and Research requests a Memorandum of Understanding (MOU) with each of the participating agencies to ensure compliance with all set standards.

This agreement will expire on September 30, 2022.

FISCAL

ANALYSIS:

There is no cost to utilize the FINDER Information Database this year since the City of Holly Hill has received a waiver for all program expenses.

STAFF

RECOMMENDATION:

Approve the Holly Hill Police Department's entry into a MOU with the Center for Law Enforcement Technology, Training, and Research, for the utilization of the FINDER Information Database.

COMMISSION

GOAL:

Goal #4: Provide proficient public health and safety services in terms of police and fire protection, water, storm water, waste water, and solid waste management and disaster preparedness with a focus on intergovernmental collaboration, private sector partnerships, and

utilization of technologies and proven innovations.

MOTION:

MOTION TO APPROVE THE HOLLY HILL POLICE DEPARTMENT'S ENTRY INTO A MOU WITH FINDER SOFTWARE SOLUTIONS, LLC., FOR THE UTILIZATION OF THE FINDER INFORMATION DATABASE.

- Holly Hill PD 2021-22 MOU Finder (PDF)

MEMORANDUM OF UNDERSTANDING FOR PARTICIPATION
IN THE FINDER DATA SHARING NETWORK (FLORIDA – Region 5)

This Memorandum of Understanding (MOU) is made by and between FINDER Software Solutions, LLC, a Florida limited liability company, hereinafter referred to as "FSS", with offices at:

FINDER Software Solutions, LLC
 11315 Corporate Blvd, Suite 110
 Orlando, FL 32817
 (407) 545-3730

and the:

Holly Hill Police Department
 1065 Ridgewood Avenue
 Holly Hill, FL 32117

hereinafter referred to as "AGENCY." AGENCY's designated contacts are as follows:

Law Enforcement Point of Contact: _____

Contact Phone: _____

Contact email: _____

Information Technology Point of Contact: _____

Contact Phone: _____

Contact email: _____

Public Records Custodian/RMLO: _____

Contact Phone: _____

Contact email: _____

AGENCY agrees to notify FSS in writing if there are any changes to the above contacts.

A. Background

FINDER® is an information sharing system built through the cooperative efforts of Florida law enforcement agencies and the University of Central Florida, initially known as the Florida Integrated Network for Data Exchange and Retrieval. Since expanding into other states and integrating with other systems such as the FBI's N-DEx and NCIS' LInX, FINDER has become known as the Federated Integrated Network for Data Exchange and Retrieval. As used herein, and where applicable, the term "FINDER" shall include the FINDERPawn system if utilized by the AGENCY.

B. Purpose and Term of this MOU

The purpose of this MOU is to set forth the terms and conditions under which AGENCY will participate in the FINDER data sharing system from October 1, 2021, through September 30, 2022. The provisions of this MOU which govern AGENCY's use of FINDER will remain in effect beyond the expiration of this MOU should AGENCY continue utilizing the FINDER system for any period of time not covered by a subsequent MOU.

C. Performance Under this MOU by FSS

For the period of this MOU, FSS agrees to:

1. Provide technical support for versions of the FINDER application that are deployed to AGENCY during the period of this MOU.
2. Develop and/or modify "parsers" necessary to ensure quality data sharing between AGENCY and the FINDER system.
3. FSS, in its sole discretion, and with due consideration to any recommendations by the Florida Law Enforcement Data Sharing Consortium ("Consortium"), may develop and deploy enhancements to the FINDER system that address public safety needs.
4. FSS, in its sole discretion, may assist AGENCY with information sharing needs that may or may not be directly related to FINDER.
5. Pursuant to the Bylaws of the Consortium, AGENCY may appoint one member and one alternate to the Steering Committee of the Consortium. Unless AGENCY instructs FSS otherwise, AGENCY's representative on the Steering Committee will be the Law Enforcement Point of Contact listed on page 1 hereof. Said representative will receive notification of all Consortium meetings and other issues of importance to the membership.
6. Public Record of Agreement
 - a. FSS shall comply with the Florida public records laws found in Chapter 119 of the Florida Statutes and, as specifically required by F.S. 119.0701(2)(b), LETTR will: "(1) Keep and maintain public records required by the public agency to perform the service; (2) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law; (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency; and (4) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency."

Should FSS fail to comply with the public records laws, AGENCY may immediately terminate this agreement by delivering a written notice of termination to FSS at the address specified on page 1 hereof.

- b. The public records referred to in this section consist of copies of this MOU and correspondence relating to the MOU.
- c. **IF THE CONTRACTOR (FSS) HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, THEY WILL CONTACT THE AGENCY'S CUSTODIAN OF PUBLIC RECORDS SPECIFIED ON PAGE 1 HEREOF.**
- 7. FSS shall abide by all aspects of the FBI's CJIS Security Policy referenced in D.1. below and the CJIS Security Addendum attached thereto, as either may be amended from time to time.

D. Performance Under this MOU by AGENCY

For the period of this MOU, AGENCY agrees that:

1. AGENCY must follow the current U. S. Department of Justice Criminal Justice Information Security Policy which can be found at <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>.
2. AGENCY's use of the FINDER system is contingent upon the AGENCY retaining authorized access to Florida's Criminal Justice Network (CJNet). The AGENCY's access to CJNet is governed by the Criminal Justice User Agreement between the AGENCY and the Florida Department of Law Enforcement (FDLE).
3. AGENCY's use of the FINDER system must follow, where applicable, the requirements established in the CJNet User Agreement. These requirements include, but are not limited to:
 - a. Use of the FINDER system is restricted to the administration of criminal justice or as otherwise specifically authorized or required by law. AGENCY will allow only properly screened, authorized personnel to have access to information contained within the FINDER system.
 - b. It is the responsibility of the AGENCY to ensure that access to FINDER is for authorized purposes only and to regulate proper access to and use of the system and information at all times.
 - c. The AGENCY will disseminate information derived from the FINDER system only to criminal justice agencies and only for criminal justice purposes. Criminal justice purposes include criminal justice employment screening. Records contained in the FINDER system must be verified with and documented by the contributing agency.
4. AGENCY is only authorized to provide FINDER access to their own personnel. Requests from other agencies for a FINDER user account, including for multi-agency task forces, should be referred to support@findersoftware.com. However, if AGENCY hosts other agencies on their RMS and/or CAD system, AGENCY may permit authorized personnel from such hosted agency to access AGENCY's FINDER server provided such hosted agency also has a current MOU with FSS.
5. AGENCY is responsible for ensuring that records subject to orders for expungement or sealing are appropriately removed from AGENCY's FINDER server and other data sharing systems.
6. AGENCY's use of FINDER is subject to the following specific requirements:

- a. The AGENCY shall permit FSS personnel to conduct inquiries with regard to any alleged or potential security violations, as well as for routine audits. AGENCY personnel should be on notice that the FINDER system logs every query.
 - b. AGENCY will permit FSS personnel to access AGENCY's local FINDER server (via secure remote connection) as necessary for FINDER updates and/or troubleshooting.
 - c. Any public records request made to the AGENCY pursuant to Chapter 119, F.S. for information from the FINDER system will be forwarded to the law enforcement agency that is the original contributor of the information to the FINDER system. Any request to the AGENCY from another law enforcement agency for information obtained from the FINDER system will be treated as exempt pursuant to Section 119.071(2)(c)2a. It is understood and acknowledged, however, that to the extent the AGENCY is required to disclose any documents or related information pursuant to Chapter 119, F.S., nothing herein shall prohibit it from so doing.
 - d. An Agency reporting or classifying an individual as a criminal gang member, criminal gang associate, sexual predator, sexual offender or any other type of offender or defined association within FINDER is solely responsible to ensure the individual meets the statutory definition thereof.
7. FSS is not responsible for the acquisition, maintenance, operation or repair of AGENCY's workstations or servers, or for supplies or software licensing therefor; or for AGENCY's personnel costs related to the use of the FINDER system.

E. Data Ownership; Accuracy; Security

1. AGENCY retains sole ownership of, exclusive control over, and sole responsibility for the information it contributes and may at any time update or correct any of its information in FINDER, or delete some or all of AGENCY's data from FINDER or any other data sharing system connected to the FINDER system.
2. Information submitted by AGENCY will not be altered or changed in any way except by AGENCY or with AGENCY's express written consent. AGENCY controls which of its personnel have access to the "Data Expunge Utility" in FINDER.
3. All records in the FINDER system will be clearly marked to identify which law enforcement agency contributed the data. Records must be verified by the contributing agency before using the information for affidavits, subpoenas, warrants or any other purpose.
4. As directed by FDLE, FSS will share AGENCY's records and/or provide AGENCY access to other national data sharing systems that are exclusively for law enforcement, such as the FBI's National Data Exchange (N-DEX) or NCIS's Law Enforcement Information Exchange (LInX).
 - a. Additional MOU(s) may be required to authorize AGENCY's sharing with or access to other systems.
 - b. If AGENCY does not wish to share or receive data nationally via the FINDER system, AGENCY must notify FSS in writing at the time of execution of this MOU.
5. The data provided by the AGENCY is never owned by FSS, other data sharing systems, third party vendors or government organizations. No agreement entered into by FSS on behalf of the AGENCY to share data with a national system will transfer ownership of AGENCY's data to any other party.
6. Each party agrees to use the same degree of care in protecting information accessed under this MOU as it exercises with respect to its own sensitive information. Each party agrees to take appropriate corrective administrative and/or disciplinary action against any of its personnel who misuse the FINDER system as if it were an abuse of their own sensitive information systems.

F. Liability

1. AGENCY understands that FSS, its managers, officers, agents, and employees shall not be liable in any claim, demand, action, suit or proceeding, including, but not limited to, any suit in law or in equity, for damages by reason of, or arising out of, any false arrest or imprisonment or for any loss, cost, expense or damages resulting from or arising out of the acts, omissions or detrimental reliance of the personnel of the AGENCY in entering, removing or relying upon information transmitted through the FINDER system.
2. To the extent provided by law, the AGENCY agrees to be responsible for the negligent acts or omissions of its personnel arising out of or involving any information contained in, received from, entered into or transmitted through the FINDER system. Nothing herein shall be construed to be a waiver of sovereign immunity.
3. To the extent provided by law, FSS agrees to be responsible for the intentional or grossly negligent acts or omissions of its personnel arising out of their programming services or involving any information contained in, received from, entered into or transmitted through the FINDER system.
4. FSS acknowledges that it has the right to provide the foregoing services and, to its knowledge, the activities hereunder do not conflict with any duties or obligations of FSS to any other agency, entity or third party. FSS makes no representations or warranties, expressed or implied, regarding its performance under this MOU including, but not limited to, the marketability, use or fitness for any particular purpose of the services or non-infringement of rights pursuant to the provision of services under this MOU. FSS is not liable for any direct, indirect, consequential, special or other damages suffered by AGENCY as a result of AGENCY's use of FSS's services, unless there is a showing of gross negligence or willful misconduct on behalf of FSS.

G. Patents; Copyrights; Intellectual Property

1. Ownership of patents, copyrights, software or intellectual property of any type that result from any arrangement arising from this MOU or FSS's performance under this MOU, including, but not limited to, all FINDER applications, upgrades and parsers, will remain with FSS.
2. FSS will grant a limited, non-exclusive, royalty-free, non-transferable, non-sublicensable right and license to use the FINDER software application and any other software developed by FSS for AGENCY solely for the purposes of using such software for its intended purpose.

H. Termination

1. Either Party may terminate this MOU at any time by giving thirty (30) days written notice to the other party. If termination is exercised by AGENCY, FSS is not obligated to refund any monies previously paid to FSS by AGENCY or on AGENCY's behalf.
2. FSS may terminate this MOU immediately, without advance notice, in the event AGENCY breaches this MOU or fails to fulfill its obligations hereunder. FSS is not obligated to refund any monies previously paid to FSS by AGENCY or on AGENCY's behalf in the event of such breach or failure.
3. Upon termination of this MOU for any reason, AGENCY's license in and to FINDER applications and related intellectual property shall immediately cease.

I. Pricing/Payment

Maintenance of the FINDER system for Regional Domestic Security Task Force Region 5 is subsidized by a Homeland Security Grant, but Region 5 agencies are asked to support continuing FINDER development and enhancements by paying the subscription fee of \$2,500.00 established by the Consortium in 2003. However, FSS has waived the standard fee for AGENCY for this MOU term.

J. Related Agreements

The following agreements may also impact AGENCY's use of the FINDER data sharing system:

1. Agreement between Florida Department of Law Enforcement, Criminal Justice Systems Officer, and the Windermere Police Department for Contribution of FINDER Data and Access to N-DEx (copy available upon request); and
2. Memorandum of Understanding between the Windermere Police Department (WPD) and AGENCY for Participation within the National Data Exchange (N-DEx) and the Florida Integrated Network for Data Exchange and Retrieval (FINDER).

K. Amendments; Assignment

This MOU may only be amended by written mutual agreement of authorized representatives from FSS and AGENCY. Neither party may assign this MOU without the prior written consent of the other party.

L. Governing Law

This MOU is to be governed and construed in accordance with the laws of the State of Florida and all applicable Federal statutes and regulations.

M. Attorneys' Fees

In the event it becomes necessary for either party to enforce any of the terms of this MOU, the prevailing party shall be entitled, in addition to such damages or other relief as may be granted, to recover reasonable attorneys' fees and costs, such attorneys' fees to include those incurred in connection with any actual or intended mediation, arbitration, trial or appeal.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have caused this MOU to be executed and effective as of the last signature date below.

FINDER Software Solutions, LLC

"AGENCY"

By: 

By: _____

Jim McClure
Print Name

Print Name

Managing Director
Title

Title

08/13/2021
Date

Date

Attachment: Holly Hill PD 2021-22 MOU Finder (3488 : MOU Finder Database)



**STAFF REPORT
CITY OF HOLLY HILL, FLORIDA**

**City Commission
Agenda Item**

4.2

MEETING DATE: October 12, 2021
FROM: Jeff Miller
SUBJECT: FDOT Grant 2022 Speed / Aggressive Driving Enforcement
Program Project Number : SC-2022-00040 FDOT Contract
NUMBER: (ID # 3487)
APPLICANT:
PLANNER:

DISCUSSION:

The Holly Hill Police Department applied for and was recently awarded a grant from the Florida Department of Transportation (FDOT) to specifically address Speeding /Aggressive Driving. This grant award is for a total of \$40,000.00 that must be used for overtime payments to officers assigned specifically to Traffic Enforcement in the targeted enforcement areas.

This grant allows for targeted enforcement areas throughout the city as speeding complaints have not been isolated to just arterial roadways.

Funding through this grant will expire on September 30, 2022.

FISCAL

ANALYSIS:

This is a non-matching grant that will reimburse the city monthly for qualified overtime expenses. The total grant is for \$40,000.00.

STAFF

RECOMMENDATION:

Approve the acceptance of the FDOT Grant (Project Number: SC-2022-00040) Speed/Aggressive Driving Enforcement Program grant award. The acceptance of the grant will allow for enhanced Traffic Enforcement operations within targeted areas. The overall expectations of this grant award is to reduce speed related crashes in the targeted areas.

COMMISSION GOAL:

Goal #1: Develop and maintain a sound and sustainable financial plan for the city that establishes sufficient reserves for all funds, ensures (whenever possible) that user fees pay for services rendered, provides a realistic capital improvement program, and encourages public/private sector partnerships and intergovernmental partnerships.

Goal #4: Provide proficient public health and safety services in terms of police and fire protection,

water, storm water, waste water, and solid waste management and disaster preparedness with a focus on intergovernmental collaboration, private sector partnerships, and utilization of technologies and proven innovations.

MOTION:

MOTION TO APPROVE THE ACCEPTANCE OF THE FDOT GRANT (PROJECT NUMBER, SC-2022-00040) SPEED/AGGRESSIVE DRIVING ENFORCEMENT PROGRAM GRANT AWARD AND AUTHORIZE THE MAYOR AND AUTHORIZED REPRESENTATIVES TO EXECUTE THE AGREEMENT.

- Aggressive Driving Grant (PDF)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)
SUBGRANT FOR HIGHWAY TRAFFIC SAFETY FUNDS

500-065-01
 SAFETY
 8/21

Project Number: SC-2022-00040	FDOT Contract Number: G2045
Federal Funds Awarded: \$40,000	FDOT DUNS Number: 80-939-7102
Subgrant Award (Start) Date:	Subgrant End Date: 09/30/2022
Part I: GENERAL ADMINISTRATIVE INFORMATION	
Project Title: Speed and Aggressive Driving	
Federal Funding: \$40,000	Match: \$ Total Cost: \$40,000
1. Subrecipient Agency: Agency Name: City of Holly Hill Address Line 1: 1065 Ridgewood Avenue Address Line 2: City: Holly Hill State: Florida Zip: 32117	2. Implementing Agency: Agency Name: Holly Hill Police Department Address Line 1: 1065 Ridgewood Avenue Address Line 2: City: Holly Hill State: Florida Zip: 32117
3. Federal ID Number: 596000337	
4. DUNS Number: 132869686	
5. Chief Financial Officer: Name: Stella Gurnee Address Line 1: 1065 Ridgewood Avenue Address Line 2: City: Holly Hill State: Florida Zip: 32117 Telephone No: (386) 248-9426 ext. E-Mail Address: sgurnee@hollyhillfl.org	6. Project Director: Name: Jeffrey Miller Address Line 1: 1065 Ridgewood Avenue Address Line 2: City: Holly Hill State: Florida Zip: 32117 Telephone No: (386) 248-9494 ext. E-Mail Address: jmiller@hollyhillfl.org
7. Financial Reimbursement Contact: Name: Amy Krok Title: Assistant Finance Director Telephone Number: (386) 248-9430 ext. E-Mail Address: akrok@hollyhillfl.org	8. Project Activity Contact: Name: Jeffrey Miller Title: Chief of Police Telephone Number: (386) 248-9494 ext. E-Mail Address: jmiller@hollyhillfl.org
9. Payment Remittance Address: Name: City of Holly Hill Address Line 1: 1065 Ridgewood Avenue Address Line 2: City: Holly Hill State: Florida Zip: 32117	

Attachment: Aggressive Driving Grant (3487 : FDOT Grant 2022 Speed)

Part II: PROJECT PLAN AND SUPPORTING DATA

State clearly and in detail the aims of the project, precisely what will be done, who will be involved, and what is expected to result. Use the following major headings:

1. Statement of the Problem:

The City of Holly Hill is a river-coastal community located in eastern Volusia County. The city has an estimated population of 12,000 and encompasses +/- 4 square miles. The city is home to perhaps the largest concentration of light industry in Volusia County, and the daytime population is estimated at quadruple that of the permanent population. Furthermore, the city's proximity to the Daytona Beach Resort area results in significant seasonal increases in both population and traffic density associated with various special events to include, but not limited to, Speed Weeks, Spring Break, and Bike Week.

The City of Holly Hill hosts 3 major arterial roadways - Nova Road, Ladies Professional Golf Association (LPGA) Boulevard, and Ridgewood Avenue (US-1). These roadways link the larger neighboring municipalities of Daytona Beach and Ormond Beach. Traffic studies have demonstrated that tens of thousands of motorists transit the City of Holly Hill daily. Speeding complaints received directly from citizens or via social media indicate that speeding through residential neighborhood streets is the police department's most frequently received complaint from our citizens.

According to an April 2020 National Highway Traffic Safety Administration (NHTSA) Fact Sheet, "in 2018 there were 9,378 fatalities in crashes where at least one driver was speeding, which is 26 percent of total traffic fatalities for the year." Furthermore, "Among speeding drivers involved in fatal crashes in 2018, 25 percent did not have valid driver licenses at the time of the crashes, compared to 12 percent of non-speeding drivers (NHTSA, April 2002 Fact Sheet).

Volusia County has worsened its ranking to 6 out of 26 counties of similar size regarding crashes correlated with aggressive driving and speeding (FY2022 Highway Safety Matrix -Ranking of Florida Counties, FDOT). Volusia County was ranked 8 in FY 2021, and FY2020.

2. Proposed Solution:

In keeping with the Florida Department of Transportation (FDOT) Police Traffic Services Project's programmatic objectives, the Holly Hill Police Department will implement an Aggressive Driving and Speeding Enforcement Program designed to increase the comprehensive enforcement of applicable traffic laws citywide.

The program will continue to be separated into 4 different phases following the city's fiscal year:

- 1st Phase (October - December)
- 2nd Phase (January - March)
- 3rd Phase (April - June)
- 4th Phase (July - September)

The 1st and 2nd phases of the operation will begin with disseminating motorist educational materials using social media, print, electronic media, digital road messaging, and public services announcements. In addition, law enforcement officers specifically assigned to the radar/laser traffic enforcement operations, involving static and roving units for greatest visibility, will issue written warnings, educational pamphlets, and other program-specific materials to enhance driver awareness about the dangers of aggressive driving and speeding.

The 3rd and 4th phases will include aggressive enforcement activities by both static and roving law enforcement officers who will issue uniform traffic citations, as appropriate, to observed violators.

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The Holly Hill Police Department Speeding and Aggressive Driving Enforcement Program is designed to enhance public awareness and reduce traffic crashes through motorist educational and targeted enforcement in identified high incident areas citywide.

The program will be conducted once a week, up to 2 different days, using at least 2 officers at a time. These officers will be dedicated traffic officers assigned to the operation. Following each month, the program coordinator will collect data, including the number of traffic stops, written warnings, citations issued, and traffic crashes, and submit via reimbursement packages to FDOT State Safety Office.

3. Project Objectives:

- a. Start enforcement activities within 60 days of subgrant award, unless otherwise approved by the FDOT State Safety Office.
- b. Strive to decrease speed and/or aggressive driving crashes and fatalities countywide by 5% when compared to the previous three year average.
- c. Conduct at least 4 speed and/or aggressive driving high visibility overtime enforcement operations per month.
- d. Participate in the state Southern Shield campaign through speed and/or aggressive driving overtime enforcement operations and educational/community activities.
- e. Conduct and or participate in 9 educational/community outreach events to increase speed and/or aggressive driving awareness during the project period.
- f. Provide speed and/or aggressive driving information and education to the public through the use of message boards/local media outlets/social media/press releases at least 12 times during the project period.

4. Evaluation:

- a. Enforcement activity start date.
- b. Speed and/or aggressive driving crashes and fatalities are reduced by 5% countywide, compared to the previous three-year average.
- c. The number of speed and/or aggressive driving high visibility overtime enforcement operations conducted per month.
- d. The number of speed and/or aggressive driving overtime enforcement operations conducted, and education/community activities conducted/participated in during the Southern Shield campaign.
- e. The number of educational/community outreach events conducted or participated in to increase speed and/or aggressive driving awareness during the project period.
- f. The number of instances that speed and/or aggressive driving information and education is provided to the public through the use of message boards/local media outlets/social media/press releases during the project period.

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Part III: PROJECT DETAIL BUDGET

Each budget category subtotal and individual line item costs listed below cannot be exceeded. The FDOT State Safety Office may approve shifts between budget categories and line items via an amendment.

BUDGET CATEGORY	FEDERAL FUNDS	MATCH	TOTAL COST	INDIRECT ELIGIBLE
A. Personnel Services				
Overtime Salary and Benefits	\$40,000	\$	\$40,000	No
	Overtime Salary and Benefits for law enforcement officers , benefits to include FICA (Social Security and Medicare), Retirement, Workers Compensation, and Health Insurance.			
Subtotal:	\$40,000	\$	\$40,000	
B. Contractual Services				
Subtotal:	\$	\$	\$	
C. Expenses - Any purchase with a per item unit cost of \$200 or more from any line item within this Category, excluding software, must have FDOT State Safety Office written approval, prior to purchase.				
Subtotal:	\$	\$	\$	
D. Equipment Costing \$5,000 or More				
Subtotal:	\$	\$	\$	
E. Indirect Cost				
Subtotal:	\$		\$	
Total Cost of Project:	\$40,000	\$	\$40,000	

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PART IV: PERFORMANCE REPORT

Minimum Performance Standards

The following are the minimum performance standards required in this subgrant agreement. The status of these standards will be reported using FDOT form number 500-065-19 Performance Report and shall be included with each request for reimbursement.

1. Submit request(s) for financial reimbursement.
2. Provide performance report(s).
3. Collect and analyze crash data to determine focus areas for targeted speed and aggressive driving enforcement.
4. Conduct speed and aggressive driving high visibility enforcement operations.
5. Conduct outreach/educational activities for speed and aggressive driving.

National Highway Traffic Safety Administration (NHTSA) Required Activity Reporting

The following statistics are required reporting for any traffic safety enforcement grant . (enforcement grants only)

1. Number of seat belt citations issued during subgrant-funded enforcement activities.
2. Number of impaired driving arrests made during subgrant-funded enforcement activities.
3. Number of speeding citations issued during subgrant-funded enforcement activities.

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Part V: Acceptance and Agreement

Conditions of Subgrant Agreement. Upon approval of this subgrant agreement for highway safety funds, the following terms and conditions shall become binding. The term "Subrecipient" referred to herein, will reference both the Subrecipient and its Implementing Agency. This agreement is line item specific and an amendment to the subgrant agreement is required for any reallocation of funds provided under this subgrant agreement.

FEDERAL REGULATIONS

1. Access to Public Records and Monitoring. The Florida Department of Transportation (FDOT), National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), Chief Financial Officer (CFO), and Auditor General (AG) of the State of Florida, or any of their duly authorized representatives, shall have access for the purpose of audit and examination of books, documents, papers, and records of the Subrecipient and to relevant books and records of the Subrecipient which are not protected from disclosure by State or Federal law, and its consultants and contractors under this subgrant agreement, as provided under applicable State or Federal law.

In addition to review of audits conducted in accordance with 2 CFR Part 200, herein incorporated by reference, monitoring procedures will include on-site visits by Department staff, limited scope audits as defined by 2 CFR Part 200, and status checks of subgrant activity via telephone calls from FDOT State Safety Office staff to Subrecipients. By entering into this subgrant agreement, Subrecipients agree to comply and cooperate with monitoring procedures. In the event that a limited scope audit of the Subrecipient is performed, the Subrecipient agrees to bring the project into compliance with this subgrant agreement. The Subrecipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the CFO or AG to the extent allowed by State or Federal law.

2. Audit. The administration of resources awarded through the Department to the Subrecipient by this subgrant agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of Federal awards or limit the authority of any State agency inspector general, the State of Florida Auditor General or any other State official. With the exception of documents protected by State law, the Subrecipient shall comply with all audit and audit reporting requirements as specified below.

- (a) In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F - Audit Requirements, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to Federal awards provided through the Department by this subgrant agreement. By entering into this subgrant agreement, the Subrecipient agrees to comply and cooperate fully with any 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 Department, State of Florida Chief Financial Officer (CFO) or State of Florida Auditor General.
- (b) The Subrecipient, a non-Federal entity as defined by 2 CFR Part 200, Subpart F - Audit Requirements, as a subrecipient of a Federal award awarded by the Department through this subgrant agreement is subject to the following requirements:
 - i. In the event the Subrecipient expends a total amount of Federal awards equal to or in excess of the threshold established by 2 CFR Part 200, Subpart F - Audit Requirements, the Subrecipient must have a Federal single or program-specific audit for such fiscal year conducted in accordance with the provisions of 2 CFR Part 200, Subpart F - Audit Requirements. Part VI to this subgrant agreement provides the required Federal award identification information needed by the Subrecipient to further comply with the requirements of 2 CFR Part 200, Subpart F - Audit Requirements. In determining

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Federal awards expended in a fiscal year, the Subrecipient must consider all sources of Federal awards based on when the activity related to the Federal award occurs, including the Federal award provided through the Department by this subgrant agreement. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F - Audit Requirements. An audit conducted by the State of Florida Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F - Audit Requirements, will meet the requirements of this part.

- ii. In connection with the audit requirements, the Subrecipient shall fulfill the requirements relative to the auditee responsibilities as provided in 2 CFR Part 200, Subpart F - Audit Requirements.
- iii. In the event the Subrecipient expends less than the threshold established by 2 CFR Part 200, Subpart F - Audit Requirements, in Federal awards, the Subrecipient is exempt from Federal audit requirements for that fiscal year. However, the Subrecipient must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Subrecipient's audit period for each applicable audit year. In the event the Subrecipient expends less than the threshold established by 2 CFR Part 200, Subpart F - Audit Requirements, in Federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F - Audit Requirements, the cost of the audit must be paid from non-Federal resources (*i.e.*, the cost of such an audit must be paid from the Subrecipient's resources obtained from other than Federal entities).
- iv. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F - Audit Requirements, and required by this section, shall be submitted, when required by 2 CFR §200.512, by or on behalf of the Subrecipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR §200.36 and §200.512. The FAC's website provides a data entry system and required forms for submitting the single audit reporting package. Updates to the location of the FAC and data entry system may be found at the OMB website. The FAC is the repository of record for audits required by 2 CFR Part 200, Subpart F - Audit Requirements, and this Agreement. However, the Department requires a copy of the audit reporting package also be submitted to FDOTSingleAudit@dot.state.fl.us within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period as required by 2 CFR Part 200, Subpart F - Audit Requirements.
- v. Within six months of acceptance of the audit report by the FAC, the Department will review the Subrecipient's audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the Federal award provided through the Department by this subgrant agreement. If the Subrecipient fails to have an audit conducted in accordance with 2 CFR Part 200, Subpart F - Audit Requirements, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:
 - 1. Temporarily withhold cash payments pending correction of the deficiency by the Subrecipient or more severe enforcement action by the Department
 - 2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance
 - 3. Wholly or partly suspend or terminate the Federal award
 - 4. Initiate suspension or debarment proceedings as authorized under 2 CFR Part 180 and Federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the Federal awarding agency)

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5. Withhold further Federal awards for the Project or program
6. Take other remedies that may be legally available
- vi. As a condition of receiving this Federal award, the Subrecipient shall permit the Department, or its designee, the CFO or State of Florida Auditor General access to the Subrecipient's records including financial statements, the independent auditor's working papers and project records as necessary. Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.
- vii. Copies of financial reporting packages required by this section shall be submitted by or on behalf of the Subrecipient directly to each of the following:

Office of Comptroller, MS 24
 605 Suwannee Street
 Tallahassee, Florida 32399-0450
FDOTSingleAudit@dot.state.fl.us

The Auditor General's Office at the following address:

Auditor General
 Local Government Audits/342
 Claude Pepper Building, Room 401
 111 West Madison Street
 Tallahassee, Florida 32399-1450

The Auditor General's website (<https://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

- viii. Any reports or other information required to be submitted to the Department pursuant to this Agreement shall be submitted timely in accordance with 2 CFR §200.512, section 215.97, Florida Statutes, and Chapters 10.550 (local government entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- ix. The Subrecipient, when submitted financial reporting packages to the Department for audits done in accordance with 2 CFR Part 200, Subpart F - Audit Requirements, or Chapters 10.550 (local government entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Subrecipient in correspondence accompanying the reporting package.
- (c) The Subrecipient shall retain sufficient records demonstrating its compliance with the terms of the award and 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 CFO or State of Florida Auditor General access to such records upon request. The Subrecipient shall ensure that the audit working papers are made available to the Department, or its designee, the CFO, or State of Florida 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. The Subrecipient shall further permit access to all Project records by the Secretary and Inspector General of the United States Department of Transportation and the Comptroller General of the United States, or their designees.
- (d) The Subrecipient shall permit, and shall require its contractors to permit, the Department's and NHTSA's authorized representatives to access the Project site; inspect all work, materials, payrolls, and records; and to audit the books, records and accounts pertaining to the financing and development of the Project.

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3. Offsets. If, after subgrant completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset the amount claimed from payments due for work or services under any other agreement it has with the Subrecipient if, upon demand, payment of the claimed amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.

4. Buy America Act. The Subrecipient agrees to comply and require consultants and contractors to comply with all applicable standards, orders, and regulations issued pursuant to the Buy America Act, Buy America Act Waiver (Docket No. NHTSA-2015-0065) and NHTSA Guidance Buy American Act Procedure for Highway Safety Grant Programs (revised 11-20-2015) herein incorporated by reference. The Subrecipient shall include the following Buy America provisions in all subcontract awards:

The Buy America Act prohibits the use of Federal highway safety grant funds to purchase any manufactured product or software/information technology systems whose unit purchase price is \$5,000 or more, including motor vehicles, that is not produced in the United States. NHTSA may waive those requirements if (1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

Each manufactured end product must comply with the provisions of the Buy America Act. Additionally, any manufactured add-on to an end product is, itself, an end product that must comply with the Act.

To be reimbursed with Federal highway safety grant funds for a purchase, a State must comply with the requirements of the Buy America Act. Non-compliance will result in denial of reimbursement.

5. Clean Air Act and Federal Water Pollution Control Act. Subgrant agreements for amounts in excess of \$150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). The Subrecipient shall include this provision in all subcontract awards in excess of \$150,000.

6. Code of Conduct. The Subrecipient has established, and will maintain, a written code or standard of conduct applicable to its officers, employees, board members or agents, and those individuals' relatives, that prohibits their involvement in the selection, award, or administration of any contract in connection with the Project if they have a present or potential financial or other significant interest therein and prohibits the acceptance of any gratuity, favor, or other thing of monetary value from any person interested or involved in the performance of work on the Project.

7. Conferences and Inspection of Work. Conferences may be held at the request of any party to this subgrant agreement. Representatives of the Department or the U.S. Department of Transportation (USDOT), or both, shall be privileged to visit the site for the purpose of inspection and assessment of work being performed at any time.

8. Contract Work Hours and Safety Standards Act. Where applicable, all subcontracts under this subgrant agreement in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

9. Debarment and Suspension. No subcontract issued under this subgrant agreement, will be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in

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accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

10. Disadvantaged Business Enterprises (DBE).

- (a) The Subrecipient agrees to the following assurance:

The Subrecipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program required by 49 CFR, Part 26, herein incorporated by reference. The Subrecipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this subgrant agreement. Upon notification to the Subrecipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.), herein incorporated by reference.

- (b) The Subrecipient agrees to include the following assurance in each contract with a consultant or contractor and to require the consultant or contractor to include this assurance in all subcontract agreements:

The consultant or contractor and subconsultant or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant or contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of USDOT-assisted contracts. Failure by the consultant or contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Subrecipient or the Department deems appropriate.

11. **Methods of procurement.** Subrecipients must follow the procurement standards in 2 CFR 200 sections 200.318 through 200.327.

12. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

- (a) The Subrecipient must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

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- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

13. Domestic Preference for Procurements. As appropriate and to the extent consistent with law, the Subrecipient should, to the greatest extent practicable under this Subgrant, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts including all purchase orders for work or products under this subgrant.

For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

14. Equal Employment Opportunity. No person shall, on the grounds of race, color, religion, sex, handicap, or national origin, be excluded from participation in, be refused the benefits of, or be otherwise subjected to discrimination under this Agreement, or any project, program, or activity that receives or benefits from this Agreement. The Subrecipient agrees to comply with Executive Order (E.O.) 11246, as amended by E.O. 11375, and as supplemented by 41 CFR, Part 60, herein incorporated by reference. The Equal Opportunity Clause contained in 41 CFR section 60-1.4 is included in this Agreement by reference.

In connection with the carrying out of the Project, the Subrecipient shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin and will comply with all Federal statutes and implementing regulations relating to nondiscrimination. The Subrecipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subrecipient shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development or operation of the Project, except contracts for standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Subrecipient shall post, in conspicuous places available to employees and applicants for employment for Project work, notices.

15. No Federal Obligation. This agreement is financed by federal funds. However, payments to the subrecipient will be made by the Department. The United States is not a party to this Agreement and no reference in this Agreement, to the United States, USDOT, NHTSA, or any representatives of the federal government makes the United States a party to this Agreement.

16. Nondiscrimination. Subrecipients will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21

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- (b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects)
- (c) Federal-Aid Highway Act of 1973, (23 U.S.C. 324 et seq.), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex)
- (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 et seq.), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27
- (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), (prohibits discrimination on the basis of age)
- (f) The Civil Rights Restoration Act of 1987, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, Subrecipient's and contractors, whether such programs or activities are Federally-funded or not)
- (g) Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38
- (h) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations)
- (i) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087-74100)
- (j) Nondiscrimination Clause.

During the performance of this subgrant, the Subrecipient agrees:

- (a) To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time
- (b) Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 21 and herein
- (c) To permit access to its books, records, accounts, other sources of information, and its facilities as required by the FDOT State Safety Office, USDOT or NHTSA
- (d) That, in event a Subrecipient fails to comply with any nondiscrimination provisions in this subgrant, the FDOT State Safety Office will have the right to impose such subgrant sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the Subrecipient under the contract/agreement until the Subrecipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part.
- (e) To insert this clause, including paragraphs (a) through (e), in every subcontract and sub-agreement and

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in every solicitation for a subcontract or sub-agreement, which receives Federal funds under this program

- 17. Ownership of Data and Creative Material.** The ownership of material, discoveries, inventions and results developed, produced, or discovered by this subgrant agreement are governed by the terms of 2 CFR, Section 200.315, Intangible Property, herein incorporated by reference.

The Subrecipient may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under this Subgrant. The Federal and State awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal and State purposes, and to authorize others to do so.

The Federal Government has the right to:

- (1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and
- (2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal and State purposes.

- 18. Political Activity.** The Subrecipient will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

- 19. Prohibition on certain telecommunications and video surveillance services or equipment.** subrecipients are prohibited from obligating or expending loan or subgrant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- 20. Property Accountability.** The Subrecipient shall establish and administer a system to control, protect, preserve, use, and maintain and dispose of any property furnished by the Department, or purchased pursuant to this subgrant agreement in accordance with Federal Property Management Standards as set forth in 49 CFR, Section 18.32, 49 CFR 19, Section 19.34, or 2 CFR, 200.33, herein incorporated by reference. This obligation continues as long as the property is retained by the Subrecipient notwithstanding the ending of this subgrant agreement.

- 21. Restrictions on Lobbying.** The Subrecipient agrees to comply and require consultants and contractors to comply with 49 CFR, Part 20, New Restrictions on Lobbying, herein incorporated by reference, for filing of certification and disclosure forms.

- (a) **Certification Regarding Federal Lobbying.** The Subrecipient certifies, to the best of his or her knowledge and belief, that:
 - i. 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,

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amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- ii. 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.
 - iii. The Subrecipient shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.
 - iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (b) **Restriction on State Lobbying.** None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.
- (c) **Restriction of Use for Federal Civilian and Military Employees.** Subgrant funding is not allowable for the cost of training federal civilian and military employees. Indian Nations may be supported with written approval from the FDOT Traffic Safety Administrator and NHTSA.

22. Termination and Suspension.

- (a) **Generally.** If: (i) the Subrecipient abandons or, before the end of the state fiscal year for which financial assistance for the Project is provided under this Agreement, finally discontinues the Project; (ii) the Subrecipient fails to comply with applicable law or the terms of this Agreement; or (iii) for any other reason, the commencement, prosecution, or timely completion of the Project by the Subrecipient is rendered improbable, infeasible, impossible, or illegal, the Department may, by written notice to the Subrecipient, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or the Department may terminate any or all of its obligations under this Agreement. Termination of this Agreement shall be governed by the provisions of 2 CFR Part 200.
- (b) **Actions Upon Termination or Suspension.** Upon receipt of any final termination or suspension notice from the Department, the Subrecipient shall proceed promptly to carry out the actions required in such notice, which may include any or all of the following: (1) necessary action to terminate or suspend, as the case may be, Project activities and contracts and such other action as may be required or desirable to keep to the minimum the costs upon the basis of which the financing is to be computed; (2) furnish a statement of the Project activities and contracts, and other undertakings the cost of which are otherwise includable as Project costs; and, (3) remit to the Department such portion of the financing and any advance payment previously received as is determined by the Department to be due under the provisions of the Agreement. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and budget as approved by the Department or upon the basis of terms and conditions imposed by the Department upon the failure of the Subrecipient to furnish the schedule, plan, and budget within a reasonable time. The approval of a remittance by the Subrecipient shall not constitute a waiver of any claim which the Department may otherwise have arising out

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of this Agreement.

- (c) **Termination for Convenience.** In accordance with Appendix II to 2 CFR Part 200-Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, either Party may terminate this Agreement for convenience upon thirty (30) days' advance written notice to the other Party. Termination of this Agreement, as such, will not affect payment for services satisfactorily furnished prior to the termination.

23. Human Trafficking. The Subrecipient shall include a provision in each contract it enters into with a private entity in connection with the Project by which the Subrecipient's contractor agrees that it and its employees that perform any work on the Project shall not, during the term of this Agreement, engage in trafficking in persons, procure a commercial sex act, or use forced labor in the performance of work on the Project.

24. Unauthorized Aliens. The Department shall consider the employment by the Subrecipient of unauthorized aliens a violation of Section 274A of the Immigration and Nationality Act. If the Subrecipient knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.

25. Title VII - Civil Rights Act of 1964. Execution of this Agreement constitutes a certification that the Subrecipient will comply with all the requirements imposed by Title VII of the Civil Rights Act of 1964 (42 U.S.C. 1981, et seq.), which among other things, prohibits discrimination in employment on the basis of race, color, national origin, creed, sex, and age.

26. Americans with Disabilities Act of 1990 (ADA). Execution of this Agreement constitutes a certification that the Subrecipient will comply with all the requirements imposed by the ADA (42 U.S.C. 12101, et seq.), the regulations of the federal government issued thereunder, and the assurance by the Subrecipient pursuant thereto.

27. Integrity Certification. By signing this Subgrant Agreement, the Subrecipient certifies that neither it nor its contractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency. This certification is a material representation of fact upon which the Department is relying in entering this Agreement. If it is later determined that the Subrecipient knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. The Subrecipient shall provide to the Department immediate written notice if at any time the Subrecipient learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

28. Federal Encouragements.

- (a) **Vehicle Pursuits.** Pursuant to 23 U.S.C. 402(j), all law enforcement agencies are encouraged to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police that are currently in effect.
- (b) **Policy on Seat Belt Use.** In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, subrecipients are encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles.
- (c) **Policy on Banning Text Messaging While Driving.** In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, subrecipients are encouraged to:
- i. Adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official business or when performing any work on behalf of the subrecipient agency and/or the Government.

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- ii. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting and driving.
- iii. Insert the substance of this section, including this sentence, in all sub-agreement/subcontracts funded with the subaward provided under this Agreement that are \$15,000 or more.

29. Reversion of Unexpended Subgrant Funds. All funds granted by the Department under this Agreement that have not been expended during the term of this Agreement shall revert to the Department.

STATE REGULATIONS

30. Compliance with State Procurement of Personal Property and Services Laws. The Subrecipient agrees to comply with all applicable provisions of Chapter 287, Florida Statutes (F.S.). The following provisions are stated in this subgrant agreement pursuant to sections 287.133(2)(a) and 287.134(2)(a), F.S.

- (a) **Section 287.133 (2)(a), F.S.** 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, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- (b) **Section 287.134 (2)(a), F.S.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 any public entity; and may not transact business with any public entity.
- (c) The convicted vendor list and discriminatory vendor list can be found on the Florida Department of Management Services (DMS) website.

31. Compliance with State Public Records Laws. The Subrecipient agrees to comply with all provisions provided in Chapter 119 F.S. If the Subrecipient receives a public records request concerning its work undertaken pursuant to this Department subgrant agreement, the Subrecipient must take appropriate action as required by Chapter 119, F.S. If the Subrecipient is unable to ascertain how best to comply with its obligations, it should seek the advice of counsel and/or FDOT State Safety Office.

The Department shall unilaterally cancel this subgrant agreement if the Subrecipient refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F.S., and made or received by the Subrecipient in conjunction with this subgrant agreement.

32. Cooperation with Inspector General. It is the duty of every Subrecipient to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this subgrant agreement. Section 20.055(5), F.S. The Subrecipient agrees to comply with Section 20.055(5), F.S., and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), F.S.

33. E-Verify. Subrecipients:

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- (a) Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
- (b) Shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

34. Indemnification and Insurance.

- (a) **Indemnification.** To the extent permitted by law and as limited by and pursuant to the provisions of Section 768.28, Florida Statutes, the Subrecipient shall indemnify and hold harmless the Department, including the Department's officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Subrecipient and persons employed or utilized by the Subrecipient in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Subrecipient's sovereign immunity.
- (b) **Subrecipient Contracts.** Subrecipient agrees to include the following indemnification clause in all contracts with contractors, subcontractors, consultants, or subconsultants who perform work in connection with this Agreement (modified to appropriately identify the parties):

"To the fullest extent permitted by law, the Subrecipient's contractor/consultant shall indemnify and hold harmless the Subrecipient and the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor/consultant and persons employed or utilized by the contractor/consultant in the performance of this Agreement.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Subrecipient's sovereign immunity."

- (c) **Workers' Compensation.** The Subrecipient shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If contracting for any of the work, the Subrecipient shall ensure that its contractors have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), the Subrecipient shall ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.

35. Reimbursement Obligation. The State of Florida's performance and obligation to reimburse the Subrecipient shall be subject to the availability of Federal highway safety funds and an annual appropriation by the Legislature.

36. Responsibility for Claims and Liability. Subject to the limitations of Section 768.28, F.S., the Subrecipient shall be required to defend, hold harmless and indemnify the Department, NHTSA, FHWA, and USDOT, from all claims and liability, or both, due to negligence, recklessness, or intentional wrongful misconduct of Subrecipient, and its contractor, consultant, agents and employees. The Subrecipient shall be liable for any loss of, or damage to, any material purchased or developed under this subgrant agreement which is caused by the Subrecipient's failure to exercise such care in regard to said material as a reasonable careful owner of similar materials would exercise.

The parties executing this subgrant agreement specifically agree that no provision in this subgrant agreement is intended

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to create in the public or any member thereof, a third-party beneficiary, or to authorize anyone not a party to this subgrant agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this subgrant agreement.

37. Restrictions on Lobbying. No funds subgranted hereunder shall be used for the purpose of lobbying the legislature, judicial branch, or state agencies, per Section 216.347, F.S.

38. Retention of Records. The Subrecipient shall retain sufficient records demonstrating its compliance with the terms of this subgrant agreement for a period of five years from the date the audit report is issued, and shall allow the Department, or its designee, the state CFO, or AG access to such records, which are not protected by State law, upon request. The Subrecipient shall ensure that the independent audit working papers are made available to the Department, or its designee, the state CFO, or AG upon request for a period of at least five years from the date the audit report is issued, unless extended in writing by the Department.

39. Tangible Property. Property purchased under this subcontract does not qualify as Tangible Personal Property as defined by Chapter 273, F.S.

MISCELLANEOUS PROVISIONS

40. Prohibited Interests. The Subrecipient shall not enter into a contract or arrangement in connection with the Project or any property included or planned to be included in the Project, with any officer, director or employee of the Subrecipient, or any business entity of which the officer, director or employee or the officer's, director's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer, director or employee or the officer's, director's or employee's spouse or child, or any combination of them, has a material interest.

- i. "Material Interest" means direct or indirect ownership of more than 5% of the total assets or capital stock of any business entity.
- ii. The Subrecipient shall not enter into any contract or arrangement in connection with the Project or any property included or planned to be included in the Project, with any person or entity who was represented before the Subrecipient by any person who at any time during the immediately preceding two (2) years was an officer, director or employee of the Subrecipient.
- iii. The provisions of this subsection shall not be applicable to any agreement between the Subrecipient and its fiscal depositories, any agreement for utility services the rates for which are fixed or controlled by the government, or any agreement between the Subrecipient and an agency of state government.

41. Interest of Members of, or Delegates to, Congress or Legislature. No member or delegate to the Congress of the United States, or the State of Florida legislature, shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

42. Department Not Obligated to Third Parties. The Department shall not be obligated or liable under this Agreement to any party other than the Subrecipient. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

43. Relationship of Parties. The Subrecipient, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.

44. When Rights and Remedies Not Waived. In no event shall the making by the Department of any payment to the Subrecipient constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist, on the part of the Subrecipient, and the making of such payment by the Department while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

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45. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

46. Sovereign Immunity. Nothing in this Agreement shall constitute a waiver by either party of its sovereign immunity for any damages claimed by third parties.

47. Bonus or Commission. By execution of the Agreement the Subrecipient represents that it has not paid and, also, agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

48. Notices. Any notice, demand, or request which is required to be given under this Agreement in writing shall be delivered to the following address:

Florida Department of Transportation
 Attn: Traffic Safety Administrator
 State Safety Office, MS 53
 605 Suwannee Street
 Tallahassee, Florida 32399-0450

49. Agreement Format. All words used in this Agreement in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

50. JURY TRIAL WAIVER. The Subrecipient and the Department hereby irrevocably and unconditionally waive trial by jury in any legal action or proceeding relating to this agreement and for any counterclaim therein.

51. Execution of Agreement. This Agreement may be simultaneously executed in a minimum of two counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

52. Agreement not Assignable. The Subrecipient may not assign any of its rights or obligations under this Agreement.

53. IRS Form 990 Annual Report and Executive Compensation Reporting. Pursuant to Governor's Executive Order 20-44, if the Subrecipient/Contractor/Vendor/Agency/Other Party is required by the Internal Revenue Code to file **IRS Form 990** and is named in statute with which the Department must form a sole-source, public-private agreement; or through contract or other agreement with the State, annually receives 50% or more of its budget from the State or from a combination of State and Federal funds, Subrecipient/Contractor/Vendor/Agency/Other Party shall submit an Annual Report to the Department, including the most recent **IRS Form 990**, detailing the total compensation for each member of the Subrecipient/Contractor/Vendor/Agency/Other Party executive leadership team. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. Recipient shall inform the Department of any changes in total executive compensation during the period between the filing of Annual Reports required by this Amendment within 60 days of any change taking effect. All compensation reports shall detail the percentage of executive leadership compensation received directly from all State and/or Federal allocations to the Subrecipient/Contractor/Vendor/Agency/Other Party. Annual Reports shall be in the form approved by the Department and shall be submitted to the Department at fdotsingleaudit@dot.state.fl.us within 180 days following the end of each tax year of the Subrecipient/Contractor/Vendor/Agency/Other Party receiving Department funding.

GRANT MANAGEMENT

54. Amendments. The Subrecipient shall obtain prior written approval from the FDOT State Safety Office for changes to this subgrant agreement. Amendments to this subgrant agreement will be approved if the modification(s) to be made will

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achieve or improve upon the outcome of this subgrant agreement's scope of work, or where factors beyond the control of the Subrecipient require the change. Requested amendments to this subgrant agreement shall be in the form of a written request signed by the one of the original signatories of this subgrant agreement. Specific delegation(s) for amendments must be provided in writing from the original signatory of the Subrecipient.

55. Disputes and Appeals. Any dispute, disagreement, or question of fact arising under this subgrant agreement may be addressed to the Traffic Safety Administrator of the FDOT State Safety Office in writing. The Traffic Safety Administrator's decision may be appealed in writing within 30 calendar days from the notification to the Governor's Highway Safety Representative, whose decision is final. Addresses are:

Florida Department of Transportation
 Attn: Traffic Safety Administrator
 State Safety Office, MS 53
 605 Suwannee Street
 Tallahassee, Florida 32399-0450

Florida Department of Transportation
 Attn: Governor's Highway Safety Representative
 State Safety Office, MS 53
 605 Suwannee Street
 Tallahassee, Florida 32399-0450

The Subrecipient shall proceed diligently with the performance of this subgrant agreement and in accordance with Department's decision(s).

56. Equipment. Any equipment purchased under this subgrant agreement with highway safety funds shall not replace previously purchased equipment that is damaged, stolen, lost, or that wears out as a result of misuse, whether the equipment was purchased with federal, state, or local funds.

- (a) **Use of Equipment.** All equipment shall be used for the originally authorized subgrant agreement purpose(s) for as long as needed for those purposes. Subrecipients must maintain an inventory control system that has adequate safeguards in place to prevent loss, damage, or theft.
- (b) **Equipment Costing \$5,000 or more.** Equipment with a useful life of more than one year and an acquisition cost of \$5,000 or more per unit shall be subject to the following requirements:
 - i. Purchases shall receive prior written approval from the FDOT Safety Office.
 - ii. Biannual certification of appropriate use and condition of equipment shall be provided to the FDOT Safety Office.
 - iii. Dispositions must be requested and shall receive prior written approval from the FDOT Safety Office.
- (c) **Disposition of Equipment Costing \$5,000 or more.** In the event the equipment is no longer needed for the originally authorized subgrant agreement purpose(s) or has reached the end of its useful life, Subrecipients should use the Equipment Disposition Request Form 500-065-026 to coordinate with the FDOT State Safety Office to obtain required approvals to dispose of the equipment or transfer the equipment to another agency for use.
- (d) **Disposition of Equipment Costing Less than \$5,000.** Equipment that does not meet the unit purchase price threshold of \$5,000 should be disposed of in accordance with the agencies own procurement and disposition policies. Documentation of this disposition should be noted in the Subrecipient files.
- (e) **Equipment Replacement or Repair.** The Subrecipient is responsible, at their own cost, for replacing or repairing any equipment purchased with Federal highway safety funds that is damaged, stolen, or lost, or that wears out as a result of misuse. The FDOT State Safety Office retains the right to replace or repair any equipment for statewide programs based on exceptional individual circumstances.

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- (f) **Equipment Repossession.** Ownership of all equipment purchased with Federal highway safety funds rests with the Subrecipient; however, the USDOT maintains an interest in the equipment and title vests in the Subrecipient subject to several conditions and obligations under 2 CFR Section 200.313. The Subrecipient must use the equipment for the authorized purposes of the project, whether or not the project continues to be supported by the Federal award, unless the FDOT State Safety Office, on behalf of USDOT, provides written authorization for another use of the equipment that is permissible under 2 CFR Section 200.313. Any equipment purchased with Federal highway safety funds that is not being used by the Subrecipient for the purposes described in the project or in accordance with other authorized uses under 2 CFR Section 200.313, is subject to repossession by the FDOT State Safety Office, on behalf of the USDOT. Items that are repossessed shall be disbursed to agencies that agree to use the equipment for the activity described in this project or for other uses authorized by USDOT.

57. Expense Purchases for \$200 or more: Any office, training, communication, or computer supplies (including computers) with a per item unit cost of \$200 or more within the Expense Category, excluding software, must have FDOT State Safety Office written approval, prior to purchase.

58. Excusable Delays. Except with respect to the defaults of Subrecipient's consultants and contractors which shall be attributed to the Subrecipient, the Subrecipient shall not be in default by reason of any failure in performance of this subgrant agreement in accordance with its terms if such failure arises out of causes beyond the control and without the fault or negligence of the Subrecipient. Such causes are acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Subrecipient. If the failure to perform is caused by the failure of the Subrecipient's consultant or contractor to perform or make progress, and if such failure arises out of causes beyond the control of the Subrecipient and its consultant or contractor, and without the fault or negligence of any of them, the Subrecipient shall not be deemed to be in default, unless (1) the supplies or services to be furnished by the consultant or contractor were obtainable from other sources, (2) the FDOT State Safety Office shall have ordered the Subrecipient in writing to procure such supplies or services from other sources, and (3) the Subrecipient shall have failed to comply reasonably with such order.

Upon request of the Subrecipient, the FDOT State Safety Office shall ascertain the facts and extent of such failure and, if it shall be determined that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly.

If the Subrecipient is unable to fulfill the activities stated in the Proposed Solution or Project Objectives in this agreement (Part II: PROJECT PLAN AND SUPPORTING DATA) due to the COVID-19 pandemic, the Subrecipient must contact the FDOT State Safety Office immediately to discuss potential amendments and/or alternate plans.

59. How this Subgrant Agreement is Affected by Provisions Being Held Invalid. If any provision of this subgrant agreement is held invalid, the remainder of this subgrant agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law. The Subrecipient acknowledges that federal grant requirements are subject to change and agrees that the most recent requirements shall govern its obligations under this Agreement at all times.

60. Ineligibility for Future Funding. The Subrecipient agrees that the Department shall find the Subrecipient ineligible for future funding for any of the following reasons:

- (a) Failure to provide the required audits
- (b) Failure to continue funding positions created with highway safety funds after the Federal funding cycle ends
- (c) Failure to provide required performance and final narrative reports in the required time frame
- (d) Failure to perform work described in Part II of this subgrant agreement

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- (e) Failure to provide reimbursement requests and performance reports in a timely manner
- (f) Providing fraudulent performance reports or reimbursement requests
- (g) Misuse of equipment purchased with Federal highway safety funds

61. Performance. In the event of default, noncompliance, or violation of any provision of this subgrant agreement by the Subrecipient, the Subrecipient's consultant(s) or contractor(s) and supplier(s), the Subrecipient agrees that the Department will impose sanctions. Such sanctions include withholding of reimbursements, retainage, cancellation, termination, or suspension of this subgrant agreement in whole or in part. In such an event, the Department shall notify the Subrecipient of such decision 30 days in advance of the effective date of such sanction. The sanctions imposed by the Department will be based upon the severity of the violation, the ability to remedy, and the effect on the project. The Subrecipient shall be paid only for those services satisfactorily performed prior to the effective date of such sanction.

62. Personnel Hired or Paid Under this Subgrant Agreement.

- (a) **Project Director.** Persons holding the position of Project Director for this subgrant agreement shall not receive reimbursement for personnel hours nor receive any other benefit under this subgrant agreement.
- (b) **Employer Responsibility.** Any and all employees of the Subrecipient whose positions are funded, in whole or in part through this subgrant agreement, shall be the employee of the Subrecipient only, and any and all claims that may arise from said employment relationship shall be the sole obligation and responsibility of the Subrecipient. Personnel hours will only be reimbursed based on actual hours worked on this subgrant agreement. No other allocation method is allowable for reimbursement.
- (c) **Bonuses or stipends.** Bonuses or one-time stipends issued to Subrecipient employees will not be eligible for subgrant reimbursement, as they are not considered salary and are an addition to the salary amounts approved for Subgrant execution. Increases in Subgrant employee salary must be approved by the FDOT State Safety Office. Annual fluctuations in benefits approved in the Subgrant are allowable and eligible for reimbursement.
- (d) **Overtime.**
 - i. **Overtime Hours.** Subgrant funds cannot be used to supplant standard activity hours; therefore, only hours qualifying as "overtime", per the Subrecipient policies will be eligible for reimbursement by this subgrant agreement. In the event a Subrecipient is awarded more than one subgrant agreement within a federal fiscal year, overtime hours for each traffic safety effort must be tracked, reported, and billed based on hours worked for each subgrant agreement type.
 - ii. **Overtime Rate.** Overtime hours are intended for enhanced/increased traffic safety activities. The overtime pay rate for personnel is based on actual cost per employee in accordance with the Subrecipient's payroll policy. Each Subrecipient shall comply with Fair Labor Standards Act (FLSA) requirements and thresholds for overtime accrual and payment and its own policies and procedures, insofar as those policies apply uniformly to both federally-financed and other activities of the Subrecipient, as required by 2 CFR 200.403(c). Additional hours may be called overtime, off duty, extra, additional, etc., as long as it enhances/increases traffic safety activities. A copy of the policy shall be maintained by the Subrecipient and made available for review if requested.

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63. Reports. The following reports are required for reimbursement of subgrant funding:

- (a) **Performance Reports.** (FDOT Form No. 500-065-19). A performance report shall be provided with each request for financial reimbursement, providing the status of the subgrant minimum performance standards, as described in Part IV of this subgrant agreement.
- (b) **Final Narrative Report.** (FDOT Form No. 500-065-20). A Final Narrative Report giving a chronological history of the subgrant activities, problems encountered, major accomplishments, and NHTSA Required Activity Reporting shall be submitted by October 31. Requests for reimbursement will not be processed and will be returned to the Subrecipient as unpaid if the required reports are not provided, following notification.
- (c) **Enforcement Activity Reports.** Enforcement Activity Report(s) for each type of enforcement shall be provided with each request for financial reimbursement for overtime worked. Agency specific activity reports may be used, if those reports include all information detailed in each FDOT Activity Form.
- (d) **Other Reports.** The FDOT State Safety Office reserves the right to require other reports not specified above, as necessary, for subgrant agreement monitoring.

64. Term of this Subgrant Agreement. Each subgrant agreement shall begin on the date the last party signs this subgrant agreement and shall end on September 30, unless otherwise stipulated by the FDOT State Safety Office on the first page of this respective subgrant agreement. In the event this subgrant agreement is for services in excess of \$25,000.00 and a term for a period of more than 1 year, the provisions of Section 339.135(6)(a), F.S., are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year."

65. Travel.

- (a) **Required Forms.** Travel costs for approved travel shall be submitted on the FDOT Contractor Travel Form (FDOT Form No. 300-000-06) or other approved Florida Department of Financial Services form and will be reimbursed in accordance with Section 112.061, F.S. and the most current version of the *Disbursement Handbook for Employees and Managers*.
- (b) **Authorization and Restriction.** All travel authorized under this subgrant shall be subject to any additional authorization requirements or restrictions imposed by: the Governor's Executive Order or other guidance; any requirements or forms for travel cost reimbursement imposed by the Subrecipient that do not violate FDOT travel cost reimbursement requirements; and/or FDOT during the subgrant period.
- (c) **Prerequisite Approvals.** Travel meeting any of the following criteria shall require a written request for approval from the FDOT State Safety Office prior to the incurring of actual travel costs. Request should include sufficient justification to prove that the travel will have significant benefits to the outcome of the subgrant activities and is within the travel budget of the project and relevant to the project:

- i. Purchase of Air fare

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- ii. Travel to conference
- iii. Travel which includes a registration fee
- iv. Out-of-subgrant-specified work area travel
- v. Out-of-state travel

Failure to receive prior written approval will deem the entire travel cost ineligible for payment, regardless of available funding in travel budget.

- (d) **Lodging Reimbursement Limit.** The FDOT State Safety Office shall not pay for overnight lodging/hotel room rates that exceed \$175.00 per night (before taxes and fees). A Subrecipient and/or traveler will be required to expend his or her own funds for paying the overnight lodging/hotel room rate in excess of \$175.00 plus the applicable percentage of fees (other than flat fees). If multiple travelers share a room and the individual cost of the lodging/hotel exceeds the \$175 per night limit, the Subrecipient and/or travelers will be required to expend his or her own funds for paying the excess amount. If another entity is covering the cost of the overnight lodging/hotel then this paragraph does not apply.
- (e) **Lodging for Subgrant Funded Statewide Coalition Meetings and Conferences.** Lodging contracts may be funded to accommodate attendance of subgrant funded statewide coalition meetings, conferences, and programs. If lodging a lodging contract is executed to cover lodging cost, all travelers shall be expected to use the contract, and any attendees choosing alternate lodging accommodations based on preference, shall do so at their own out of pocket costs. Cost for these lodging contracts will be reviewed and approved for program appropriateness and costs savings to the State, as determined and approved by the FDOT State Safety Office.

66. Vehicles. Any Subrecipient receiving subgrant funds to purchase a vehicle (excluding law enforcement vehicles) shall maintain a travel log that contains the beginning and ending mileage, location, and purpose of travel. All agencies must report any vehicle use (excluding law enforcement vehicles) and maintenance with each request for reimbursement using the Safety Grant Vehicle Use Form (FDOT Form No. 500-065-21) and the Safety Grant Equipment Maintenance Form (FDOT Form No. 500-065-22).

Vehicles purchased with federal highway safety funds shall be used for program use only and in accordance with Rule 60B-1.004 F.A.C. Subrecipients who are responsible for the operation and use vehicles for official state business are allowed to permit persons other than state officials or employees to travel in the vehicle provided these persons are conducting official state business or only on special occasions if the purpose of the travel can be more usefully served by including such persons and no additional expense is involved.

It is permissible to transport persons other than state officials and employees during disasters and emergency situations where the state must protect life and property. Providing assistance to motorists whose vehicles are disabled may be considered as an emergency when there is a need to protect life and property.

Any vehicles used for personal reasons or not being used by the Subrecipient for the purposes described in this subgrant agreement shall be subject to repossession by the FDOT State Safety Office.

FINANCIAL/FISCAL

67. Allowable Costs. The allowability of costs incurred under this subgrant agreement shall be determined in accordance with the general principles of allowability and standards for selected cost items set forth in the Applicable Federal Law, state law, and the FDOT Disbursement Handbook for Employees and Managers, to be eligible for reimbursement. All funds not spent in accordance with the Applicable Federal Law will be subject to repayment by the Subrecipient. Only costs directly related to this subgrant agreement shall be allowable.

68. Subcontract Agreements.

- (a) **Requirement for Pre- Approval.** All subcontract agreements must be submitted to the FDOT Safety Office in

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draft form for review and approval. Approval of this subgrant agreement does not constitute approval of subcontract agreements.

(b) **Minimum Mandatory Subcontract Language.** All subcontract agreements shall include as a minimum the following information:

- i. Beginning and end dates of the subcontract agreement (not to exceed this subgrant agreement period)
- ii. Total contract amount
- iii. Scope of work/Services to be provided
- iv. Quantifiable, measurable, and verifiable units of deliverables
- v. Minimum level of service to be performed and criteria for evaluating successful completion
- vi. Budget/Cost Analysis
- vii. Method of compensation/Payment Schedule

(c) **Additional Required Clauses.**

- i. **All subcontract agreements shall contain the following statement:** "The parties to this contract shall be bound by all applicable sections of Part V: Acceptance and Agreement of Project # (insert project number), A final invoice must be received by (insert date)"
- ii. **Buy American Act clause** (see Section 4 of Part V)
- iii. **Certification Regarding Federal Lobbying** (see Section 21 of Part V)
- iv. **Cooperation with Inspector General** (see Section 32 of Part V)
- v. **DBE Clause** (see Section 10(b) of Part V)
- vi. **E-Verify clause** (see Section 33 of Part V)
- vii. **Nondiscrimination clause** (see Section 16 of Part V)
- viii. **Clean Air Act and Federal Water Pollution Control Act clause** (subcontracts in excess \$150,000) (see Section 5 of Part V)
- ix. **Integrity Certification Clause** (see Section 27 of Part V)
- x. **Contract Work Hours and Safety Standards Act** (subcontracts in excess of \$100,000) (see Section 8 of Part V)
- xi. **Indemnification and Insurance** (see Section 34 of Part V)
- xii. **Policy on Banning Text Messaging While Driving Act** (subcontracts in excess of \$15,000) (see Section 28 of Part V)
- xiii. **Human Trafficking Clause** (see Section 23 of Part V)
- xiv. **Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms** (see Section 12 of Part V)
- xv. **Termination for Convenience** (see Section 22 of Part V)

69. Indirect Costs. Indirect costs included in this subgrant agreement in Part III, under the indirect line item are based on the indirect costs rate the Subrecipient used in the competitive concept paper application process. The rate will be applied in accordance with 2 CFR 200 and the Subrecipients federally approved rate agreement. If the Subrecipient does not have a federally approved costs rate agreement, a de minimis rate of 10% of modified total direct costs in the manner described in 2 CFR 200.414 will be used. [The de minimis rate is available only to entities that have never had a negotiated indirect cost rate. When selected, the de minimis rate must be used consistently for all federal awards until such time the Subrecipient chooses to negotiate a rate. A de minimis certification form must be submitted to the Department for review and approval.] All subgrant awards are based on cost benefit, available funding, and if the indirect costs rate requested significantly affects the proposed project's ability to adequately address the traffic safety need.

70. Obligation of Subgrant Funds. Subgrant funds shall not be obligated prior to the effective date or subsequent to the end date of this subgrant agreement period. Only project costs incurred on or after the effective date and on or prior to the end date of this subgrant agreement are eligible for reimbursement. A cost is incurred when the Subrecipient's

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employee or approved contractor or consultant performs the service required or when goods are received by the Subrecipient, notwithstanding the date of order.

71. Procedures for Reimbursement.

- (a) **Required Forms.** All requests for reimbursement of subgrant costs must be submitted on forms provided by the Department (FDOT Form Numbers 500-065-04 through 09 and 19) unless otherwise approved. Forms must be completed in detail sufficient for a proper pre-audit and post audit based on the quantifiable, measurable, and verifiable units of deliverables and costs, including supportive documentation. **ALL requests for reimbursement shall include FDOT Form 500-065-019 Performance Report for the period of reimbursement.**
- (b) **Supporting Documentation.** Invoices for cost reimbursement subgrants must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation shall be submitted for each amount for which reimbursement is being claimed indicating that the item has been paid. Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved subgrant budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided. **Contracts between state agencies may submit alternative documentation to substantiate the reimbursement request, which may be in the form of FLAIR reports or other detailed reports.**

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address
<https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>.

Listed below are types and examples of supporting documentation:

i. Personnel Services.

- a. **Salaries:** Timesheets that support the hours worked on the project or activity must be kept. A payroll register, or similar documentation should be maintained. The payroll register should show gross salary charges, fringe benefits, other deductions, and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.
- b. **Fringe Benefits:** Fringe benefits should be supported by invoices showing the amount paid on behalf of the employee, e.g., insurance premiums paid. If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

- ii. **Contractual Services.** Should be supported by a copy of the approved subcontract agreement, invoice showing payment request and dates of service from the vendor, and proof of payment by the Subrecipient.
- iii. **Expenses.** Should be supported by a copy of any required pre-approvals, invoice showing payment request from the vendor, and proof of payment by the Subrecipient.
- iv. **Travel.** Reimbursement for travel must be in accordance with s. 112.061, F.S. and the most recent version of the FDOT Disbursement Handbook, which includes submission of the travel costs on an approved state travel form along with supporting receipts and invoices.
- v. **Equipment Costing Over \$5,000.** Should be supported by a copy of any required pre-approvals, invoice showing payment request from the vendor, and proof of payment by the Subrecipient.

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- vi. **Indirect Cost.** If the subgrant stipulates that indirect costs will be paid based on a specified rate, then the calculation should be shown. Indirect costs must be in the approved agreement budget and the entity must be able to demonstrate that the costs are not duplicated elsewhere as direct costs. All indirect cost rates must be evaluated for reasonableness and for allowability and must be allocated consistently.

All documentation should be readable and include the necessary calculations to support the amounts being requested. Illegible documents or documents for the wrong time-period or calculation amounts will require resubmittal by the Subrecipient. If documents provided do not equal totals requested, additional documentation may be requested, or amounts reimbursed will be reduced to totals supported by documentation.

Subgrant agreements between state agencies, and/or subgrant agreements between universities may submit alternative documentation to substantiate the reimbursement request that may be in the form of FLAIR reports or other detailed reports and do not have to include check numbers.

(c) **Frequency and Deadlines for Submission.**

- i. **Partial Claims.** Subrecipients should submit all costs for reimbursement monthly unless no costs were incurred within a month. Reimbursement for personnel costs may be submitted after each pay period, if desired. Failure to submit reimbursement requests in a timely manner may result in this subgrant agreement being terminated.
- ii. **Final Claim.** A final financial request for reimbursement shall be submitted and/or postmarked no later than October 31 following the end of this subgrant agreement period. Such request should be distinctly identified as **Final**.

The Subrecipient agrees to forfeit reimbursement of any amount incurred or expended if the final request is not submitted and/or postmarked by October 31 following the end of this subgrant agreement period.

- (d) **Travel Reimbursement.** Bills for travel expenses specifically authorized in this subgrant agreement shall be submitted on the FDOT Contractor Travel Form (300-000-06) and will be paid in accordance with Section 112.061, F.S. and the most current version of the FDOT Disbursement Handbook for Employees and Managers.
- (e) **Equipment Reimbursement.** All requests for reimbursement of equipment having a unit cost of \$5,000 or more and a useful life of one year or more shall be accompanied by a Non-Expendable Property Accountability Record (FDOT Form No. 500-065-09). Reimbursement of these equipment costs shall not be made before receipt of this form.
- (f) **Media Purchase Reimbursement.** Proof of performance (e.g., copies and/or images of posters, air schedules, etc.) of all paid media purchased with subgrant funds shall be attached to reimbursement requests.
- (g) **Signature Requirements.** All requests for reimbursement shall be signed by an Authorized Representative of the Subrecipient, or their delegate. Delegation letters must be provided for each subgrant agreement.
- (h) **Reimbursement Timeline.** Subrecipients providing goods and services to the Department should be aware of the following time frames. The FDOT State Safety Office has a 30-day review process to approve goods and services that starts on the date of receipt of financial reimbursement request. After that review and approval, the Department 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. Financial reimbursement requests may be returned if not completed properly. If a payment is not available within 40 days from the FDOT State Safety Office approval, a separate interest penalty

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at a rate as established pursuant to Section 55.03(1), F.S., will be due and payable, in addition to the financial reimbursement request amount, to the Subrecipient. Interest penalties of less than one (1) dollar will not be enforced unless the Subrecipient requests payment. Financial reimbursement requests that have to be returned to a Subrecipient because of Subrecipient preparation errors will result in a delay in the payment. The financial reimbursement request payment requirements do not start until a properly completed financial reimbursement request is provided to the Department.

- (i) **Financial Consequences.** Payment shall be made only after receipt and approval of deliverables and costs incurred. If the Department determines that the performance of the Subrecipient is unsatisfactory, the Department shall notify the Subrecipient of the deficiency to be corrected, which correction shall be made within a timeframe to be specified by the Department. The Subrecipient shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Subrecipient will address all issues of subgrant agreement non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or subgrant agreement noncompliance. If the corrective action plan is unacceptable to the Department, the Subrecipient will not be reimbursed to the extent of the non-performance. The Subrecipient will not be reimbursed until the Subrecipient resolves the deficiency. If the deficiency is subsequently resolved, the Subrecipient may bill the Department for the unpaid reimbursement request(s) during the next billing period. If the Subrecipient is unable to resolve the deficiency, the funds shall be forfeited at the end of this subgrant agreement term.
- (j) **Vendor Ombudsman.** A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Subrecipients who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

72. Tracking and Retention of Financial Records. The Subrecipient shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this subgrant agreement shall be maintained and made available upon request to the Department at all times during the period of this subgrant agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Subrecipients general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work.

73. Program Income. Program income means gross income earned by Subrecipient that is directly generated by a supported activity or earned as a result of the subgrant award during the subgrant period of performance. Program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs and any remaining program income must be offset against the final request for reimbursement. Program income that the Subrecipient did not anticipate at the time of the subgrant award must be used to reduce the Federal award and Subrecipient contributions rather than to increase the funds committed to the project.

74. Registration for Attendance. No activities funded under this subgrant agreement shall charge a registration fee for attendance.

75. Responsibility of Subrecipient. The Subrecipient shall establish fiscal control and fund accounting procedures that assure proper disbursement and accounting of subgrant funds and required non-federal expenditures. All monies spent on this project shall be disbursed in accordance with provisions of the Project Detail Budget as approved by the FDOT State Safety Office. All expenditures and cost accounting of funds shall conform to 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards, herein incorporated by reference, (hereinafter referred to as Applicable Federal Law).

REQUIREMENTS

76. Child Safety Seats. Any agency that receives child safety seats must have at least one staff member who is a

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current Certified Child Passenger Safety Technician.

77. Enforcement.

- (a) **Automated Traffic Enforcement.** No subgrant funds will be awarded or expended to carry out a program to purchase, operate, or maintain an automated traffic enforcement system. (23 U.S.C. 402(c)(4)). The term "automated traffic enforcement system" includes any camera that captures an image of a vehicle for the purposes only of red light and speed enforcement, and does not include hand held radar and other devices operated by law enforcement officers to make an on-the-scene traffic stop, issue a citation, or other enforcement action at the time of violation. Subgrant funding will not be utilized or reimbursed for continuing priorly initiated investigations, court or Administrative Hearings, and enforcement from aircraft.
- (b) **Data Driven.** Selection of enforcement activity locations should be based on current data that identifies high-risk areas with the greatest number of crashes, serious injuries, fatalities, and/or traffic violations (citations). Data should be reviewed periodically to ensure that the most current high-risk areas are continually addressed throughout this subgrant agreement period.
- (c) **High Visibility Enforcement.** All law enforcement agencies shall conduct High Visibility Enforcement while conducting enforcement under this subgrant agreement.

High Visibility Enforcement is defined as:

Intense: Enforcement activities are over and above what normally takes place.
 Frequent: Enforcement occurs often enough to create general deterrence.
 Visible: A majority of the public sees or hears about the enforcement.
 Strategic: Enforcement targets high-risk locations during high-risk times.

(d) Impaired Driving Enforcement.

- i. **Hours of Emphasis.** A strong emphasis of enforcement operations should be during the hours of 6:00 pm to 6:00 am. Expansion of enforcement operation hours can be adjusted based on supporting data and prior approval by the FDOT State Safety Office. Agencies should ensure that enforcement saturation/wolfpack/roving patrols are conducted in periods of no fewer than 3 consecutive hours. The FDOT State Safety Office reserves the right to request a copy of any subgrant funded checkpoint After Action Report.
- ii. **Mobilization Participation.** All law enforcement agencies that receive impaired driving subgrant funding should participate in all NHTSA impaired driving mobilizations for the following holidays and events: New Year's Day, NFL Super Bowl, St. Patrick's Day, Cinco de Mayo, Independence Day, Labor Day, Halloween, and the end of year holiday season.
- iii. **Required Credentials for Impaired Driving Enforcement.** Any law enforcement officer who takes enforcement action and receives compensation under an impaired driving subgrant must have successfully completed at least one of the following within the last five years:
 - a. NHTSA/IACP 24 hour DWI Detection and Standardized Field Sobriety Testing (SFST) course
 - b. NHTSA/IACP 4 hour DWI Detection and Standardized Field Sobriety Testing (SFST) refresher course
 - c. NHTSA/IACP DWI Detection and Standardized Field Sobriety Testing (SFST) Instructor Development course
 - d. NHTSA/IACP 8-hour DWI Detection and Standardized Field Sobriety Testing (SFST) Instructor Update course
 - e. NHTSA/IACP Advanced Roadside Impaired Driving Enforcement (ARIDE) course

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- f. Be an active certified Drug Recognition Expert (DRE)
- (e) **Motorcycle Enforcement.** No subgrant funds will be used for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.
- (f) **Occupant Protection Enforcement.** All law enforcement agencies that receive occupant protection subgrant funding should participate in all NHTSA occupant protection mobilizations for Click It or Ticket and are encouraged to participate in Child Passenger Safety Week and National Seat Check Saturday. Safety belt enforcement is encouraged for both day and nighttime.
- (g) **Speed and Aggressive Driving Enforcement.** All law enforcement agencies that receive speed and aggressive driving subgrant funding should participate in the NHTSA Regional speed and aggressive driving mobilization for Operation Southern Shield.
 - i. **Required Credentials for Speed Enforcement.** Any law enforcement officer who is using a radar or laser speed detection system, must be certified in the use of that piece of equipment.

78. Public Service Announcements, Marketing, and Advertisements.

- (a) **Closed Caption Requirement.** All public service announcements produced with Federal highway safety funds shall be closed captioned for the hearing impaired.
- (b) **Media Plan.** All paid media reimbursed with subgrant funds shall contain a traffic safety message. In order to maximize the effectiveness of the paid media, when marketing or advertising is included in subgrant activities, it shall be done only in conjunction with proven, effective countermeasures, and when the message of the media is designed to call attention to those countermeasures. Before incurring costs related to the paid media, a final draft of the media and media plan shall be submitted to the FDOT State Safety Office for review.

Media plans should include the following:

- i. What program/policy the paid media is supporting
- ii. How the paid media will be implemented to support an operational enforcement program whether it be a periodic crackdown/mobilization or an on-going saturation or roving patrol
- iii. The amount allocated for paid media
- iv. Anticipated creative costs associated with the paid media
- v. The measures that will be used to assess message recognition and penetration of the target audience.
- (c) **Tagging.** All subgrant funded public service announcements, marketing, and advertisements shall be tagged "Funding provided by the Florida Department of Transportation, or Funded by FDOT", or FDOT logo, "Brought to you by" or "Provided by ..." may also be used for this requirement. Television commercials must include a statement as set forth above. The name of the Subrecipient and its logo can appear on the paid media, if approved by the FDOT State Safety Office, but the names of individuals connected with the Subrecipient shall not appear when paid for with Federal highway safety funds, unless otherwise approved by the FDOT State Safety Office.
- (d) **Prohibition of Gifts.** Contractual agreements for marketing and advertising which include communications, public information, and paid media expenditures shall not include gifts as defined by Section 112.312, F.S., which includes items such as tickets, seats, food, travel, apparel, memorabilia, etc., to any representative of this subgrant agreement or any of their traffic safety partners unless the item or service is regularly made available to the general public at no cost.

Attachment: Aggressive Driving Grant (3487 : FDOT Grant 2022 Speed)

Project Title: Speed and Aggressive Driving
 Project Number: SC-2022-00040
 FDOT Contract Number: G2045

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79. Public Information and Education Items. Public Information and Education Items are defined as materials whose purpose is to convey substantive information about highway safety. Paper, pamphlets, flash drives, CD-ROMs, and similar media that contain educational materials are all allowable because their purpose is to contain and convey educational information. In order to be considered educational, distributed material must provide substantial informational and educational content to the public (not merely a slogan) and have the sole purpose of conveying that information. If a Subrecipient chooses to provide educational content on a flash drive, CD-ROM, or similar device, that device must be an economical method of conveying the information.

Before printing or ordering any public information and education items, a final draft or drawing of the items shall be submitted to the FDOT State Safety Office for review and approval.

Requests should include the following:

- (a) What public information or educational item is being requested
- (b) What program/policy is the item supporting
- (c) Who the target audience is
- (d) How the item will be distributed
- (e) Estimated unit cost(s) for the item

The FDOT State Safety Office shall provide written approval for reimbursement if the items are appropriate for purchase under this subgrant agreement. Copies and/or images of all public information and education items purchased with highway safety funds shall be attached to the forms requesting reimbursement for the items.

Printed materials (tip cards, brochures, safety pledges, surveys, activity books, booklets, guides, etc.) can be freely distributed, however tangible items (helmets, DVDs, CD-ROMs, flash or thumb drives, reflective tape, etc.) require the person receiving the item to interact with the Subrecipient in some manner related to the goal of the project in order to receive the item. Interaction includes attending a presentation, having a discussion with a program representative, signing a pledge sheet, filling out a survey form, answering a traffic safety question, etc. The results of this interaction must be reported in the performance report.

Where feasible, either the Florida Department of Transportation logo or the words "Funding provided by the Florida Department of Transportation or Funded by FDOT" shall appear on or in all items. "Brought to you by" or "Provided by" may also be used for this requirement. The name of the Subrecipient and its logo can appear on any of the public information and education items. The names of individuals connected with the Subrecipient shall not appear on any printed materials, and advertisements paid for with highway safety funds.

Per 2 CFR 200 and NHTSA Memo "Use of NHTSA Highway Safety Grant Funds for Certain Purchases" (dated May 18, 2016), Use of NHTSA grant funds to purchase promotional items or memorabilia (backpacks, cups, flashlights, key chains, magnets, shirts, stickers, sunglasses, umbrellas, etc.) is prohibited and therefore unallowable under this subgrant agreement.

80. Publication and Printing of Observational Surveys and Other Reports.

- (a) **Review and Publication.** During this subgrant agreement period, but before publication or printing, the final draft of any report or reports required under this subgrant agreement or pertaining to this subgrant agreement shall be submitted to the FDOT State Safety Office for review and concurrence. After this subgrant agreement period has concluded, Subrecipients may publish after providing the FDOT State Safety Office with at least a 15-day prior written notice.
- (b) **Discussion.** Both written and oral releases are considered to be within the context of publication. However, there is no intention to limit discussion of the study with small technical groups or lectures to employees or students. Lectures that describe plans but discuss neither data nor results may be given to other groups without

Amendment Number: Original

Project Title: Speed and Aggressive Driving
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advance approval.

(c) **Required Language.** Each publication or other printed report covered by Paragraph 80(a) above shall include the following statement on the cover page:

- i. This report was prepared for the FDOT State Safety Office, Department of Transportation, State of Florida, in cooperation with the National Highway Traffic Safety Administration, U.S. Department of Transportation and/or Federal Highway Administration, U.S. Department of Transportation.
- ii. The conclusions and opinions expressed in these reports are those of the Subrecipient and do not necessarily represent those of the FDOT State Safety Office, Department of Transportation, State of Florida, and/or the National Highway Traffic Safety Administration, U.S. Department of Transportation and/or Federal Highway Administration, or any other agency of the State or Federal Government.

81. Safety Belt Policy. Each Subrecipient shall have a written safety belt policy, which is enforced for all employees. A copy of the policy shall be maintained by the Subrecipient and made available for review if requested.

82. Special Conditions.

Attachment: Aggressive Driving Grant (3487 : FDOT Grant 2022 Speed)

Project Title: Speed and Aggressive Driving
 Project Number: SC-2022-00040
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Part VI: Federal Financial Assistance (Single Audit Act)

Federal resources awarded pursuant to this subgrant are as follows:

CFDA Number and Title:

- ☒ 20.600 - State and Community Highway Traffic Safety Program (NHTSA 402 Funds)
- ☐ 20.614 - National Highway Traffic Safety Administration Discretionary Safety Grants (NHTSA 403 funds)
- ☐ 20.616 - National Priority Safety Program (NHTSA 405 Funds)

*Federal Funds Awarded: \$40,000
Awarding Agency: Florida Department of Transportation
Indirect Cost Rate:
**Award is for R&D: No

Federal resources awarded pursuant to this subgrant are subject to the following audit requirements:

- (a) 2 CFR Part 200 - Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards
www.ecfr.gov

Federal resources awarded pursuant to this subgrant may also be subject to the following:

- (a) Federal Funding Accountability and Transparency Act (FFATA) Sub-award Reporting System (FSRS)
www.fsrs.gov

<u>Federal Award Identification Number (FAIN):</u>	<u>FAIN Award Date:</u>
69A37520300004020FLO	02/03/2020

Attachment: Aggressive Driving Grant (3487 : FDOT Grant 2022 Speed)

Project Title: Speed and Aggressive Driving
 Project Number: SC-2022-00040
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Attachment: Aggressive Driving Grant (3487 : FDOT Grant 2022 Speed)

IN WITNESS WHEREOF, the parties affirm that they have each read and agree to the conditions set forth in Part V of this Agreement that each have read and understand the Agreement in its entirety. Now, therefore, in consideration of the mutual covenants, promises and representations herein have executed this Agreement by their undersigned officials on the day, month, and year set out below.	
<i>(For FDOT Use Only)</i> STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION By: _____ <i>Authorized FDOT State Safety Office Representative</i> Date: _____ <i>Date Signed</i>	SUBRECIPIENT By: _____ <i>Signature of Authorized Representative</i> Name: _____ <i>Authorized Representative's Name Printed</i> Title: _____ <i>Authorized Representative's Title Printed</i> Date: _____ <i>Date Signed</i>
Reviewed for the Florida Department of Transportation: By: _____ <i>Authorized FDOT Attorney</i> Date: _____ <i>Date Signed</i>	IMPLEMENTING AGENCY By: _____ <i>Signature of Authorized Representative</i> Name: _____ <i>Authorized Representative's Name Printed</i> Title: _____ <i>Authorized Representative's Title Printed</i> Date: _____ <i>Date Signed</i>
NOTE: These signatures are the only recognized authorized representatives for this agreement, unless delegation is granted in writing.	



**STAFF REPORT
CITY OF HOLLY HILL, FLORIDA**

4.3

**City Commission
Agenda Item**

MEETING DATE: October 12, 2021
FROM: Jeff Miller
SUBJECT: Florida DHSMV MOU for DAVID System 2022
NUMBER: (ID # 3486)
APPLICANT:
PLANNER:

DISCUSSION:

Over the last several years, the City of Holly Hill Police Department has maintained a continuous MOU with the Florida DHSMV for the use of the DAVID driver's license information system. The information system is used extensively throughout each day by Holly Hill Police Officers to check vehicle tag registrations and driver's licenses for validity.

FISCAL ANALYSIS:

There is no budgetary impact to the City.

STAFF

RECOMMENDATION:

Authorize the Chief of Police to enter into Data Exchange Memorandum of Understanding (MOU) with the Florida Department of Highway Safety and Motor Vehicles (DHSMV).

COMMISSION GOAL:

<u>Goal</u>	<u>#</u>	<u>4:</u>
--------------------	-----------------	------------------

Provide proficient public health and safety services in terms of police and fire protection, water, storm water, waste water, and solid waste management and disaster preparedness with a focus on intergovernmental collaboration, private sector partnerships, and utilization of technologies and proven innovations.

MOTION:

AUTHORIZE THE CHIEF OF POLICE TO ENTER INTO DATA EXCHANGE MEMORANDUM OF UNDERSTANDING (MOU) WITH THE FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES (DHSMV).

- DAVID MOU (PDF)



**MEMORANDUM OF UNDERSTANDING
FOR LAW ENFORCEMENT AGENCY ACCESS TO
DRIVER AND VEHICLE INFORMATION DATABASE SYSTEM (DAVID)**

This Memorandum of Understanding (MOU) is made and entered into by and between Holly Hill Police Department, hereinafter referred to as the Requesting Party, and the Florida Department of Highway Safety and Motor Vehicles, hereinafter referred to as the Providing Agency, collectively referred to as the Parties.

I. Purpose

The Providing Agency is a government entity whose primary duties include issuance of motor vehicle and driver licenses, registration and titling of motor vehicles, and enforcement of all laws governing traffic, travel, and public safety upon Florida's public highways.

In carrying out its statutorily mandated duties and responsibilities, the Providing Agency collects and maintains personal information that identifies individuals. This information is stored in the Department's Driver and Vehicle Information Database system, commonly referred to as "DAVID." Based upon the nature of this information, the Providing Agency is subject to the disclosure prohibitions contained in 18 U.S.C. §2721, the Driver's Privacy Protection Act (hereinafter "DPPA"), Section 119.0712(2), Florida Statutes, and other statutory provisions.

The Requesting Party is a law enforcement agency operating under the laws and authority of the state of Florida. As a law enforcement agency, the Requesting Party may receive personal information from DAVID under the government agency exception provided in DPPA as indicated in Attachment I. The Requesting Party utilizes DAVID information for the purposes of carrying out its statutorily mandated law enforcement and prosecutorial functions.

This MOU is entered into for the purpose of establishing the conditions and limitations under which the Providing Agency agrees to provide electronic access to DAVID information to the Requesting Party. Use of the data by Requesting Party shall only be for a lawful purpose.

II. Definitions

For the purposes of this Agreement, the below-listed terms shall have the following meanings:

- A. DAVID - The Providing Agency's Driver and Vehicle Information Database system that accesses and transmits driver and vehicle information.
- B. Driver License Information - Driver license and identification card data collected and maintained by the Providing Agency. This information includes personal information as defined below.
- C. Emergency Contact Information (ECI) - Information contained in a motor vehicle record listing individuals to be contacted in the event of an emergency. Emergency contact information may be released to law enforcement agencies through the DAVID system for purposes of contacting those listed in the event of an emergency, as noted in Section 119.0712 (2)(d), Florida Statutes.
- D. Driver Privacy Protection Act (DPPA) - The Federal Act (see, 18 United States Code § 2721, et seq.) that prohibits release and use of personal information except as otherwise specifically permitted within the Act.
- E. Government Entity - Any non-law enforcement agency of the state, city or county government and all Federal agencies, which may include Federal law enforcement agencies.
- F. Insurance Record – Insurance information, such as Insurance Company name, policy type, policy status, insurance creation and expiration date provided to the Requesting Party, pursuant to Section 324.242(2), Florida Statutes.

- G. Parties - The Providing Agency and the Requesting Party.
- H. Personal Information – As described in Chapter 119, Florida Statutes, information found in the motor vehicle record, which includes, but is not limited to, the subject's driver identification number, name, address, telephone number, social security number, medical or disability information, and emergency contact information.
- I. Point-of-Contact (POC) - A person(s) appointed by the Requesting Party as the administrator of the DAVID program in their agency.
- J. Providing Agency - The Florida Department of Highway Safety and Motor Vehicles. The Providing Agency is responsible for granting access to DAVID information to the Requesting Party.
- K. Quarterly Quality Control Review Report – Report completed each quarter by the Requesting Party's POC to monitor compliance with the MOU. The following must be included in the Quarterly Quality Control Review Report:
 - 1. A comparison of the DAVID users by agency report with the agency user list;
 - 2. A listing of any new or inactivated users since the last quarterly quality control review; and
 - 3. Documentation verifying that usage has been internally monitored to ensure proper, authorized use and dissemination.
- L. Requesting Party - Any law enforcement agency that is expressly authorized by Section 119.0712(2), Florida Statutes, and DPPA to receive personal information contained in a motor vehicle record maintained by the Providing Agency.
- M. Vehicle Information – Title and registration data collected and maintained by the Providing Agency for vehicles.

III. Legal Authority

The Providing Agency maintains computer databases containing information pertaining to driver's licenses and vehicles pursuant to Chapters 317, 319, 320, 322, 328, and Section 324.242(2), Florida Statutes. The driver license and motor vehicle data contained in the Providing Agency's databases is defined as public record pursuant to Chapter 119, Florida Statutes, and as such, is subject to public disclosure unless otherwise exempted by law.

As the custodian of the state's driver and vehicle records, the Providing Agency is required to provide access to records permitted to be disclosed by law and may do so by remote electronic means pursuant to Sections 119.0712(2), 320.05, 321.23, 322.20, and 324.242(2), Florida Statutes, and applicable rules.

Under this MOU, the Requesting Party will be provided, via remote electronic means, information pertaining to driver licenses and vehicles, including personal information authorized to be released pursuant to Section 119.0712(2), Florida Statutes and DPPA. By executing this MOU, the Requesting Party agrees to maintain the confidential and exempt status of any and all information provided by the Providing Agency pursuant to this agreement and to ensure that any person or entity accessing or utilizing said information shall do so in compliance with Section 119.0712(2), Florida Statutes and DPPA. In addition, the Requesting Party agrees that insurance policy information shall be utilized pursuant to Section 324.242(2), Florida Statutes. Furthermore, the deceased date of an individual shall only be provided to a Requesting Party that meets the qualifications of 15 CFR §1110.102. Disclosure of the deceased date of an individual, which is not in compliance with 15 CFR §1110.102, is punishable under 15 CFR §1110.200. Additionally, because the Social Security Administration does not guarantee the accuracy of the Death Master File (DMF), the Requesting Party is reminded that adverse action should not be taken against any individual without further investigation to verify the death information listed.

This MOU is governed by the laws of the state of Florida and jurisdiction of any dispute arising from this MOU shall be in Leon County, Florida.

IV. Statement of Work

A. The Providing Agency agrees to:

1. Allow the Requesting Party to electronically access DAVID as authorized under this agreement.
2. Provide electronic access pursuant to established roles and times, which shall be uninterrupted except for periods of scheduled maintenance or due to a disruption beyond the Providing Agency's control, or in the event of breach of this MOU by the Requesting Party. Scheduled maintenance will normally occur Sunday mornings between the hours of 6:00 A.M. and 10:00 A.M, EST.
3. Provide an agency contact person for assistance with the implementation and administration of this MOU.

B. The Requesting Party agrees to:

1. Utilize information obtained pursuant to this MOU, including Emergency Contact Information (ECI), only as authorized by law and for the purposes prescribed by law and as further described in this MOU. In the case of ECI, such information shall only be used for the purposes of notifying a person's registered emergency contact in the event of a serious injury, death, or other incapacitation. ECI shall not be released or utilized for any other purpose, including developing leads or for criminal investigative purposes.
2. Retain information obtained from the Providing Agency only if necessary for law enforcement purposes. If retained, information shall be safeguarded in compliance with Section V. Safeguarding Information, subsection C.
3. Ensure that its employees and agents comply with Section V. Safeguarding Information.
4. Refrain from assigning, sub-contracting, or otherwise transferring its rights, duties, or obligations under this MOU, without the prior written consent of the Providing Agency.
5. Not share, provide, or release any DAVID information to any other law enforcement, governmental agency, person, or entity not a party or otherwise subject to the terms and conditions of this MOU.
6. Protect and maintain the confidentiality and security of the data received from the Providing Agency in accordance with this MOU and applicable state and federal law.
7. Defend, hold harmless and indemnify the Providing Agency and its employees or agents from any and all claims, actions, damages, or losses which may be brought or alleged against its employees or agents for the Requesting Party's negligent, improper, or unauthorized access, use, or dissemination of information provided by the Providing Agency, to the extent allowed by law.
8. Immediately inactivate user access/permissions following termination or the determination of negligent, improper, or unauthorized use or dissemination of information and to update user access/permissions upon reassignment of users within five (5) business work days.
9. Complete and maintain Quarterly Quality Control Review Reports as defined in Section II. Definitions, K, and utilizing the form attached as Attachment II.
10. Update any changes to the name of the Requesting Party, its Agency head, its POC, address, telephone number and/or e-mail address in the DAVID system within ten calendar days of occurrence. The Requesting Party is hereby put on notice that failure to timely update this information may adversely affect the time frames for receipt of information from the Providing Agency.

11. Immediately comply with any restriction, limitation, or condition enacted by the Florida Legislature following the date of signature of this MOU, affecting any of the provisions herein stated. The Requesting Party understands and agrees that it is obligated to comply with the applicable provisions of law regarding the subject matter of this Agreement at all times that it is receiving, accessing, or utilizing DAVID information.
12. Cooperate with the Providing Agency in Field Audits conducted pursuant to Section VI. Compliance and Control Measures, subsection B., below.
13. Timely submit the reports and statements required in Section VI. Compliance and Control Measures, below.
14. Access and utilize the deceased date of an individual, or other information from the NTIS Limited Access Death Master File, as defined in 15 CFR §1110.2, in conformity with the following requirements:
 - a) Pursuant to 15 CFR §1110.102, the Requesting Party certifies that its access to DMF information is appropriate because the Requesting Party: (i) has a legitimate fraud prevention interest, or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty; (ii) has systems, facilities, and procedures in place to safeguard such information, and experience in maintaining the confidentiality, security, and appropriate use of such information, pursuant to requirements reasonably similar to the requirements of section 6103(p)(4) of the Internal Revenue Code of 1986; and (iii) agrees to satisfy such similar requirements.
 - b) Pursuant to 15 CFR §1110.102, the Requesting Party certifies that it will not: (i) disclose DMF information to any person other than a person who meets the requirements of Section IV. Statement of Work, subsection B. paragraph 14 (a), above; (ii) disclose DMF information to any person who uses the information for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty; (iii) disclose DMF information to any person who further discloses the information to any person other than a person who meets the requirements of subsection IV. B. 14 (a), above; or (iv) use DMF information for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation or fiduciary duty.

V. Safeguarding Information

The Parties shall access, disseminate, use and maintain all information received under this MOU in a manner that ensures its confidentiality and proper utilization in accordance with Chapter 119, Florida Statutes, and DPPA. Information obtained under this MOU shall only be disclosed to persons to whom disclosure is authorized under Florida law and federal law.

Any person who willfully and knowingly violates any of the provisions of this section is guilty of a misdemeanor of the first degree punishable as provided in Sections 119.10 and 775.083, Florida Statutes. In addition, any person who willfully and knowingly discloses any information in violation of DPPA may be subject to criminal sanctions and civil liability. Furthermore, failure to comply with 15 CFR §1110.102 pertaining to the deceased date of an individual may result in penalties of \$1,000 for each disclosure or use, up to a maximum of \$250,000 in penalties per calendar year, pursuant to 15 CFR §1110.200.

The Parties mutually agree to the following:

- A. Information exchanged will not be used for any purposes not specifically authorized by this MOU. Unauthorized use includes, but is not limited to, queries not related to a legitimate business purpose, personal use, or the dissemination, sharing, copying, or passing of this information to unauthorized persons.
- B. The Requesting Party shall not indemnify and shall not be liable to the Providing Agency for any driver

license or motor vehicle information lost, damaged, or destroyed as a result of the electronic exchange of data pursuant to this MOU, except as otherwise provided in Section 768.28, Florida Statutes.

- C. Any and all DAVID-related information provided to the Requesting Party as a result of this MOU, particularly data from the DAVID system, will be stored in a place physically secure from access by unauthorized persons.
- D. The Requesting Party shall comply with Rule 60GG-2, Florida Administrative Code, and with Providing Agency's security policies, and employ adequate security measures to protect Providing Agency's information, applications, data, resources, and services. The applicable Providing Agency's security policies shall be made available to Requesting Party. Additionally, with respect to the deceased date of an individual, the Requesting Party shall have systems, facilities, and procedures in place to safeguard such information, and experience in maintaining the confidentiality, security, and appropriate use of such information, pursuant to requirements reasonably similar to the requirements of section 6103(p)(4) of the Internal Revenue Code of 1986 and agrees to satisfy such similar requirements.
- E. When printed information from DAVID has met record retention, it shall be destroyed by cross-cut shredding or incineration in accordance with Florida law.
- F. The Requesting Party shall maintain a list of all persons authorized within the agency to access DAVID information. The list will not be provided to the Providing Agency but shall be subject to viewing during any field audit conducted by the Providing Agency or in the event of a violation under Section VI. Compliance and Control Measures, subsection D, of this MOU for the purposes of ascertaining whether the person or persons involved have been removed from the list or have otherwise had their DAVID access modified or limited.
- G. Access to DAVID-related information, particularly data from the DAVID System, will be protected in such a way that unauthorized persons cannot view, retrieve, or print the information.
- H. Under this MOU agreement, access to DAVID system shall be provided to users who are direct employees of the Requesting Party and shall not be provided to any non-employee or contractors of the Requesting Party.
- I. By signing this MOU, the Parties, through their signatories, affirm and agree to maintain the confidentiality of the information exchanged through this agreement.

VI. Compliance and Control Measures

- A. **Quarterly Quality Control Review Report** – Must be completed pursuant to Section IV, B(9), utilizing Attachment II, Quarterly Quality Control Review Report, within 10 days after the end of each quarter and maintained for two years. The following must be included in the Quarterly Quality Control Review Report:
 - 1. A comparison of the DAVID users by agency report with the agency user list;
 - 2. A listing of any new or inactivated users since the last quarterly quality control review; and
 - 3. Documentation verifying that usage has been internally monitored to ensure proper, authorized use and dissemination utilizing the auditing features available in DAVID.
- B. **Field Audits** – Field audits shall be conducted by the Providing Agency in order to ensure that MOU requirements concerning internal controls are being met. Field audits shall be conducted on-site by Providing Agency employees, who shall be designated as "Field Liaisons" for the purposes of this MOU. Field Liaisons shall be geographically located throughout the state. The Requesting Party shall cooperate with the Field Liaisons in conducting field audits by granting access to systems and records related to this MOU and assigning appropriate personnel to respond to information requests.

Audits shall be conducted a minimum of once, every two years. Field Liaisons shall contact the POC in order to schedule the audit. At the completion of the audit, the Field Liaison will complete a report and provide a copy to the Requesting Party within ninety (90) days of the audit date. Should the audit report conclude that deficiencies or issues exist in regard to the Requesting Party's internal

controls, or access to or use of DAVID information, Providing Agency reserves the right to take, based upon the nature of the deficiencies/issues found, any or all of the following actions: audit more frequently than once, every two years; and/or suspend or terminate Requesting Party's access to DAVID information until such time as Requesting Party submits proof satisfactory to the Providing Agency that the deficiencies/issues have been corrected.

- C. **Internal Control Attestation** – This MOU is contingent upon the Requesting Party having appropriate internal controls in place at all times that data is being provided/received pursuant to this MOU to ensure that the data is protected from unauthorized access, distribution, use, modification, or disclosure. The Requesting Party must submit an Attestation statement no later than 45 days after receipt of the audit report referenced in Section VI. Compliance and Control Measures, subsection B., above. The Attestation shall indicate that the internal controls over personal data have been reviewed and evaluated in light of the audit findings and are adequate to protect the personal data from unauthorized access, distribution, use, modification, or disclosure. The Attestation shall also certify that any and all deficiencies/issues found during the audit have been corrected and measures enacted to prevent recurrence. The Providing Agency may extend the time for submission of the Attestation upon written request by the Requesting Party. The Attestation must have an original signature of the Chief, Sheriff, or State Attorney, or person designated by Letter of Delegation to execute contracts/agreements on their behalf, and may be sent via U.S. Mail, facsimile transmission, or e-mailed to the Providing Agency's Bureau of Records at the following address:

Department of Highway Safety and Motor Vehicles
Chief, Bureau of Records
2900 Apalachee Parkway, MS89
Tallahassee, Florida 32399-0500
Fax: (850) 617-5168
E-mail: DataListingUnit@flhsmv.gov

- D. **Annual Certification Statement** - The Requesting Party shall submit to the Providing Agency an annual statement indicating that the Requesting Party has evaluated and certifies that it has adequate controls in place to protect the personal data from unauthorized access, distribution, use, modification, or disclosure, and is in full compliance with the requirements of this MOU. The Requesting Party shall submit this statement annually, within 45 days after the anniversary date of this MOU. (NOTE: During any year in which a Field Audit is conducted, submission of the Internal Control Attestation may satisfy the requirement to submit an Annual Certification Statement.) Failure to timely submit the certification statement may result in an immediate field audit and, based upon the findings of the audit, suspension or termination of Requesting Party's access to DAVID information as indicated in Section VI. Compliance and Control Measures, subsection B., above.

In addition, prior to expiration of this MOU, if the Requesting Party intends to enter into a new MOU, a certification statement attesting that appropriate controls remained in place during the final year of the MOU and are currently in place shall be required to be submitted to the Providing Agency prior to issuance of a new MOU.

- E. **Misuse of Personal Information** – The Requesting Party must notify the Providing Agency in writing of any incident where determination is made that personal information has been compromised as a result of unauthorized access, distribution, use, modification, or disclosure, by any means, within 30 days of such determination. The statement must be provided on the Requesting Party's letterhead and include each of the following: a brief summary of the incident; the outcome of the review; the date of the occurrence(s); the number of records compromised; the name or names of personnel responsible; whether disciplinary action or termination was rendered; and whether or not the owners of the compromised records were notified. The statement shall also indicate the steps taken, or to be taken, by the Requesting Agency to ensure that misuse of DAVID data does not continue. This statement shall be mailed to the Bureau Chief of Records at the address indicated in Section VI. Compliance and Control Measures, subsection C., above. (NOTE: If an incident involving breach of personal information did occur and Requesting Party did not notify the owner(s) of the compromised records, the Requesting Party must indicate why notice was not provided, for example "Notice not statutorily required.")

In addition, the Requesting Party shall comply with the applicable provisions of Section 501.171, Florida Statutes, regarding data security and security breaches, and shall strictly comply with the provisions regarding notice provided therein.

VII. Agreement Term

This MOU shall take effect upon the date of last signature by the Parties and shall remain in effect for six (6) years from this date unless sooner terminated or cancelled in accordance with Section IX. Termination. Once executed, this MOU supersedes all previous agreements between the parties regarding the same subject matter.

VIII. Amendments

This MOU incorporates all negotiations, interpretations, and understandings between the Parties regarding the same subject matter and serves as the full and final expression of their agreement. This MOU may be amended by written agreement executed by and between both Parties. Any change, alteration, deletion, or addition to the terms set forth in this MOU, including to any of its attachments, must be by written agreement executed by the Parties in the same manner as this MOU was initially executed. If there are any conflicts in the amendments to this MOU, the last-executed amendment shall prevail. All provisions not in conflict with the amendment(s) shall remain in effect and are to be performed as specified in this MOU.

IX. Termination

- A. This MOU may be unilaterally terminated for cause by either party upon finding that the terms and conditions contained herein have been breached by the other party. Written notice of termination shall be provided to the breaching party; however, prior-written notice is not required, and notice may be provided upon cessation of work under the agreement by the non-breaching party.
- B. In addition, this MOU is subject to unilateral termination by the Providing Agency without notice to the Requesting Party for failure of the Requesting Party to comply with any of the requirements of this MOU, or with any applicable state or federal laws, rules, or regulations, including Section 119.0712(2), Florida Statutes.
- C. This MOU may also be cancelled by either party, without penalty, upon 30 days' advanced written notice to the other party. All obligations of either party under the MOU will remain in full force and effect during the thirty (30) day notice period.

X. Notices

Any notices required to be provided under this MOU may be sent via U.S. Mail, facsimile transmission, or e-mail to the following individuals:

For the Providing Agency:

Chief, Bureau of Records
2900 Apalachee Parkway
Tallahassee, Florida 32399
Fax: (850) 617-5168
E-mail: DataListingUnit@flhsmv.gov

For the Requesting Party:

Agency Point-of-Contact listed on the signature page.

XI. Additional Database Access/Subsequent MOU's

The Parties understand and acknowledge that this MOU entitles the Requesting Party to specific information included within the scope of this agreement. Should the Requesting Party wish to obtain access to other personal information not provided hereunder, the Requesting Party will be required to execute a subsequent MOU with the

Providing Agency specific to the additional information requested. All MOU's granting access to personal information will contain the same clauses as are contained herein regarding audits, report submission, and the submission of Certification and Attestation statements.

The Providing Agency is mindful of the costs that would be incurred if the Requesting Party was required to undergo multiple audits and to submit separate certifications, attestations, and reports for each executed MOU. Accordingly, should the Requesting Party execute any subsequent MOU with the Providing Agency for access to personal information while the instant MOU remains in effect, the Requesting Party may submit a written request, subject to Providing Agency approval, to submit one of each of the following covering all executed MOU's: Quarterly Quality Control Review Report; Certification; and Attestation; and/or to have conducted one comprehensive audit addressing internal controls for all executed MOU's. The Providing Agency shall have the sole discretion to approve or deny such request in whole or in part or to subsequently rescind an approved request based upon the Requesting Party's compliance with this MOU and/or any negative audit findings.

XII. Application of Public Records Law

The parties to this Agreement recognize and acknowledge that any governmental agency having custody of records made or received in connection with the transaction of official business remains responsible for responding to public records requests for those records in accordance with state law (including Chapter 119, Florida Statutes), and that public records that are exempt or confidential from public records disclosure requirements will not be disclosed except as authorized by law.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLA. STAT., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATED TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (850) 617-3101, OGCFILING@FLHSMV.GOV, OFFICE OF GENERAL COUNSEL, 2900 APALACHEE PARKWAY, STE. A432, TALLAHASSEE, FL 32399-0504.

XIII. Certification Information

Pursuant to Section IV. Statement of Work, subsection B. paragraph 14(a), above, the Requesting Party certifies that access to DMF information is appropriate based on the following specific purpose (please describe the legitimate purpose):

Law enforcement purposes only

Please indicate whether the Requesting Party desires to re-disclose the deceased date of any individual to any other person or entity: Yes ☐ No ☒

If the Requesting Party desires to re-disclose the deceased date of any individual to any other person or entity, the Requesting Party agrees that it will not re-disclose the data received from the Providing Agency, but rather, will contact NTIS at <https://classic.ntis.gov/products/ssa-dmf/#> to become a Certified Person, as defined by 15 CFR §1110.2. A Requesting Party who is a Certified Person may only disclose the deceased date of an individual pursuant to the Requesting Party's obligations under 15 CFR §1110.102.

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Attachment: DAVID MOU (3486 : Memorandum of Understanding (MOU) David System FY2021-2022)

IN WITNESS HEREOF, the Parties hereto, have executed this Agreement by their duly authorized officials on the date(s) indicated below.

REQUESTING PARTY**PROVIDING AGENCY:**

Holly Hill Police Department

 Agency Name
 1065 Ridgewood Avenue

 Street Address

 Suite
 Holly Hill FL 32117

 City State Zip Code

Florida Department of Highway Safety and Motor
 Vehicles
 2900 Apalachee Parkway
 Tallahassee, Florida 32399

BY:**BY:**

Signature of Authorized Official
 Jeffery Miller

 Printed/Typed Name
 Interim Chief of Police

 Title

 Date
 jmiller@hollyhillfl.org

 Official Agency Email Address
 (386) 248-9494

 Phone Number

Signature of Authorized Official

 Printed/Typed Name

 Title

 Date

Agency Point of Contact:
 Jason Weiss

 Printed/Typed Name
 jweiss@hollyhillfl.org

 Official Agency Email Address

(386) 248-9475 / Phone Number
 _____ / Fax Number

Attachment: DAVID MOU (3486 : Memorandum of Understanding (MOU) David System FY2021-2022)



**STAFF REPORT
CITY OF HOLLY HILL, FLORIDA**

**City Commission
Resolution**

MEETING DATE: October 12, 2021
FROM: Stella Gurnee
SUBJECT: A Resolution of the City of Holly Hill, Florida, Amending the Fiscal Year 2021-2022 Annual Operating Budget, Appropriating Project Carry Over Funds for the Purchase of a Fire Truck from the Fiscal Year 2020-2021 to the Fiscal Year 2021-2022 Budget; Setting Forth Revenues and Expenditures; Providing for Severability; and Providing for an Effective Date.
NUMBER: 2021-R-83
APPLICANT:
PLANNER:

DISCUSSION:

In Fiscal year 2021 The City of Holly Hill issued a Project budget to establish a reserve for the purchase of a Fire truck in Fiscal year 2022. The balance in this reserve is \$241,000. In the fiscal year 2022 project budget an additional \$75,905 was appropriated. The total project budget is \$316,905. The purchase cost of the Fire truck is \$550,000.

Florida statute 166.241 (2) states "...a municipal government may not expend or contract for expenditures in any fiscal year except pursuant to the adopted budget." Therefore, an additional \$233,095 is needed to fund the Fire truck purchase. Staff is recommending that this amount be funded from FY2021 General Fund contingency reserve and carried over into fiscal year 2022. This Resolution will carryover budget funds into the new fiscal year to fund the Purchase.

FISCAL

ANALYSIS:

There are sufficient funds for this request. All fund balances reserve requirements are at the appropriate level.

STAFF RECOMMENDATION:

Approve Resolution as submitted by staff.

COMMISSION

GOAL:

Goal #1: Develop and maintain a sound and sustainable financial plan for the city that establishes sufficient reserves for all funds, ensures (whenever possible) that user fees pay for services rendered, provides a realistic capital improvement program, and encourages public/private sector partnerships and intergovernmental partnerships.

MOTION:

APPROVE AMENDING THE FISCAL YEAR 2021-2022 ANNUAL OPERATING BUDGET, APPROPRIATING PROJECT CARRY OVER FUNDS AND RESERVE FUNDS FROM THE FISCAL YEAR 2020-2021 TO THE FISCAL YEAR 2021-2022 BUDGET; SETTING FORTH REVENUES.

ATTACHMENTS:

- EXHIBIT A-BUDGET RESOLUTION FIRE TRUCK FY2022 (PDF)

Resolution No. 2021-83

A RESOLUTION OF THE CITY OF HOLLY HILL, FLORIDA, AMENDING THE FISCAL YEAR 2021-2022 ANNUAL OPERATING BUDGET, APPROPRIATING PROJECT CARRY OVER FUNDS FOR THE PURCHASE OF A FIRE TRUCK FROM THE FISCAL YEAR 2020-2021 TO THE FISCAL YEAR 2021-2022 BUDGET; SETTING FORTH REVENUES AND EXPENDITURES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

RESOLUTION OF THE CITY OF HOLLY HILL, FLORIDA, AMENDING THE FISCAL YEAR 2021-2022 ANNUAL OPERATING BUDGET, APPROPRIATING OPEN PROJECT CARRY OVER FUNDS AND RESERVE FUNDS FROM THE FISCAL YEAR 2020-2021 TO THE FISCAL YEAR 2021-2022 BUDGET; SETTING FORTH REVENUES AND EXPENDITURES AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Holly Hill has certain projects initiated prior to the fiscal year commencing October 1, 2021, which remain incomplete and will carryover from fiscal year 2011-2022 into the ensuing fiscal year; and

WHEREAS, the City of Holly Hill City Commission adopted Resolution 2021-R-73 approving the Annual Operating Budget for Fiscal Year 2021-2022; and

WHEREAS, the City of Holly Hill City Commission desires to appropriate the necessary carryover and reserve funds for continuation and completion of certain City operations and continuing projects and to set forth and appropriate certain revenues and expenses.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA:

SECTION 1. BUDGET AMENDMENT. The project funds and reserve funds are hereby appropriated as set forth in Composite Exhibit "A" attached hereto, which reflects revenues and corresponding expenditures for the designated projects for fiscal year 2021-2022 budget.

SECTION 2. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 3. EFFECTIVE DATE. The Budget item adopted in the preceding section shall govern the expenditures relating to operations and projects for the City during the

current fiscal year effective October 1, 2021 through September 30, 2022. This Resolution shall become effective immediately upon its adoption.

APPROVED AND AUTHENTICATED on this 12th day of OCTOBER, 2021.

Exhibit "A"

FY 2021 - 2022 BUDGET ADMENDMENT**REVENUES AND EXPENSES FY 2020 - 2021**

	REVENUE	EXPENSE
001 - GENERAL FUND	\$ 233,095	\$ 233,095
301 - GENERAL CAPITAL PROJECTS	\$ 474,095	\$ 474,095
TOTAL ALL FUNDS	\$ 707,190	\$ 707,190



STAFF REPORT
CITY OF HOLLY HILL, FLORIDA

City Commission
Agenda Item

5.2

MEETING DATE: October 12, 2021
FROM: Joseph Forte
SUBJECT: Fountainhead Reqeestions for Time Extention to Rolling Option
NUMBER: (ID # 3500)
APPLICANT:
PLANNER:

DISCUSSION:

In July, 2021, Fountainhead developers approached the city with a request to have the deadline of exercising the purchase option extended. The agreement states: *“If the Developer exercises and closes the Initial Option as required in Paragraph 8, the Developer shall have four (4) years measured from the date of acquisition of Parcel 2 to exercise and close the next option (the “Rolling Option”).”* **This timeline amounts to August 30, 2021.**

At the time the staff felt that the project had made enough progress that a 6-month extension would be acceptable. However, once the staff and the developers entered into more detailed negotiations with regard to the extension, other issues were brought up, by the developer, that have now clouded the staff’s ability to make a recommendation to support the extension.

First and foremost, it must be understood that the request from the developer is being made because a performance milestone has not been met. It is important to remember that the Incentive Agreement was to protect the City from two issues. First, Fountainhead was not a developer and did not have a portfolio of completed projects that the City could see comparable to what was being proposed. Therefore, all incentives were based on performance. Secondly, the City did not want Fountainhead to just flip the property purchased for a profit. The City wanted Fountainhead to develop the property as was being promised and created incentive, based on performance.

The basis of the incentive agreement is twofold.

First, all TIF money generated as a result of the development would be returned to the developer minus debt service, to reimburse for certain capital expenditures paid for the development of the project. The amount of TIF money is based on the Volusia County Property Appraisers taxable valuation of the property. To date, the developer has received all TIF dollars they are entitled to.

Second, the money the developer pays to purchase the property would be held aside for reimbursement of eligible jobs created and maintained on the property. This incentive is available conditioned upon, the completion and certificate of occupancy being issued for all of Phase 1, Parcel 2 as defined on Exhibit “C”; and the headquarters and all employees of Synergy Billing, LLC being permanently relocated to Phase 1, Parcel 2.

To date, no job reimbursement money has been delivered to the developer. Initially, the City expected approximately 130 Synergy Billing jobs would be transferred to Fountainhead upon obtaining a certificate of occupancy for Phase 1, Parcel 2. However, Synergy Billing occupied the project prior to obtaining a certificate of occupancy (which still has not been issued) so the city issued a temporary certificate of occupancy. Therefore, I do not know the number of jobs transferred at the time the facility was occupied however, the most recent employee roster the City received indicated approximately 65 jobs with only 42 eligible for reimbursement upon the issuance of the certificate of occupancy. While this is a performance standard reimbursed based on the actual number of employees, the city is disappointed that the number of employees currently listed are nearly half of what was supposed to be originally transferred and about 10% of what was promised in the presentation of the developer to have 500 jobs by 2020, which is also indicated in the attached Economic Impact Statement provided to the City by Jayson Meyer on January 22, 2020.

On July 29, 2021 a meeting was held at Fountainhead where the request for an extension to the rolling option was brought forward. Three conditions were initially discussed and verbally agreed to.

1. Commit incentive dollars back to the project
2. Use Jobs money for FHFC local match
3. Jobs on parcel 3 can be reimbursed for Fountainhead employees not 3rd party developer.

As the staff and the developer entered into the negotiations, other issues came to light.

The developer wanted to extend the repayment of the loan to the FHCF beyond the 2026 deadline of the CRA. A significant change to the initially agreed upon conditions which also caused a delay to our negotiations. Since the FHFC local match is being covered by Volusia County this matter is no longer an issue. The developer also wanted the city to reimburse for jobs transferred to the project under the temporary certificate occupancy although many of those jobs are not be in existence and will not be at the time the certificate of occupancy. The developer has concede that the initial jobs transferred are not eligible unless the jobs are still in existence as of the issuance of the certificate of occupancy with a least one year of employment history.

The last item that was brought up was how the \$190,000 credit was to be applied to the purchase of parcel.

You have been provided email communication from both the City Manager and Patrick Kennedy, attorney for Fountainhead, with regard to our separate and distinct interpretations of this language. The staff and the developer are still not in agreement with how this language is to be interpreted and since it is directly involved in how parcel 1 is to be purchased which is the catalyst for the rolling option and purchase of parcel 3, I do not feel it is in the City's interest to grant an extension to the rolling option without resolving this important factor.

It remains clear that until paragraph 8 is resolved this matter will be an on-going issue with

regard to the purchase of parcel 1.

On September 17, 2021 I received an email from Jayson Meyer suggesting the parties seek a Declaratory Judgment. I provided my feed back to that email and questioned the length of time a declaratory Judgment would take and requested confirmation from the Fountainhead attorney of this direction. On September 29th I received an email from Patrick Kennedy indicating that a Declaratory Judgment would be premature at this time and that Fountainhead would move forward with their request for a time extension of the rolling option.

FISCAL ANALYSIS:

N/A

STAFF RECOMMENDATION:

Since the developer continuously demands to hold the city to the letter of the agreement and the fact that the developer has not met the performance milestone required and there are still unresolved issues with regard to the incentive agreement more specifically, paragraph 8, which have been and will remain contentious, staff recommends the request to extend the rolling option not be granted.

COMMISSION GOAL:

N/A

MOTION:

AS DISCUSSED BY THE CITY COMMISSION.

- Economic Impact scenario-Fountainhead Complete (PDF)
- Fountainhead Request for Extension of Option Deadline- Patrick Kennedy (PDF)
- Historical Analysis Fountainhead RIA - Patrick Kennedy (PDF)
- Staff review of Paragraph 8 - Joe Forte (PDF)

Economic Impact Scenario - *Fountainhead Complete*

1/22/2020

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	712	23,261,387	26,190,276	45,426,287
Indirect Effect	97	3,907,947	6,250,237	11,749,359
Induced Effect	63	2,516,361	4,499,184	7,770,197
Total	872	\$29,685,695	\$36,939,697	\$64,945,843

IMPLAN Industry Code: Multiple

Startup Year: 2022

Staffing (headcount): 712

Fountainhead Establishments:

Synergy HQ (500 employees)

Fitness Center (8 employees)

Restaurant (10 employees)

Child Day Care (10 employees)

Medical Clinic (20 employees)

Software Developer (8 employees)

Real Estate Office (3 employees)

Marketing Firm (5 employees)

Call Center (60 employees)

Private School (8 employees)

Clearing House (20 employees)

Public Polling (20 employees)

Administrative Services (40 employees)

Attachment: Economic Impact scenario-Fountainhead Complete (3500 : Fountainhead Reqections for

1/22/2020

Economic Impact Scenario - *Synergy Headquarters*

1/22/2020

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	500	\$14,026,173	\$15,029,837	\$24,454,001
Indirect Effect	49	\$1,875,256	\$3,019,772	\$5,383,940
Induced Effect	39	\$1,573,795	\$2,814,776	\$4,860,907
Total	588	\$17,475,223	\$20,864,385	\$34,698,848

IMPLAN Industry Code: 462 - Office Services

Startup Year: 2022

Staffing (headcount): 500

Economic Impact Scenario - Synergy Campus Partners

1/22/2020

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	48	\$1,764,799	\$2,679,052	\$4,749,920
Indirect Effect	9	\$349,955	\$638,624	\$1,134,020
Induced Effect	4	\$164,626	\$294,076	\$507,962
Total	61	\$2,279,380	\$3,611,752	\$6,391,902

IMPLAN Industry Code: Multiple

Startup Year: 2022

Staffing (headcount): 48

Campus Partners:

- Fitness Center (8 employees)
- Restaurant (10 employees)
- Child Day Care (10 employees)
- Medical Clinic (20 employees)

1/22/2020

Economic Impact Scenario - *Fountainhead Business Center*

1/22/2020

Impact Type	Employment	Labor Income	Value Added	Output
Direct Effect	164	\$7,470,415	\$8,481,387	\$16,222,366
Indirect Effect	39	\$1,682,736	\$2,591,842	\$5,231,399
Induced Effect	20	\$777,940	\$1,390,332	\$2,401,328
Total	223	\$9,931,092	\$12,463,560	\$23,855,093

IMPLAN Industry Code: Multiple

Startup Year: 2022

Staffing (headcount): 164

Business Center Tenants:

Software Developer (8 employees)	Private School (8 employees)
Real Estate Office (3 employees)	Clearing House (20 employees)
Marketing Firm (5 employees)	Public Polling (20 employees)
Call Center (60 employees)	Administrative Services (40 employees)

Attachment: Economic Impact scenario-Fountainhead Complete (3500 : Fountainhead Reqections for

1/22/2020

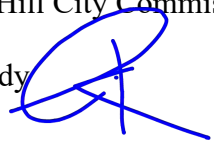
The Law Offices of Patrick J Kennedy, PA

124 Central Avenue
Crescent City, Florida 32112
386-244-4910

patrickjkennedypa@gmail.com

MEMORANDUM

To: Joe Forte, City Manager
City of Holly Hill City Commission

From: Patrick Kennedy 

Cc: Jayson Meyer
Scott Simpson
Brian Walker

Date: October 1, 2021

RE: Fountainhead Developers Request for Extension

Please accept this memorandum and the referenced attachments for submission to the City Commission for the City of Holly Hill for the upcoming October 12th City Commission meeting. It is our intention to simply present and discuss the proposed addendum attached as Exhibit A to this memorandum. It is a simple and straightforward extension of time pursuant to the already agreed to conditions, but with the understanding that the use of the job incentive money to fund the FHFC application is no longer required because the Volusia County agreed to fund the application.

While we understand that the questions you raised regarding contract interpretation have not been resolved, we strongly believe that the extension question should be addressed now, and we can continue the contract interpretation questions. As of the date of this memorandum, we are too far apart on how to answer your questions, and it does not appear that we will be able to resolve them by October 12, 2021. If we rush the discussions on this matter, we are more likely to create more problems than we solve (you only need to look at the history of the still debated paragraph 8 to appreciate this).

Fountainhead Recommendation for Requested Extension: Approve the requested extension of time pursuant to the conditions outlined in the attached contract addendum. The parties will continue to work on resolution of the contract interpretation questions.

Because Joe Forte has advised that he believe the Commission will want an answer to his questions on paragraph 8 at the October meeting, we are compelled to make sure our position is part of the agenda packet and we have included this as Exhibit B to this memorandum. It is a slightly modified and combined version of historical and legal analysis already provided to Staff. Recognizing the length of this document, we include our executive summary, below.

Executive Summary of Fountainhead Analysis of Paragraph 8

Paragraph 8 of the Redevelopment Incentive Agreement reads as follows:

8) *Notwithstanding the forgoing provisions of this Part One, \$190,000.00 shall be used as a credit towards the purchase price of the Developer acquiring Parcel 1. Parcel 1 shall be acquired by the Developer after meeting the criteria below which shall be closed simultaneously with the first payment of the New Employee Incentive. The \$190,000 used as a credit towards the purchase price shall remain in the New Employee Incentive fund. The first payment of the New Employee Incentive shall be conditioned upon (a) the completion and certificate of occupancy being issued for all of Phase 1, Parcel 2 as identified on Exhibit C; and (b) the headquarters and all employees of Synergy Billing, LLC being permanently located to the Phase 1, Parcel 2.*

Paragraph 8 starts with the phrase “**Notwithstanding the forgoing provisions in Section One,** \$190,000 shall be used as a credit toward the purchase price of Parcel 1”. This clause expressly tells all parties to the agreement that the \$190,000 credit will be given regardless of the conditions in paragraphs 2 through 7; or to put it another way, regardless of how the purchase money is otherwise used and regardless of how New Employee Incentive is funded, earned and paid, Fountainhead is entitled to a \$190,000 credit towards the purchase of the Initial Option.

Where the money comes from to fund this credit is made clear by the second highlighted clause in paragraph 8, which tells us the funds used as the credit toward the purchase price “shall remain in the New Employee Incentive Fund”. The only way the funds can remain in this account is by coming from this account in the first place. The clear intent of money remaining in the New Employee Incentive Fund is to fund future earned job incentives.

While we do not believe a historical analysis is necessary to address the plain meaning of the Agreement, Mr. Forte asked to defer the extension decision to allow time to be review the historical record regarding the development of this provision. The purpose of exercise was to review the history of the negotiations against the wording of the Redevelopment Incentive Agreement to determine whether City staff’s preferred interpretation had support in this historical record. Unfortunately, there appears to be no such record. Quite the contrary, the history, buoyed by Joe Forte’s own statements on the record when this Agreement was adopted in its current form, clearly states that it was always the intention to allow some of the New Employee Incentive fund to be used as a means of offsetting costs associated with initial development costs. Neither the wording of the contract nor the historical record supports City’s staff’s position that the \$190,000 must be earned through job creation.

Conclusion Regarding Paragraph 8: The \$190,000 is a sum of money that is earned when Fountainhead finishes Phase 1 and moves Synergy headquarters, including its employees, to the Property (which was done in June 2019 which often seems to get overlooked in these discussion). Rather than pay it directly to Fountainhead as a reimbursement, it treated as an incentive payment applied as a credit towards the purchase price of Parcel 1. The \$190,000 is then treated like all other funds derived from the purchase of the option parcels – it is left in the job incentive fund to pay for future job incentives earned.

EXHIBIT A

Proposed Redevelopment Incentive Agreement Addendum

ADDENDUM
FOUNTAINHEAD REDEVELOPMENT INCENTIVE AGREEMENT

This Addendum is entered into this ____ day of October 2021 by and between the City of Holly Hill (“City”), the City of Holly Hill Community Redevelopment Agency (“Agency”) and Fountainhead Developers, LLC (“Developer”).

WITNESSETH

WHEREAS, the City, the Agency and the Developer entered into a Redevelopment Incentive Agreement (“Agreement”) for the redevelopment of the 25 acres of real property located at 1200 Center Street in Holly Hill, Florida, which is comprised of five distinct parcels (the “Property”) as illustrated in by the plat recorded at Plat Book 58 Page 91 of the public record with the Volusia County Clerk of Courts; and

WHEREAS, the parties agreed the a primary purpose of the Agreement was to provide separate and distinct incentives for the redevelopment of the Property to induce and assist the Developer in redeveloping the Property, thereby increasing the ad valorem tax base generated by the Property, and encourage the creation of new businesses operating on the Property with full-time, highly paid employees; and

WHEREAS, these incentives had certain performance metrics and milestones to be able to make use of the incentives, including but not limited to the completion of the Phase 1 improvements in a manner consistent with Exhibit C to the Agreement and the purchase the initial option by a date certain (on or before August 30, 2021) in order to take advantage of the option to purchase certain parcels within the Property, specifically Parcel 3; and

WHEREAS, Developer has substantially completed the Phase 1 improvements but due to Developer’s actions and a variety of other reasons, not the least of which was the onset of the COVID-19 pandemic and its continued effect on the cost and availability of labor and materials, Developer will be unable to reach 100% completion of Phase 1 in order to exercise its option on Parcel 3 by August 30, 2021; and

WHEREAS, the parties agree that Developer’s effort and investment to date demonstrates the intent and the willingness of Developer to fulfill the goals and objectives of the Agreement; and

WHEREAS, Developer is seeking an extension of time to complete Phase 1 and to exercise its options on Parcel 1 for purposes of exercising the option on Parcel 3;

NOW THEREFORE, considering the foregoing and the mutual covenants and agreements set forth in the Agreement and amendments as set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. EXTENSION OF DEADLINE FOR ROLLING OPTIONS AND RELATED CONDITIONS: Paragraph 16(a) of the Agreement shall be amended as follows:

a. The deadline for exercising and closing the Rolling Option under paragraph 16(a) is extended from August 30, 2021 to February 28, 2022. Any terms, conditions or incentives tied to the exercise of the Rolling Option shall remain available to the Developer as provided for in the Agreement.

b. Should Developer exercise and close the option on Parcel 3 on or before February 28, 2022, and then sell Parcel 3 to third party during the term of the Agreement, the sale proceeds received by the City from Developer's purchase of Parcel 3 shall not be eligible revenues for the New Employee Incentive, notwithstanding any other provisions in this Agreement to the contrary; and such sale proceeds shall be available to the City and Agency to use as they see fit. Nothing in this provision shall apply to the transfer of Parcel 3 to an entity that has the same ownership as Developer.

2. FORCE MAJEURE. Failure to exercise and/or close the first Rolling Option by February 28, 2022, shall not terminate Developer's right to exercise the Rolling Option if Developer can demonstrate Force Majeure: that the delay is caused by or results from causes beyond the reasonable control and foreseeability of Developer, including but not limited fire, floods, sever weather events, embargoes, war, acts of war, insurrections, riots, strikes, lockouts or other labor disturbances, or acts of God, directly effecting the Property or Holly Hill in Volusia County. It is understood that the COVID-19 pandemic is a primary consideration for this extension and therefor expressly excluded as a basis for extending the time frames established by the addendum. Developer shall notify the City and the Agency of delay prior to the February 28, 2022, deadline, indicate the length of the requested extension, and provide the basis for the extension.

3. EXHIBIT C UPDATE. Exhibit C to the Agreement is amended as shown in the attached updated Exhibit C to this addendum to be consistent with the administratively approved amendments made to Exhibit C of the Fountainhead MPUD Development Agreement.

4. NO FURTHER AMENDMENTS: There are no further amendments, changes, alterations, or modifications to the Agreement. All other terms and conditions as outlined in the Agreement shall govern and be interpreted to apply to this Addendum No.1 in a manner consistent with the amendments stated herein.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed by the proper officers the day and year as written below.

Fountainhead Developers, LLC

City of Holly Hill

M. Jayson Meyer, CEO

Chris Via, Mayor

APPROVED AS TO FORM AND LEGALITY

Attest:

Scott Simpson, City Attorney

Valerie Manning, City Clerk



EXHIBIT B
Fountainhead Developers Detailed Review of Historical Record
Regarding Paragraph 8 of the Incentive Agreement

THIS ANALYSIS BELOW IS THE SAME THE HISTORICAL RESEARCH AND ANALYSIS PROVIDED TO CITY STAFF ON SEPTEMBER 16, 2021 REGARDING PARAGRAPH 8 OF THE FOUNTAINHEAD REDEVELOPMENT INCENTIVE AGREEMENT WITH SOME MINOR MODIFICATIONS AND THE ADDITION OF A PLAIN LANGUAGE ANALYSIS SIMILAR TO PRIOR MEMOS SUBMITTED TO CITY STAFF.

As discussed following the August 24th City Commission meeting, we conducted some historical research regarding the development of the Fountainhead Redevelopment Incentive Agreement. We reviewed the meeting minutes and agenda packets for regular and special meetings/workshops from November 2016 and January 2017, as well as any emails, memos, and draft incentive agreements from this same period. I have provided my historical record findings in 3 blocks of time and end with a brief analysis of the plain language in the Agreement:

- I. The Development of the November 15, 2016, Version of the Incentive Agreement
- II. The December 13, 2016, Work Session
- III. The Development of the January 24, 2017, Version of the Incentive Agreement Currently in Place
- IV. The Plain Language of the Agreement

I. THE DEVELOPMENT OF THE NOVEMBER 15TH VERSION OF THE INCENTIVE AGREEMENT

- A. August 1, 2016, Joe Forte issues a memorandum following a July 29th meeting with Jayson Meyer and a letter from Jayson wherein he expressly supports the use of funds otherwise meant for job incentives to reimburse for initial construction costs, specifically stating:

The City Manager will support and recommend to the City Commission that the revenue received by Fountainhead Developers for the initial purchase of Parcel II of approximately 9.42 acres will be eligible to reimburse Fountainhead Developers for jobs transferred in accordance with the already accepted job incentive schedule and to reimburse Fountainhead Developers for the cost of construction of the landscaping, entry features, signage, lighting and retention pond improvements associated with the construction of Phase I. Reimbursement of funds will only be eligible for these agreed upon items and job incentives at the time Phase I receives a CO (Certificate of Occupancy).

- B. November 10, 2016, Scott Simpson email verifies that the intent of all parties was to allow development reimbursement at the same time the first job incentives are paid:

From: Scott Simpson
 <scott.scottsimpsonlaw@gmail.com<<mailto:scott.scottsimpsonlaw@gmail.com>>>
 To: Mark Watts <Mark.Watts@cobbcole.com<<mailto:Mark.Watts@cobbcole.com>>>
 Cc: Joe Forte <jforte@hollyhillfl.org<<mailto:jforte@hollyhillfl.org>>>, Lynne Figenscher
 <Lynne.Figenscher@cobbcole.com<<mailto:Lynne.Figenscher@cobbcole.com>>>, Heather Flores <Heather.Flores@cobbcole.com<<mailto:Heather.Flores@cobbcole.com>>>
 Date: Thu, 10 Nov 2016 15:56:03 +0000
 Subject: Re: Fountainhead

Mark:

I discussed with Joe. As you and I discussed how about we state that the Initial Redevelopment Improvements will be reimbursed at the same time the first Job Incentives are paid....

- C. November 15th, the City Commission, with the support of the city staff, approves the first version of the redevelopment incentive agreement, wherein paragraph 8 read as follows:

Notwithstanding the forgoing provisions of this Part One, \$60,000 per acre of the first 10 acres acquired by the Developer shall also be available to the Developer from the Agency to fund the costs associated with installation of perimeter landscaping, hardscaping, enhanced entry features and related improvements (the "Initial Redevelopment Improvements") associated with the redevelopment of the Property. Any amount of the fund established in Part One for New Employee Incentives used for the costs associated with the Initial Redevelopment Improvements shall reduce the overall amount available for the New Employee Incentive on a dollar for dollar basis. Reimbursement of the Initial Redevelopment Improvements shall be on an as-incurred basis and payments shall be made by the City and Agency in accordance with the timelines for payment under Parts Two and Three provided in paragraph 20, below. Initial Redevelopment Improvements may be funded from the New Employee Incentive fund so long as it is an Eligible Redevelopment Cost as defined in Part Two.

- D. Additional Notes Re: Nov 15 Meeting minutes:

I think it is worth pointing out during the November 15th meeting there was special emphasis placed on paragraph 8 and it was understood at the time they were approving the November 15th version of paragraph 8 before the "Phase 1" elements were defined.

Attorney Simpson stated "all" improvements in Phase 1, Parcel 2. It has the word "all" for Phase 1 and parcel 2 have to be CO'd before the city does the incentive. The word "all" is in there. Once the city gets the final MPUD then they will know what's in Parcel 2.

Mr. Forte stated, right.

Key Takeaway for Events Through November 15th Incentive Agreement: The early groundwork is laid for using proceeds from the sale of Parcel 2 for capital expenditure reimbursement, as well as job incentive money.

II. THE DECEMBER 13, 2016, WORK SESSION.

- A. December 13, 2016, special work session with the City Commission to discuss progress of the MPUD. Several items of note come out of this meeting, not the least of which is the birth of the \$190,000 credit expressed in the current agreement.
1. During a discussion of the timetables for completing Phase 1, the meeting minutes indicate that there is some confusion as to what constitutes Phase 1 in the context of the incentive agreement (despite the fact, as noted above, it was understood in November that the elements of Phase 1 were not yet worked out). The meeting soon morphed from a

discussion of the MPUD to a discussion of the meaning of paragraph 8 of the incentive agreement. At this time, everyone is still working from the previously approved November 15th version of the incentive agreement. As summarized in the minutes, Jayson Meyer explained the intent of paragraph 8:

Mr. Myer stated the intent, when Mr. Forte and I were first talking about this, was we wanted to get all the landscaping done in the beginning, but it may not make financial sense for us, the developer, to landscape property we don't yet own. So, the intent in that was when we move in and we get our Certificate of Occupancy, we can get reimbursed for that work that we're doing in the beginning and that way we didn't have to put part of the perimeter landscaping in place, not all of it, that was the intent of it.

2. Joe Forte interrupted the discussion about the timetable for completing construction with the following statements per the meeting minutes:

Mr. Forte stated before they get off that, we are still going to run into a debate, if not today then down the line, on how that...the jobs growth money is going to be used for initial construction reimbursements and he thinks the sooner that gets addressed by both the Commission and the developer, the better. And if this is a job...if this is a performance-based reimbursement and the city agrees to use "some" of the money for the jobs for initial reimbursements, he thinks the Commission and the developer should set a standard and he mentioned earlier, once the headquarters is built and the jobs move in and those jobs are reimbursed, whatever is left over could and should be used for those initial reimbursements. The question is, how many jobs should that be? And if they used, as an example, maybe it will take a year and a half, two years to complete the headquarters...he doesn't know, maybe by that time they will have 130 jobs to move in. One hundred and thirty jobs, that's \$390,000. He thinks, at least that much money should be set aside and be held for jobs reimbursement and then the balance can be freed up after that for the initial improvements, which at a \$540,000, purchase, they're looking at about a \$160,000 for initial improvements reimbursements.

This appears to me to be pivotal point that led to the current version of paragraph 8. While it is unclear from the minutes or any emails I have at my disposal why paragraph 8 was being opened back up for debate, Fountainhead's legal counsel, Mark Watts, agreed to discuss it further.

3. The work session picked up again after the regular meeting, and the discussion focused on the question of the number of jobs being moved over by Synergy and how much of the purchase price for Parcel 2 would be used for job incentive and how much would be used for reimbursing the cost of initial improvements. It is during this discussion that Joe Forte came up with the idea that paragraph 8 should be changed. Using an estimate of 125 jobs created with an average incentive payment of \$3,000 per job, he suggested that \$375,000 of the job incentive fund created from the purchase Parcel 2 should be specifically earmarked for job reimbursements, and the balance of the purchase price would be used for initial improvements.

Mr. Forte stated so, in essence they would set \$375,000 aside specifically for job reimbursements and the balance up to the purchase price for the 9.4 acres can be used for the initial improvements.

Mayor Penny stated about \$200,000.

Mr. Forte stated, roughly.

In actuality, at \$60,000 per acre for 9.42 acres, the balance left for initial improvements after setting aside \$375,000 is \$190,200.

Key Takeaway from the December 13, 2016 Meeting: Both the purpose and the math for the \$190,000 is born; but the intent of the use for the money does not change – reimbursement of initial capital expenditures.

III. JANUARY 24TH APPROVAL OF THE CURRENT VERSION OF THE INCENTIVE AGREEMENT

There were a few versions of the incentive agreement exchanged between December 13, 2016, and January 24, 2017, which are instructive for illustrating how the language morphed into the version under which we are operating today. However, I believe Joe Forte's comments as reflected in the January 24th meeting minutes pretty much sum up everyone's understanding as to how paragraph 8 was intended to operate:

Mr. Forte stated there were quite a few changes to the Incentive Agreement. Most of which came out of the previous meeting where the Commission directed staff to make some changes. Of note is paragraph 8, that they have talked about so many times in the past and paragraph 8 has now been changed to read as follows, "Notwithstanding the forgoing provisions of this Part One, \$190,000.00 shall be used as a credit towards the purchase price of the Developer acquiring Parcel 1. Parcel 1 shall be acquired by the Developer after meeting the criteria below which shall be closed simultaneously with the first payment of the New Employee Incentive. The \$190,000 used as a credit towards the purchase price shall remain in the New Employee Incentive fund. The first payment of the New Employee Incentive shall be conditioned upon (a) the completion and certificate of occupancy being issued for all of Phase 1, Parcel 2 as identified on Exhibit C; and (b) the headquarters and all employees of Synergy Billing, LLC being permanently located to the Phase 1, Parcel 2." In other words, paragraph 8 had some other criteria where they had to reach a certain development stage in order to start to get the reimbursements of the job incentive money and a portion of that money \$190,000 would be used towards the initial improvements.

The Developer (Jayson) made business decisions to move forward with the project based on his then belief that 100% of the initial development expenses would be reimbursable pursuant to Joe Forte's August 1, 2016, memo. Paragraph 8 of the Incentive Agreement approved by Staff and the City Commission on November 15, 2016, provided that up to \$600,000 (\$60,000 per acre for the first 10 acres), could be used for this purpose. However, City staff sought to renegotiate this part of the agreement during a December 13th workshop on the status of the MPUD. Despite already having an agreement in place that allowed for up to \$600,000 in initial capital expense reimbursement, Fountainhead Developers cooperated with Staff's desire to emphasize jobs. The end result is January 24, 2017, version now in place, which was developed and presented to the

City Commission for approval. As explained by the City Staff prior to the adoption, it was intended that \$190,000 from the job incentive fund would be used to offset initial development cost, but with added and more clear conditions precedent to release of any such funds.

IV. PLAIN LANGUAGE OF THE CONTRACT

For ease of reference, paragraph 8 of the Agreement is as follows:

8) Notwithstanding the forgoing provisions of this Part One, \$190,000.00 shall be used as a credit towards the purchase price of the Developer acquiring Parcel 1. Parcel 1 shall be acquired by the Developer after meeting the criteria below which shall be closed simultaneously with the first payment of the New Employee Incentive. The \$190,000 used as a credit towards the purchase price shall remain in the New Employee Incentive fund. The first payment of the New Employee Incentive shall be conditioned upon (a) the completion and certificate of occupancy being issued for all of Phase 1, Parcel 2 as identified on Exhibit C; and (b) the headquarters and all employees of Synergy Billing, LLC being permanently located to the Phase 1, Parcel 2.

In addition to the historical record, the plain language of paragraph 8 makes it fairly clear what the parties intended at the time this provision was adopted. The very first sentence of paragraph 8, “notwithstanding” any of the forgoing provisions of Part One regarding how the New Employee Incentive is funded, how it is earned and how it is paid out, \$190,000 shall be used as a credit toward the purchase price of Parcel 1 upon moving the Synergy headquarters to the Property and completion of Phase 1. [See *Wash. Nat'l Ins. Corp. v. Ruderman*, 117 So.3d 943, 948 (Fla.2013) “Where the contract is unambiguous, it must be interpreted in accordance with its plain meaning so as to give effect to the contract as a whole.”] That the \$190,000 used for this credit “shall remain” in the New Employee Incentive fund only reinforces the fact that the money used for the credit towards the purchase price comes from the job incentive fund, but rather than going straight to the Developer’s bank account, it “remains” in the fund to be used for future job incentives earned in the same manner as if the funds came directly from Jayson Meyer. [See *Bombardier Capital Inc. v. Progressive Mktg. Grp., Inc.*, 801 So. 2d 131, 134 (Fla. 4th DCA 2001) The Court may draw reasonable inferences from unambiguous contract language to determine what the parties intended.]

As I understand the City staff position, \$190,000 must be New Employee Incentive actually earned and then applied as a credit. However, there is no contract language that supports this interpretation, and such a reading of this paragraph makes it meaningless. It goes without saying that job incentive payments earned can be used for whatever the Developer decides is most critical to the Developer. Moreover, not only is there nothing in the contract that to support this recent idea that the \$190,000 credit must be earned through job creation, but the “notwithstanding” language expressly excludes the application of the job incentive requirements to the application of the \$190,000 credit towards the purchase price.

It is then available for job incentive money in the same fashion all other parcel purchase money. What these two highlighted clauses tell us is that the purchase money from Parcel 2, which might otherwise be used for job incentive payments, can be the “source” of funds for the credit, but the funds will not be moved to some other CRA use. The \$190,000 “shall remain” in the job incentive pool of funds available for job incentive payments when they are earned.

Given the clear language of the contract document itself, the statements made by the City staff directly addressing paragraph 8 at the meeting where the current agreement was adopted, and the clear history supporting the intent of paragraph 8, it is puzzling why we are even debating this issue. The \$190,000 was a renegotiation of a provision that previously allowed Fountainhead to use up to 100% of the proceeds from the sale of the first 10 acres for reimbursement of the initial development costs, if needed. The City staff was able to reopen the matter and whittle this down to the \$190,000 credit. There is no need to whittle it down any further.

The Law Offices of Patrick J Kennedy, PA
124 Central Avenue
Crescent City, Florida 32112
patrickjkennedypa@gmail.com

MEMORANDUM

To: Joe Forte, City Manager
City of Holly Hill, Florida

From: Patrick Kennedy 

Cc: M. Jayson Meyer

Date: September 16, 2021

RE: Historical Research Regarding Paragraph 8 of the Fountainhead Incentive Agreement and Related Matters

As discussed following the last City Commission meeting, we conducted some historical research regarding the development of the Fountainhead Redevelopment Incentive Agreement. We reviewed the meeting minutes and agenda packets for regular and special meetings/workshops from November 2016 and January 2017, as well as any emails, memos, and draft incentive agreements from this same period. I have provided my findings in 3 blocks of time:

- I. The Development of the November 15, 2016, Version of the Incentive Agreement
- II. The December 13, 2016, Work Session
- III. The Development of the January 24, 2017, Version of the Incentive Agreement Currently in Place

Part IV directly addresses some of the statements from Joe Forte's September 14, 2021, correspondence on this matter.

I. THE DEVELOPMENT OF THE NOVEMBER 15TH VERSION OF THE INCENTIVE AGREEMENT

- A. August 1, 2016, Joe Forte issues a memorandum following a July 29th meeting with Jayson Meyer and a letter from Jayson wherein he expressly supports the use of funds otherwise meant for job incentives to reimburse for initial construction costs, specifically stating:

The City Manager will support and recommend to the City Commission that the revenue received by Fountainhead Developers for the initial purchase of Parcel II of approximately 9.42 acres will be eligible to reimburse Fountainhead Developers for jobs transferred in accordance with the already accepted job incentive schedule and to reimburse Fountainhead Developers for the cost of construction of the landscaping, entry features, signage, lighting and retention pond improvements associated with the construction of Phase I. Reimbursement of funds will only be eligible for these agreed upon items and job incentives at the time Phase I receives a CO (Certificate of Occupancy).

- B. November 10, 2016, Scott Simpson email verifies that the intent of all parties was to allow development reimbursement at the same time the first job incentives are paid:

From: Scott Simpson

<scott.scottsimpsonlaw@gmail.com<<mailto:scott.scottsimpsonlaw@gmail.com>>>

To: Mark Watts <Mark.Watts@cobbcole.com<<mailto:Mark.Watts@cobbcole.com>>>

Cc: Joe Forte <jforte@hollyhillfl.org<<mailto:jforte@hollyhillfl.org>>>, Lynne Figenschner <Lynne.Figenschner@cobbcole.com<<mailto:Lynne.Figenschner@cobbcole.com>>>, Heather Flores <Heather.Flores@cobbcole.com<<mailto:Heather.Flores@cobbcole.com>>>

Date: Thu, 10 Nov 2016 15:56:03 +0000

Subject: Re: Fountainhead

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I discussed with Joe. As you and I discussed how about we state that the Initial Redevelopment Improvements will be reimbursed at the same time the first Job Incentives are paid....

- C. November 15th, the City Commission, with the support of the city staff, approves the first version of the redevelopment incentive agreement, which provided in paragraph 8, in part:

Notwithstanding the forgoing provisions of this Part One, \$60,000 per acre of the first 10 acres acquired by the Developer shall also be available to the Developer from the Agency to fund the costs associated with installation of perimeter landscaping, hardscaping, enhanced entry features and related improvements (the "Initial Redevelopment Improvements")

- D. Additional Notes Re: Nov 15 Meeting minutes:

I think it is worth pointing out during the November 15th meeting there was special emphasis placed on paragraph 8 and it was understood at the time they were approving the November 15th version of paragraph 8 before the "Phase 1" elements were defined.

Attorney Simpson stated "all" improvements in Phase 1, Parcel 2. It has the word "all" for Phase 1 and parcel 2 have to be CO'd before the city does the incentive. The word "all" is in there. Once the city gets the final MPUD then they will know what's in Parcel 2. Mr. Forte stated, right.

Key Takeaway for Events Through November 15th Incentive Agreement: The early groundwork is laid for using proceeds from the sale of Parcel 2 for capital expenditure reimbursement, as well as job incentive money.

II. THE DECEMBER 13, 2016, WORK SESSION.

- A. December 13, 2016, special work session with the City Commission to discuss progress of the MPUD. Several items of note come out of this meeting, not the least of which is the birth of the \$190,000 credit expressed in the current agreement.

1. During a discussion of the timetables for completing Phase 1, the meeting minutes indicate that there is some confusion as to what constitutes Phase 1 in the context of the incentive agreement (despite the fact, as noted above, it was understood in November that the elements of Phase 1 were not yet worked out). The meeting soon morphed from a discussion of the MPUD to a discussion of the meaning of paragraph 8 of the incentive agreement. At this time, everyone is still working from the previously approved November 15th version of the incentive agreement. As summarized in the minutes, Jayson Meyer explained the intent of paragraph 8:

Mr. Myer stated the intent, when Mr. Forte and I were first talking about this, was we wanted to get all the landscaping done in the beginning, but it may not make financial sense for us, the developer, to landscape property we don't yet own. So, the intent in that was when we move in and we get our Certificate of Occupancy, we can get reimbursed for that work that we're doing in the beginning and that way we didn't have to put part of the perimeter landscaping in place, not all of it, that was the intent of it.

2. Joe Forte interrupted the discussion about the timetable for completing construction with the following statements per the meeting minutes:

Mr. Forte stated before they get off that, we are still going to run into a debate, if not today then down the line, on how that...the jobs growth money is going to be used for initial construction reimbursements and he thinks the sooner that gets addressed by both the Commission and the developer, the better. And if this is a job...if this is a performance-based reimbursement and the city agrees to use "some" of the money for the jobs for initial reimbursements, he thinks the Commission and the developer should set a standard and he mentioned earlier, once the headquarters is built and the jobs move in and those jobs are reimbursed, whatever is left over could and should be used for those initial reimbursements. The question is, how many jobs should that be? And if they used, as an example, maybe it will take a year and a half, two years to complete the headquarters...he doesn't know, maybe by that time they will have 130 jobs to move in. One hundred and thirty jobs, that's \$390,000. He thinks, at least that much money should be set aside and be held for jobs reimbursement and then the balance can be freed up after that for the initial improvements, which at a \$540,000, purchase, they're looking at about a \$160,000 for initial improvements reimbursements.

This appears to me to be pivotal point that lead to the current version of paragraph 8. While it is unclear from the minutes or any emails I have at my disposal why paragraph 8 was being opened back up for debate, Fountainhead's legal counsel, Mark Watts, agreed to discuss it further.

3. The work session picked up again after the regular meeting, and the discussion focused on the question of the number of jobs being moved over by Synergy and how much of the purchase price for Parcel 2 would be used for job incentive and how much would be used for reimbursing the cost of initial improvements. It is during this discussion that Joe Forte came up with the idea that paragraph 8 should be changed. Using an estimate of 125 jobs created with an average incentive payment of \$3,000 per job, he suggested that \$375,000 of the job incentive fund created from the purchase Parcel 2 should be specifically earmarked for job reimbursements, and the balance of the purchase price would be used for initial improvements.

Mr. Forte stated so, in essence they would set \$375,000 aside specifically for job reimbursements and the balance up to the purchase price for the 9.4 acres can be used for the initial improvements.

Mayor Penny stated about \$200,000.

Mr. Forte stated, roughly.

In actuality, at \$60,000 per acre for 9.42 acres, the balance left for initial improvements after setting aside \$375,000 is \$190,200.

Key Takeaway from the December 13, 2016 Meeting: Both the purpose and the math for the \$190,000 is born; but the intent of the use for the money does not change – reimbursement of initial capital expenditures.

III. JANUARY 24TH APPROVAL OF THE CURRENT VERSION OF THE INCENTIVE AGREEMENT

There were a few versions of the incentive agreement exchanged between December 13, 2016, and January 24, 2017, which are instructive for illustrating how the language morphed into the version under which we are operating today. However, I believe Joe Forte's comments as reflected in the January 24th meeting minutes pretty much sum up everyone's understanding as to how paragraph 8 was intended to operate:

Mr. Forte stated there were quite a few changes to the Incentive Agreement. Most of which came out of the previous meeting where the Commission directed staff to make some changes. Of note is paragraph 8, that they have talked about so many times in the past and paragraph 8 has now been changed to read as follows, "Notwithstanding the forgoing provisions of this Part One, \$190,000.00 shall be used as a credit towards the purchase price of the Developer acquiring Parcel 1. Parcel 1 shall be acquired by the Developer after meeting the criteria below which shall be closed simultaneously with the first payment of the New Employee Incentive. The \$190,000 used as a credit towards the purchase price shall remain in the New Employee Incentive fund. The first payment of the New Employee Incentive shall be conditioned upon (a) the completion and certificate of occupancy being issued for all of Phase 1, Parcel 2 as identified on Exhibit C; and (b) the headquarters and all employees of Synergy Billing, LLC being permanently located to the Phase 1, Parcel 2." In other words, paragraph 8 had some other criteria where they had to reach a certain development stages in order to start to get the reimbursements of the job incentive money and a portion of that money \$190,000 would be used towards the initial improvements.

The Developer (Jayson) made business decisions to move forward with the project based on his then belief that 100% of the initial development expenses would be reimbursable pursuant to Joe Forte's August 1, 2016, memo. Paragraph 8 of the approved Incentive Agreement from November 15, 2016, made certain this could happen, and stated in part:

Notwithstanding the forgoing provisions of this Part One, \$60,000 per acre of the first 10 acres acquired by the Developer shall also be available to the Developer from the Agency to fund the costs associated with installation of perimeter landscaping, hardscaping, enhanced entry features and related improvements (the "Initial Redevelopment Improvements") associated with the

redevelopment of the Property. Any amount of the fund established in Part One for New Employee Incentives used for the costs associated with the Initial Redevelopment Improvements shall reduce the overall amount available for the New Employee Incentive on a dollar for dollar basis. Reimbursement of the Initial Redevelopment Improvements shall be on an as-incurred basis and payments shall be made by the City and Agency in accordance with the timelines for payment under Parts Two and Three provided in paragraph 20, below. Initial Redevelopment Improvements may be funded from the New Employee Incentive fund so long as it is an Eligible Redevelopment Cost as defined in Part Two.

It appears from the record that City staff sought to renegotiate the agreement between the November 15, 2016, approved version and January 24, 2017, version we are now operating under, placing restrictions that resulted in the new paragraph 8 and the \$190,000 credit towards the purchase of Parcel 1.

Given the clear language of the contract document itself, the statement made by Joe Forte directly addressing paragraph 8 at the January 24th meeting when the current agreement was adopted, and the clear history supporting the intent of paragraph 8, it is puzzling why we are even debating this issue. The \$190,000 was a renegotiation of a provision that previously allowed Fountainhead to use up to 100% of the proceeds from the sale of the first 10 acres for reimbursement of the initial development costs, if needed.

IV. JOE FORTE MEMO 9/14/2021

This section address the Joe Forte memo sent via email on September 14, 2021, taking key comments and conclusions made in this memo in the order they appear.

Joe Forte Statement: “However, the conclusion I have reached was that the city was going to hold \$190,000 of New Employee Incentives as a credit towards the purchase price of Parcel 1 for any jobs transferred.”

Response: If this is what was intended, this is what the agreement would have said. I found no history and there is no history cited in the write up to support this conclusion. The history does show that the Agreement morphed several times from what started out as an ability to use all the land purchase money for improvement costs (see pre-November 15, 2016, versions), to capping the use of the incentive money for improvement costs to the proceeds from the first 10 acres (which was supported by staff and adopted by the commission on November 15th), to simply using \$190,000 to offset improvement expenses but applying these funds as a credit towards the purchase price of Parcel 1. That is what the history supports, that is what Mr. Forte’s statement at the January 24th meeting supports, and that is what the plain meaning of the contract supports.

Joe Forte Statement: “The thought was that if Synergy Billing’s employment grew as projected, Fountainhead would have received sufficient New Employee Incentive benefits, between the \$190,000 credit and the payment of the balance, to effectively pay for Parcel 1 without any out of pocket expense. Unfortunately, that is no[t] the case today.”

Response: What is the point of mentioning a \$190,000 credit if Synergy had to earn it through achieving “sufficient New Employee Incentive benefits”. We do not argue that the jobs were not where anyone

wanted them to be when Synergy relocated, including Jayson, but the \$190,000 credit was not tied to a certain number of jobs or a certain amount of earned job incentives.

Joe Forte Statement: “When Fountainhead executed the incentive agreement it was anticipating a certain employment growth by Synergy Billing that would have effectively paid for Parcel 1, but the employment growth did not materialize.”

Response: While we appreciate your attempt to understand what Fountainhead anticipated with the regard to the use of employment incentives to offset the costs of purchasing Parcel 1, how we may have intended to apply the job incentive dollars earned is not relevant to this analysis. We are addressing the \$190,000 credit. The anticipated growth discussed at the time of negotiation was 125 jobs transferred to the City of Holly Hill, which resulted in your assertion that \$375,000 of the purchase price for Parcel 2 should be limited to job incentive only; and to quote your statement as reflected in the minutes “*the balance up to the purchase price for the 9.4 acre can be used for initial improvements*”. That is an accurate expression of everyone’s intent for the \$190,000.

Your own statements in each of the meetings, including the January 24th meeting demonstrate that this was both the City’s and Fountainhead’s intent then and now to allow a portion of the New Employee Incentive fund to be used to offset improvement costs. And, despite the fact that there was already an agreement in place on November 15, 2016, that allowed more flexibility to use job incentive money towards improvement costs, Fountainhead agreed to these changes reflected in the subsequent agreement adopted in January 2017.

Joe Forte Statement: “I believe what Fountainhead is doing now is an effort to try and get Parcel 1 without having to actually come out of pocket for the purchase price. That is why I believe you are claiming the \$190,000 was a price reduction and not a credit.”

Response: The Developer was offended by this statement and felt it contrary to the intent of this exercise but for my part, I believe these statements shed light on what I believe is a major source of the City’s misunderstanding of this provision. I would agree with you that the incentive agreement does not provide for a discount in the purchase price and that there is no “reference to reducing the purchase price” in the contract or in the historical record. However, this is because purchase price is not being reduced and we are not asking it to be reduced.

What the agreement does provide: “Notwithstanding the forgoing provisions of ... Part One” regarding the use of the New Employee Incentive fund, \$190,000 from this fund will be used as a credit to the purchase price of Parcel 1 once Phase 1 is complete and Synergy completes the move of its headquarters to the Property. The money applied as a credit does not go straight into Fountainhead’s bank account, but rather it “remains in the New Employee Incentive fund” where it can be paid out towards future job incentives as if the funds came directly by Fountainhead in the purchase of Parcel 1.

Joe Forte Statement: “If the \$190,000 was to be used simply to reduce the price of parcel 1, it would not have been in the jobs incentive section of the agreement and would have specifically stated the funds were to be used to reduce the purchase price of parcel 1.”

Response: The fact that paragraph 8 is in Part One of the incentive agreement does nothing to rebut our position nor does it support the conclusions presented by the City. Quite the contrary, there is a clear reason why this provision is in this section – because it speaks to use of the New Employee Incentive fund for something other than jobs created. Moreover, the City’s meeting minutes, and the versions of this agreement exchanged over the course of negotiation all demonstrate that paragraph 8 has always been about using a certain portion of the job incentive funds for something other than jobs and it has always been in Part One of every version of the agreement. Hence the reason and the need for the introductory clause to paragraph 8 “Notwithstanding the forgoing provisions of this Part One...” Once again, both the history of the negotiations and the plain meaning of the contract contradict the City conclusory statement that the “only payment from the New Employee incentive fund is for qualified jobs”.

Joe Forte Statement: “The \$190,000 was money that was earned by Fountainhead and to be paid out of the employee incentive fund, which is why Paragraph 8 says that instead of paying the money to Fountainhead, it will be a credit towards the purchase price and will “remain in the New Employees incentive Fund”.

Response: The historical record shows the \$190,000 is to be paid out of purchase money from Parcel 2 as a negotiated compromise to Fountainhead’s request to use some of these funds to offset initial improvement costs. Paragraph 8 clearly tells all parties that “**notwithstanding**” the fact that purchase money from Parcel 2 might otherwise be earmarked for job incentive payments, \$190,000 from this fund shall be used as the source of funds for the credit against the purchase price, and it is to be treated like all other funds paid by Fountainhead for the purchase of the parcels: it “shall” remain available in this fund for future job incentive payments when they are earned.

Joe Forte Statement: “Therefore, it is my recommendation that the city move forward providing funding in the amount equal to any employees that qualify for the New Employee Incentive as of the date that Fountainhead is issued a certificate of occupancy and that the New Employee Incentives earned shall be provided as a credit towards the purchase price of Parcel 1 and shall remain in the New Employee Incentive fund.”

Response: Fountainhead is entitled to whatever new employee incentive has been earned, regardless of the \$190,000 credit. If the timing allows, we can choose to use that money towards the purchase price of any of the parcels, not just Parcel 1 without any special permission from the City. The \$190,000, as demonstrated by the history and the language of the contract, is a separate consideration and it comes out of the New Employee Incentive fund regardless of the number of jobs created.

Perhaps it will help to look at this way: If Synergy had transferred 125 jobs when it transferred its headquarters in June of 2019, Fountainhead would have received roughly \$375,000 in job incentive payments at the time of Certificate of Occupancy for all of Phase 1, some of which could be used towards buying Parcel 1, and we would still be entitled to the \$190,000 credit towards the purchase from the New Employee Incentive fund over and above the \$375,000 job incentive payout.

Final Take Away from Historical Review of the Redevelopment Incentive Agreement:

The purpose of this exercise was to review the history of the negotiations against the wording of the Redevelopment Incentive Agreement. The history, buoyed by Joe Forte's own statements on the record, clearly states that it was always the intention to allow some of the New Employee Incentive fund to be used for something other than job incentives – to wit, offsetting costs associated with initial development costs. Neither the wording of the contract nor the historical record supports a position that the \$190,000 must be earned through job creation. Rather, it is a sum of money that is earned when Fountainhead finishes Phase 1 and moves Synergy headquarters, including its employees, to the Property; and rather than pay it directly to Fountainhead, it is applied as a credit towards the purchase price of Parcel 1 to satisfy the City's concern that the Developer would continue with future phases of development after completion of Phase 1 (a concern that was expressed in the meetings). The \$190,000 is then treated like all other funds derived from the purchase of the option parcels – it is left in the incentive funds to pay for future incentives earned.

Gentlemen,

I read through a number of minutes from city commission meetings and workshops starting with the November 2016 Commission meeting thru January 2017 Commission meetings, as well as several email chains with regard specifically to Paragraph 8 of the incentive agreement.

The initial incentive agreement was approved in November of 2016 and simply required that Fountainhead obtain a certificate of occupancy for all of Phase 1, Parcel 2 improvements before the first payment from the New Employee Incentive fund. However, there was immediately a misunderstanding of what all of Phase 1 meant. This issue and the incentive agreement were then brought back to the Commission in December 2016. During this meeting there was discussion about changing Paragraph 8 to allow \$190,000 of the New Employee Incentive money to be used to reimburse Fountainhead for off premises improvements, mainly landscaping, after Fountainhead had earned and received approximately \$360,000 in New Employee Incentive payments. This was not voted on by the City Commission at this meeting, but instead city staff and Fountainhead were directed to bring back an agreed upon incentive agreement to the first meeting in January 2017. The city staff and representatives from Fountainhead participated in several meetings between these two commission meetings.

What I have read was that there were long discussions at the commission meetings and work sessions over the language in paragraph 8. Those meetings were followed up with some email communications between Scott, Mark Watts and me, and some verbal meetings which I do not have record of who attended or what was discussed, all of which morphed the language over a very short period of time.

Between November and December of 2016, there were plenty of discussions on how some excess funds in the New Employee Incentive fund may be used for initial improvements but was then reduced to only being used to reimburse for off sight landscaping on parcels 1 and 3 during the December 2016 Commission meeting. However, this language was ultimately dropped for the language that is in the final incentive agreement. As you may recall, I often opposed using the New Employee Incentive money for any payment other than qualified jobs and Fountainhead would often seek to have the New Employee Incentive money used for capital expense reimbursement.

There was also a lot of discussion over the conditions to be met in order to get the excess funding. For example, at one point the conditions were for Synergy Billing to transfer 130 jobs to the Fountainhead headquarters and to complete all of Phase I which was the development of parcel 2. Exhibit C did not exist at this point. Then the number of jobs transferred reduced to 115 which is where the balance of \$190,000 came from and as discussions continued and the terms changed as parcel 2 was going to be developed in phases which is when Exhibit "C" came into existence. Since Exhibit "C" reduced the amount of development on parcel 2 and the number of jobs to be transferred fell off the table, the terms changed yet again.

The final language in paragraph 8 is not specific to the communications that lead up to it. However, the conclusion I have reached was that the city was going to hold \$190,000 of New Employee Incentives as a credit towards the purchase price of Parcel 1 for any jobs transferred. Therefore, the city was not paying the New Employee incentive money to Fountainhead, which may have been taxable, only for Fountainhead to pay it back to the city for the purchase of the parcel 1. The thought was that if Synergy Billing's employment grew as projected, Fountainhead would have received sufficient New Employee

Incentive benefits, between the \$190,000 credit and the payment of the balance, to effectively pay for Parcel 1 without any out of pocket expense. Unfortunately, that is not the case today.

Please keep in mind that at the time all of this was being discussed there was anticipated to be 130 jobs transferred and much more development on parcel 2. Unfortunately, what no one anticipated or considered when the incentive agreement was approved was, what happens if Synergy Billing's employment does not grow as projected or worse yet, actually decreases, which is what Synergy Billing actually experienced. When Fountainhead executed the incentive agreement it was anticipating a certain employment growth by Synergy Billing that would have effectively paid for Parcel 1, but the employment growth did not materialize. I believe what Fountainhead is doing now is an effort to try and get Parcel 1 without having to actually come out of pocket for the purchase price. That is why I believe you are claiming the \$190,000 was a price reduction and not a credit. It appears you are claiming that the City should consider the employees Synergy Billing transferred under a temporary Certificate of Occupancy, instead of the number of Fountainhead employees that exist at the time the Certificate of Occupancy is approved, which is what the incentive agreement provides.

If the \$190,000 was to be used simply to reduce the price of parcel 1, it would not have been in the jobs incentive section of the agreement and would have specifically stated the funds were to be used to reduce the purchase price of parcel 1. If the money was to be used to pay for offsite improvements, it would have stated so. There is a difference between a price reduction and a credit. For the credit to be given, the City would have to owe money to the Fountainhead. The only money the City would owe Fountainhead, from the jobs incentive fund, is jobs incentive money that Fountainhead earned for actual jobs at Fountainhead. The \$190,000 was money that was earned by Fountainhead and to be paid out of the employee incentive fund, which is why Paragraph 8 says that instead of paying the money to Fountainhead, it will be a credit towards the purchase price and will "remain in the New Employees incentive Fund". To remain in this fund, it has to be referring to money that would otherwise have been paid out of the fund. The only payment from the New Employee incentive fund is for qualified jobs.

I have been unable to find any reference to reducing the purchase price and the terms around the offsite improvements for landscaping parcels 1 and 3 fell apart as the negotiations changed the language. But even if that was agreed upon in the incentive agreement, \$190,000 would have been used to reimburse for capital expenses incurred by Fountainhead that qualified for reimbursement. There were never any discussions of the City providing any money or benefits without a performance measure being met. All benefits Fountainhead is to receive are earned based on performance.

*Therefore, it is my recommendation that the city move forward providing funding in the amount equal to any employees that qualify for the New Employee Incentive as of the date that Fountainhead is issued a certificate of occupancy and that the New Employee Incentives earned shall be provided as a credit towards the purchase price of Parcel 1 and shall remain in the New Employee Incentive fund.

If you have any information that indicates this money should be used other than what I have interpreted or is in support of your position, please provide it to me and I will certainly consider it with an open mind. It is imperative that this matter be resolved in order for Fountainhead to receive an extension on the purchase option to February 2022 and more importantly for Fountainhead to purchase parcel 1.



**STAFF REPORT
CITY OF HOLLY HILL, FLORIDA**

5.3

**City Commission
Agenda Item**

MEETING DATE: October 12, 2021
FROM: Joseph Forte
SUBJECT: Fountainhead Land Lease (Renewal)
NUMBER: (ID # 3502)
APPLICANT:
PLANNER:

DISCUSSION:

Fountainhead MPUD, Incentive Agreement and Exhibits were approved March 2017. The proposal was presented as a \$25,000,000.00 development completed by 2026 and bringing 100 existing and 400 new jobs to the City of Holly Hill by the end of 2020.

Two incentive packages were developed. One is to reimburse the developer a specified dollar amount for all new and existing jobs, as well as, an added incentive for those employee who live inside the city limits. The money used for this reimbursement is available from the developers purchase of the property. The second incentive package is designed to reimburse the developer for qualified expenses for the development of the project. The money used for reimbursement would come from the Tax Increment generated from the property's increased tax value.

To understand the expectation, below are a few points of fact that must be understood when deciding future changes to the agreements.

Section 2. Master Development Plan authorized the following:

- | | |
|--|-------------------|
| A. Corporate Headquarters: | 110,172 sq. ft. |
| B. Medical Office/Clinic | 16,000 sq. ft. |
| C. Office: | 30,000 sq. ft. |
| a. Financial Institution may be included within the office area as provided for below. | |
| D. Fitness Center: | 4,000 sq. ft. |
| E. Child Day Care: | 6,000 sq. ft. |
| F. Specialty Food/Restaurant | 4,000 sq. ft. |
| G. Multi-family Dwelling units | 88 dwelling units |

Section 6. Phasing of Development: The PROPERTY may be developed in multiple phases as

individual parcels, as shown on the MPUD. However, at a minimum, the following improvements must be included as part of Phase 1 as also illustrated in Exhibit “C”:

- A. Synergy Billing Headquarters (2 buildings, totaling 21,000 sq. ft.)
- B. Synergy Academy (7,000 sq. ft.)
- C. 24 ft. landscaped perimeter buffer along Center Avenue
- D. 10 ft. buffer along Walker Street, running from the intersection of Walker Street and Center Ave to the main entrance to the Property on Walker.
- E. Water retention ponds, as required by the St. Johns River Water Management District, as depicted in Exhibit “C”. Landscaping of said ponds shall be provided herein.
- F. Parking to support the Phase 1 buildings, with future parking area to be sodded until improved.
- G. Primary entrances to Walker Street and Center Avenue as depicted on Exhibit “C”.

All of the items identified in the amended Exhibit “C” Phase I on Parcel 2 (attached) must be completed before the developer would be permitted to purchase Parcel 1. The developer would then have to purchase Parcel 3 in order to gain access to the funds in excess of the first \$60k per acre of the housing development, Parcel 4, once that property is sold to a housing developer. These moneys were to be used to keep the development moving forward.

The Developer needed to move his operation into the facility by the end of May 2019 because their current location would no longer be available. As a result, the Developer had requested an early Certificate of Occupancy to gain access to the former Media Center and Gymnasium before the final construction plan of Exhibit “C” is complete. The City and the Developer worked on a purchase and sale agreement with amendments to Exhibit “C” as part of Phase I on Parcel 2. Unable to reach an agreement, the Developer has requested to lease the area of the property for the sole purpose of providing parking for the employees of Synergy Billing. At a later date, the City and the Developer will come back to the commission with a lease agreement for the entire 5.2+/- acres or a purchase agreement for the property.

The Developer is requesting an extension of the lease agreement until the property is purchased by the Developer.

Attached is a one year lease agreement for the City Commission’s consideration.

FISCAL

ANALYSIS:

The requested action has no fiscal changes to the city. Revenue of \$4,200.00 paid on a quarterly basis.

STAFF

RECOMMENDATION:

Staff recommends the City Commission approve the Lease Agreement and authorize the City Manager to execute the Lease Agreement.

COMMISSION GOAL:

N/A

MOTION:

APPROVE THE ATTACHED LEASE AGREEMENT AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENT.



**STAFF REPORT
CITY OF HOLLY HILL, FLORIDA**

**City Commission
Ordinance**

MEETING DATE: October 12, 2021
FROM: Brian Walker
SUBJECT: **SECOND READING - an Ordinance of the City of Holly Hill, Volusia County, Florida, Annexing by Voluntary Petition Approximately 1.23 Acres Identified as Parcel Number 4244-01-07-0081 Contiguous to the City of Holly Hill; Redefining Boundaries of the City of Holly Hill to Include Said Property and the Adjacent Right-Of-Way of 8Th Street; Directing the City Clerk to File the Ordinance with the Clerk of the Circuit Court, with the Chief Administrative Officer of Volusia County and with the Department of State; Providing for Conflicting Ordinances; Providing for Severability; and Providing for an Effective Date.**

NUMBER: 2021-O-3043
APPLICANT: Brian Walker
PLANNER:

INTRODUCTION:

This request is to annex a parcel of approximately 1.23 acres, located approximately 350 feet west of Nova Road N on the north side of 8th Street. The parcel is more specifically known as 1012 8th Street. This application precedes a comprehensive plan amendment and a rezone.

BACKGROUND:

The parcel is currently vacant residential and directly abuts property within the City of Holly Hill that is zoned CC-1 (Commercial Corridor) with a Commercial future land use, and property to the north zoned I-1 (Wholesale - Light Industrial) with a wholesale commercial and industrial future land use. The applicant has submitted a petition for voluntary annexation.

DISCUSSION:

Florida Statutes Section 171.044 presents the requirements for voluntary annexation. The parcel is contiguous to the City limit. The annexation will result in a city limit that is reasonably compact and does not create an enclave. Therefore, the request meets the statutory requirements. This request precedes a request for a comprehensive plan amendment and rezone that will allow light industrial and personal storage uses.

FINANCIAL

IMPACTS:

No financial impacts are expected other than an increase in taxable value.

RECOMMENDATION:

RECOMMEND THE CITY COMMISSION ANNEX A PARCEL OF APPROXIMATELY 1.23 ACRES, LOCATED APPROXIMATELY 350 FEET WEST OF NOVA ROAD N ON THE NORTH SIDE OF 8TH STREET AND MORE SPECIFICALLY KNOWN AS 1012 8TH STREET.

ATTACHMENTS:

- Application (PDF)
- Survey (PDF)
- PA Information Sheet (PDF)
- Exhibit B to Ordinance (PDF)
- Surrounding Zoning and FLU (PDF)
- County Zoning & FLU (PDF)

HISTORY:

09/28/21

City Commission

APPROVED AT 1ST READING

Next: 10/12/21

Mayor Via opened public participation. No one spoke.

Ordinance No. 2021-3043

SECOND READING - AN ORDINANCE OF THE CITY OF HOLLY HILL, VOLUSIA COUNTY, FLORIDA, ANNEXING BY VOLUNTARY PETITION APPROXIMATELY 1.23 ACRES IDENTIFIED AS PARCEL NUMBER 4244-01-07-0081 CONTIGUOUS TO THE CITY OF HOLLY HILL; REDEFINING BOUNDARIES OF THE CITY OF HOLLY HILL TO INCLUDE SAID PROPERTY AND THE ADJACENT RIGHT-OF-WAY OF 8TH STREET; DIRECTING THE CITY CLERK TO FILE THE ORDINANCE WITH THE CLERK OF THE CIRCUIT COURT, WITH THE CHIEF ADMINISTRATIVE OFFICER OF VOLUSIA COUNTY AND WITH THE DEPARTMENT OF STATE; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

AN ORDINANCE OF THE CITY OF HOLLY HILL, VOLUSIA COUNTY FLORIDA, ANNEXING BY VOLUNTARY PETITION APPROXIMATELY 1.23 ACRES IDENTIFIED AS PARCEL NUMBER 4244-01-07-0081 CONTIGUOUS TO THE CITY OF HOLLY HILL; REDEFINING BOUNDARIES OF THE CITY OF HOLLY HILL TO INCLUDE SAID PROPERTY AND THE ADJACENT RIGHT-OF-WAY OF 8th STREET; DIRECTING THE CITY CLERK TO FILE THE ORDINANCE WITH THE CLERK OF THE CIRCUIT COURT, WITH THE CHIEF ADMINISTRATIVE OFFICER OF VOLUSIA COUNTY AND WITH THE DEPARTMENT OF STATE; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Bon-Properties FT LLC, owner of the real property described herein; and

WHEREAS, the owner filed, pursuant to Florida Statue 171.044, a petition for voluntary annexation of said property as described in Attachment “A” into the municipal limits of the City of Holly Hill; and

WHEREAS, the City Commission of the City of Holly Hill, has determined all of the property which is proposed to be annexed into the City of Holly Hill is within an

unincorporated area of Volusia County, is contiguous to the City of Holly Hill, and is reasonably compact; and

WHEREAS, the map attached hereto as Exhibit “B” shows the property, which is proposed to be annexed into the City of Holly Hill; and

WHEREAS, Exhibit “A” is the legal description of the property, which is proposed to be annexed into the City of Holly Hill;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA:

SECTION 1. The City Commission of the City of Holly Hill, based upon the above findings, hereby annexes into the City of Holly Hill by voluntary petition the following described property:

LEGAL DESCRIPTION: See Attached Exhibit “A”.

(Tax Parcel Number 4244-01-07-0081 and the adjacent right-of-way of 8th Street)

SECTION 2. The City of Holly Hill city boundary is hereby amended to incorporate the above described property.

SECTION 3. That within seven (7) days of the adoption of this Ordinance, the City Clerk shall file a copy of said Ordinance with the Clerk of the Court, with the Chief Administrative Officer of Volusia County, and with the Department of State.

SECTION 4. That upon approval on first reading, the City Clerk is hereby directed to publish the Notice of Annexation required by Section 171.044(2), Florida Statutes, at least once each week for two (2) consecutive weeks in a newspaper of general circulation in the City of Holly Hill.

SECTION 5. If any section, subsection, sentence, clause, phrase, or portion of

this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

SECTION 6. That all ordinances made in conflict with this Ordinance are hereby repealed.

SECTION 7. That this Ordinance shall become effective immediately upon its adoption.

**APPROVED AND AUTHENTICATED on this 12th day of OCTOBER, 2021
for second and final reading.**

**ATTACHMENT "A"
LEGAL DESCRIPTION**

The easterly ½ of the westerly ½ of the southerly ½ of Lot 8, Block 7, Mason & Carswell, Holly Hill, according to map in Map Book 2, page 90, Public Records of Volusia County, Florida. Except that portion in the road.

CITY OF HOLLY HILL

Community Development Department
1065 Ridgewood Avenue, Holly Hill, FL 32117

(386) 248-9442
www.hollyhillfl.org

PETITION/CONSENT FOR ANNEXATION

For Planning Department Use

Application Number

A-2021-02

Date Submitted

7-27-2021

7-15-2021

APPLICANT INFORMATION

This application is being submitted by: ☒ Property Owner☐ Agent on behalf of Property Owner*

Name

Bon-Properties FT LLC

Full Address

1012 8th St, Daytona Beach FL 32117

Telephone

386-871-6045

Email

metrocc@cfllr.com

* If this application is being submitted by a person other than the property owner, please provide the following Property Owner Information as well as a notarized letter designating you as agent.

PROPERTY OWNER INFORMATION**

Name

Bon-Properties FT LLC

Full Address

709 Holly St, Daytona Beach FL 32117

Telephone

386-871-6045

Email

metrocc@cfllr.com

** If the property owner does not reside on the property for which the application refers, please provide the following details.

PROPERTY DETAILS***

Full Address

1012 8th Street, Daytona Beach

Parcel ID Number

4244-01-07-0081

Subdivision

N/A

Legal Description

To be provided by Surveyor

Total Acreage

1.23

Present Use of Property

Vacant

Number of Residents On Site (if applicable)

N/A

Attachment: Application (2021-O-3043 : Annexation - 1012 8Th Street)

PROPERTY DETAILS(continued)

Existing Structures Located
On Site

None.

County Future Land Use
Designation

MXZ

Assessed Property Value

N/A

Taxable Value

N/A

***Proof of property ownership must be included with this Petition/Consent for Annexation.

REQUEST

Reason for Request

CERTIFICATION

I hereby certify that the information provided above is true and correct to the best of my knowledge and that I am aware of the application submittal requirements and review process for this application. I hereby authorize the City of Holly Hill Staff to visit my property and to take pictures pertaining to my request. I am aware of the required pre-application meeting and am aware that if all of the required information is not provided, my application will be continued to the next regularly scheduled meeting.

Signature: _____

STATE OF FLORIDA
COUNTY OF Volusia

The foregoing instrument was acknowledged before me this 27 day of July, 2021, by Thomas Bonarrigo
as Owner President (title*) for BON Properties-Ft (name of corporation*),
who ☒ provided FL/DL as identification, or ☐ who is personally known to me.

Space Coast Credit Union

Edie McCormick
Notary Public, State of Florida
My Commission Expires:

* If you are executing this document with behalf of a company, please complete the spaces with your title and the name of your company as indicated.







Volusia County Property Appraiser

123 W. Indiana Ave., Rm. 102

DeLand, FL. 32720

Phone: (386) 736-5901 Web: vcpa.vcgov.org

AltKey: 3219074

Parcel ID: 424401070081

BON-PROPERTIES FT LLC

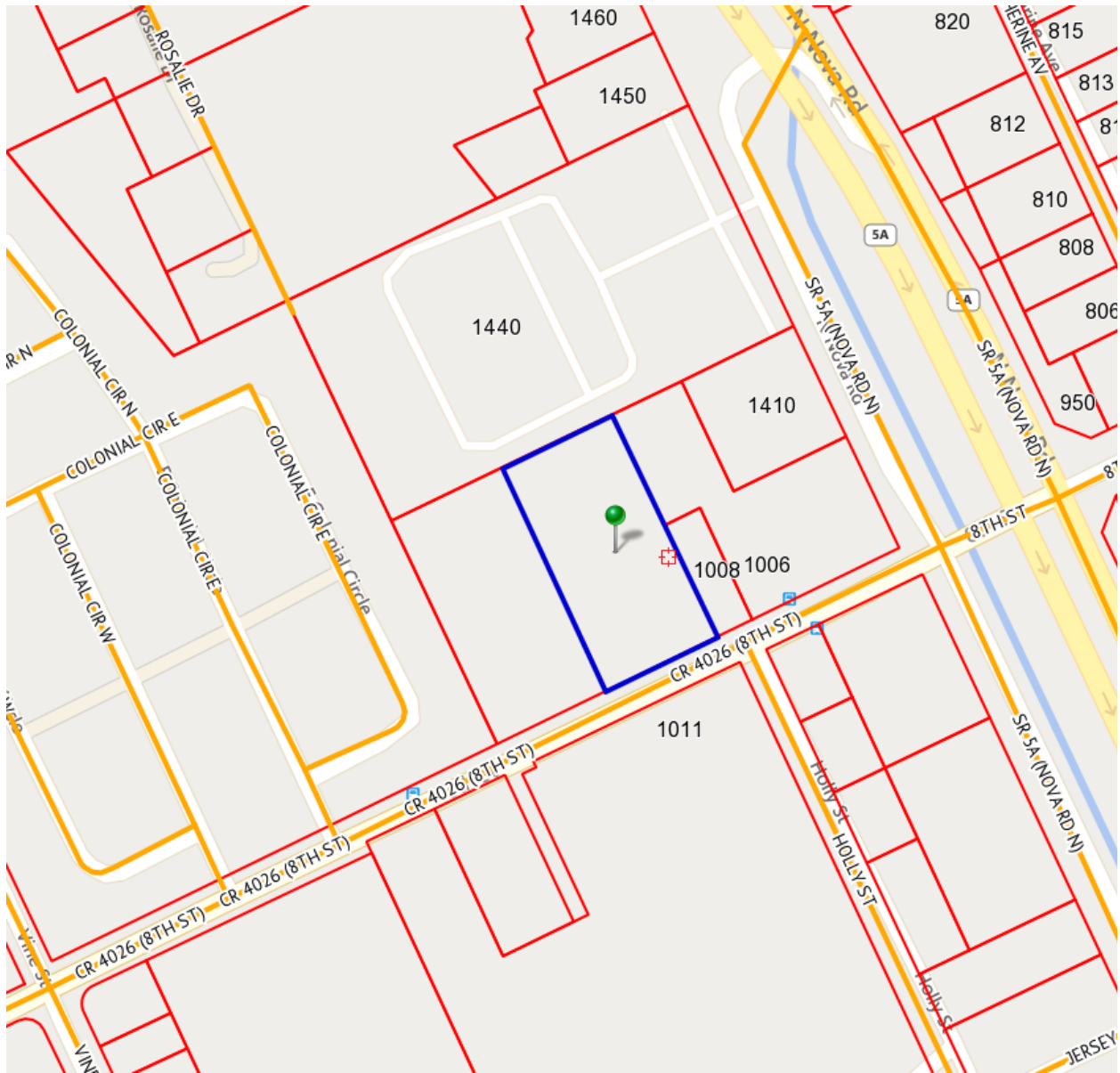
1012 8TH ST, DAYTONA BEACH, FL

Parcel Summary

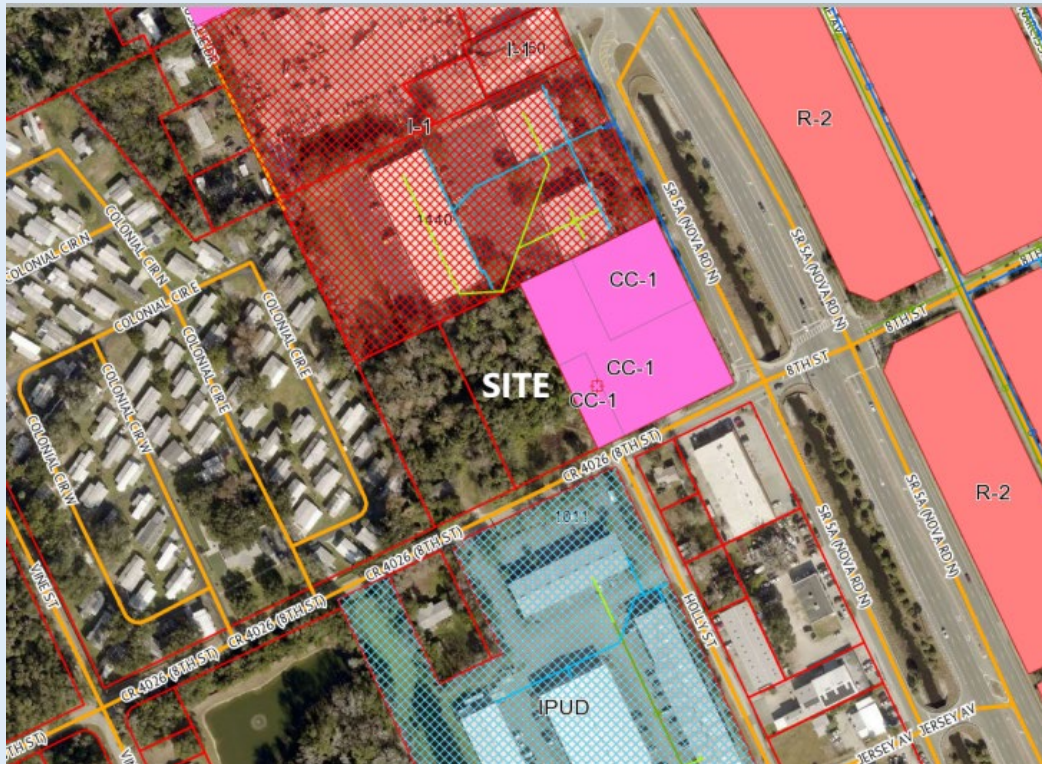
Alternate Key:	3219074
Parcel ID:	424401070081
Township-Range-Section:	14 - 32 - 44
Subdivision-Block-Lot:	01 - 07 - 0081
Owner(s):	BON-PROPERTIES FT LLC - FS - Fee Simple - 100
Mailing Address On File:	10 CLYDESDALE DR ORMOND BEACH FL 32174
Physical Address:	1012 8TH ST, DAYTONA BEACH 32117
Property Use:	0000 - VACANT RES
Tax District:	200-UNINCORPORATED - NORTHEAST
2020 Certified Millage Rate:	19.5221
Neighborhood:	2112
Business Name:	
Subdivision Name:	
Homestead Property:	No

Attachment: PA Information Sheet (2021-O-3043 : Annexation - 1012 8Th Street)

Property Map



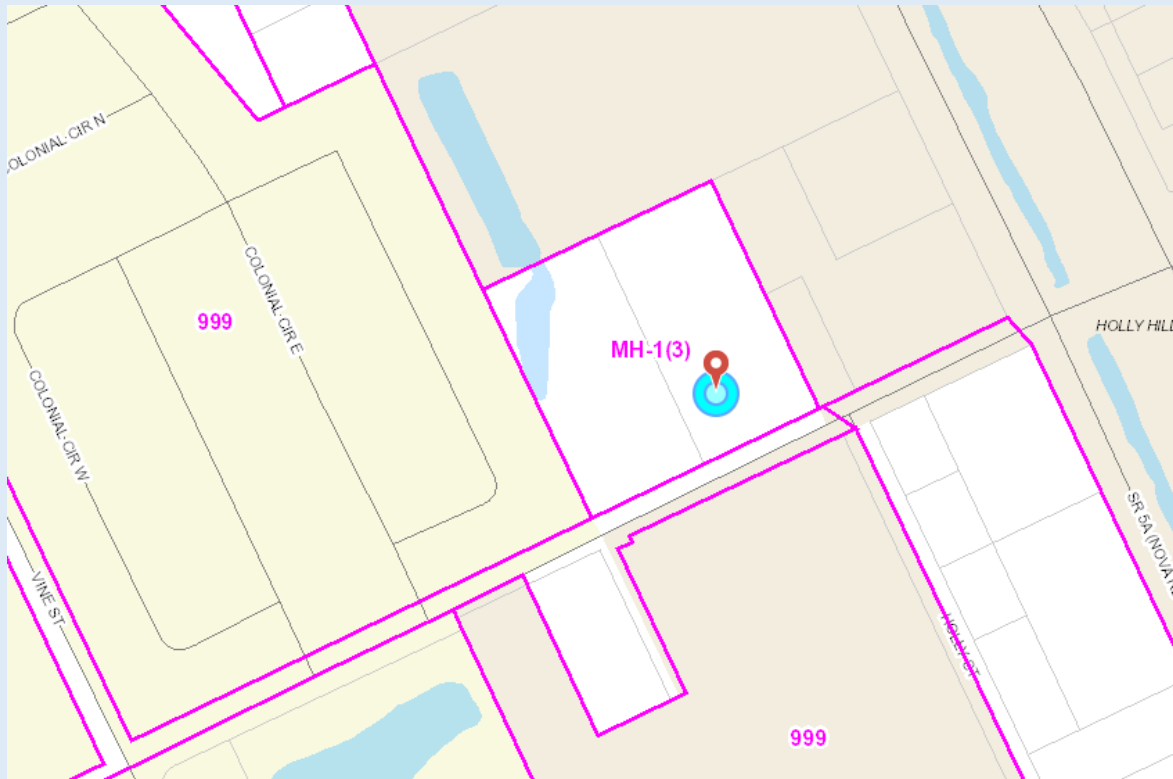
Surrounding City Zoning - CC-1, I-1 and Industrial PUD



Surrounding City FLU – Whole and Industrial and General Commercial



Property currently has County zoning of MH-1 (Mobile Home Park)



Property currently has County FLU of MXZ (Mixed Use)

