



REGULAR CITY COUNCIL MEETING

7:00 PM – COUNCIL CHAMBERS – CITY HALL

DECEMBER 3, 2024

AGENDA

ALL CITIZENS DESIRING TO ADDRESS THE PORT ORANGE CITY COUNCIL DURING PUBLIC PARTICIPATION SHOULD COMPLETE THE SPEAKER CARD WHICH IS LOCATED ON THE STANDS OUTSIDE COUNCIL CHAMBERS. AFTER COMPLETING THE SPEAKER CARD, PRESENT IT TO THE CLERK.

A. OPENING

1. Invocation by Pastor Scott Kirscher from Christ the King Community Church
2. Pledge of Allegiance
3. Swearing-In Ceremony
4. Roll Call
5. Election of Vice Mayor for 2025
6. Appointments to Council Committees for 2025

B. CONSENT AGENDA

7. Public Comments on Consent Agenda Items Only
8. Agenda Approval
9. Approval of Minutes
 - a. November 19, 2024 - Regular City Council Meeting
10. Bid Awards and Contract Items
 - a. Approval of Task Authorization No. 19 with Kimley-Horn & Associates, Inc. under the Master Contract for Engineering and Environmental Services (CA7763) for the Port Orange Water Treatment Plant (WTP) Lime Silo replacement
 - b. Approval of Task Authorization No. 20 with Kimley-Horn & Associates, Inc. under the Master Contract for Engineering and Environmental Services (CA7763) for the Water Treatment Plant (WTP) Transfer Pump Stations Rehabilitation.
 - c. Approval of Contract for Sale and Purchase of real property located at 1201 Reed Canal Road to Landsea Development Group

11. Resolution No. 24-52 - Approval of the Subgrant Agreement with the Florida Department of Transportation accepting a grant in the amount of \$50,000 for a Motorcycle Safety and Awareness High Visibility Enforcement Campaign
12. Approval of the 2025 City Council Meeting Calendar
13. Approval of the Cooperative Equipment Loan Agreement with the Florida Department of Agriculture and Consumer Services and Florida Forest Service for Two Light Medium Tactical Vehicles

C. PUBLIC PARTICIPATION (Agenda)

14. Welcome Mayor Scott Stiltner to the Florida League of Mayors (FLM) - Nancy Miller, President of FLM

D. PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

E. COUNCIL COMMENTS

15. Comments/Concerns from Council Members

F. BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

16. Golf Advisory Board Report
17. Environmental Advisory Board Report - Kristine Cunningham

G. ADDITIONAL ITEMS

18. City Attorney
19. City Manager

H. COUNCIL COMMITTEE REPORTS

20. City Council Committee Reports
 - a. Fire Pension Board - Councilman Jonathan Foley
 - b. General Employee's Pension Board - Mayor Scott Stiltner

I. ADJOURNMENT

NOTICES – PURSUANT TO SECTION 286.0105 OF THE FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, SUCH PERSON 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 (PHONE: 386-506-5563) AS FAR IN ADVANCE AS POSSIBLE, BUT



HELP FOR THE HEARING IMPAIRED IS AVAILABLE THROUGH THE ASSISTIVE LISTENING SYSTEM RECEIVERS CAN BE OBTAINED FROM THE CITY

Regular City Council Meeting

12/3/2024

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PREFERABLY WITHIN 2 WORKING DAYS OF YOUR
RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE
MEETING OR HEARING DATE.

CLERKS' OFFICE.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA), IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

ANY INVOCATION THAT IS OFFERED BEFORE THE OFFICIAL START OF THE CITY COUNCIL MEETING SHALL BE THE VOLUNTARY OFFERING OF A PRIVATE PERSON, TO AND FOR THE BENEFIT OF THE CITY COUNCIL. THE VIEWS OR BELIEFS EXPRESSED BY THE INVOCATION SPEAKER HAVE NOT BEEN PREVIOUSLY REVIEWED OR APPROVED BY THE CITY COUNCIL OR THE CITY STAFF, AND THE CITY IS NOT ALLOWED BY LAW TO ENDORSE THE RELIGIOUS BELIEFS OR VIEWS OF THIS, OR ANY OTHER SPEAKER. PERSONS IN ATTENDANCE AT THE CITY COUNCIL MEETING ARE INVITED TO STAND DURING THE OPENING INVOCATION AND PLEDGE OF ALLEGIANCE. HOWEVER, SUCH INVITATION SHALL NOT BE CONSTRUED AS A DEMAND, ORDER, OR ANY OTHER TYPE OF COMMAND. NO PERSON IN ATTENDANCE AT THE MEETING SHALL BE REQUIRED TO PARTICIPATE IN ANY OPENING INVOCATION THAT IS OFFERED. A PERSON MAY EXIT THE CITY COUNCIL CHAMBERS AND RETURN UPON COMPLETION OF THE OPENING INVOCATION IF A PERSON DOES NOT WISH TO PARTICIPATE IN OR WITNESS THE OPENING INVOCATION.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 12/3/2024

SUBJECT: (A5) Election of Vice Mayor for 2025

DEPARTMENT: City Clerk

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Move to elect a Vice Mayor for 2025 and authorize the Deputy City Clerk to amend related contact information as necessary.

SUMMARY: In accordance with Article III, Section 3.03 of the City Charter: "The vice mayor shall be elected at the first meeting of the newly elected council after the regular city elections; and, in nonelection years, at the first regular council meeting in January and commencing in 2007 at the first regular council meeting in December. The vice mayor shall act as mayor during the absence or disability of the mayor. In case of death, resignation, or removal of the mayor, the vice mayor shall serve as mayor for the remaining unexpired term of such office. The council vacancy left by the vice mayor shall be filled as provided in section 3.05(c). A vice mayor shall be elected by the council from its members either before or after the filling of the council vacancy as provided in the preceding sentence. In all instances, the vice mayor shall be elected by the affirmative vote of the majority of the council."

PRESENTER: Robin Fenwick

ATTACHMENTS:

Robin Fenwick
Wayne Clark

Created/Initiated - 11/14/2024
Final Approval - 11/21/2024



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 12/3/2024

SUBJECT: (A6) Appointments to Council Committees for 2025

DEPARTMENT: City Clerk

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Move to nominate a Council Member to each committee.

SUMMARY: Below is a listing of committees and the current Council Member assigned to each committee:

ArtHaus – Tracy Grubbs
General Employees Retirement Trust Fund – Scott Stiltner
Volusia Flagler Transportation Planning Organization, Formerly known as River to Sea
Transportation Planning Organization – Jonathan Foley
Municipal Firefighters Pension Board – Jonathan Foley
Municipal Police Officers Retirement Trust – Drew Bastian
Port Orange-South Daytona Chamber of Commerce – Don Burnette
Roundtable of Elected Officials - Don Burnette
First Step - Don Burnette

Appointments will need to be made for service on these committees for 2025.

PRESENTER: Robin Fenwick

ATTACHMENTS:

Robin Fenwick
Robin Fenwick
Wayne Clark

Created/Initiated - 11/21/2024
Approved - 11/21/2024
Final Approval - 11/21/2024

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
NOVEMBER 19, 2024

THE REGULAR CITY COUNCIL MEETING of the City of Port Orange was called to order by Mayor Donald O. Burnette at 6:30 p.m.

Invocation by Father Edgar Serrano of the Basilica of Saint Paul

Pledge of Allegiance

Roll Call	Present:	Councilman Jonathan Foley Councilman Tracy Grubbs Councilman Drew Bastian Vice Mayor Scott Stiltner Mayor Donald Burnette
	Also Present:	City Manager Wayne Clark City Attorney Matthew Jones Deputy City Clerk Amanda Bonin

PROCLAMATIONS AND RECOGNITION

4. Certificates of Recognition - Councilman Tracy Grubbs

Mayor Don Burnette presented certificates of recognition to four individuals.

CONSENT AGENDA

5. Public Comments on Consent Agenda Items Only

There were none.

6. Agenda Approval

Motion to approve the agenda as presented was made by Vice Mayor Scott Stiltner and Seconded by Councilman Drew Bastian. Motion carried unanimously by voice vote.

7. Approval of Minutes

- a. November 6, 2024 - Regular Council Meeting

8. Bid Awards and Contract Items

- a. Request to Waive Formal Bidding Requirements for Water Treatment Facility Lime Disposal and Award a Contract to 4C Sod Farm, Inc.
b. Approval of the Economic Incentive Agreement for Florida Volusia

Trust LLC (65 Dunlawton Avenue) - Chapter 20 Targeted Business Program

- c. Approval of the Economic Incentive Agreement for Mueta Business LLC (59 Dunlawton Avenue) - Chapter 20 Targeted Business Program

9. Resolution No. 24-46 - Budget Amendment - FY2023 - 2024 Final Year End True-Up

10. Resolution No. 24-47 - Capital Encumbrance and Project Balance Roll forward Budget Amendment for Fiscal Year 2024-2025

11. Resolution No. 24-48 - Accepting the grant award from the U.S. Department of Justice FY24 Patrick Leahy Bulletproof Vest Partnership Project in the amount of \$29,233.97.

12. Resolution No. 24-49 - Florida Green Finance Authority's Incorporation of Supplemental Statutory Requirements Pursuant to SB 770 for Florida's PACE Act

13. Resolution No. 24-50 - Master Lease Purchase Agreement for Public Safety and Public Works Equipment with Truist Commercial Equity, Inc.

14. Resolution No. 24-51 - Approval of Grant Agreement for \$750,000 from Florida Inland Navigation District (FIND) for construction of the South Causeway Boat Ramp and Floating Docks Improvements

15. Approval of an Amendment to the Administrative Code

16. Approval of the Purchase of Real Property from Bristol Port Orange Partners, LLC and Acceptance and Approval of Assignments of Purchase and Sale Agreements from Bristol Port Orange Partners, LLC to the City for Purchase of Real Property Parcels adjacent to the City and CRA-Owned Parcels in the Riverwalk Area

- a. Assignment of the Contract to Purchase 113 Herbert Street from Bristol Port Orange Partners, LLC to the City of Port Orange (Assignment #1)
- b. Assignment of the Contract to Purchase 3855 Ridgewood Avenue from Bristol Port Orange Partners, LLC to the City of Port Orange (Assignment #2)
- c. Assignment of the Contract to Purchase 3921 Ridgewood Avenue from Bristol Port Orange Partners, LLC to the City of Port Orange (Assignment #3)
- d. Contract to Purchase 3925 Ridgewood Avenue (Purchase #1)

Motion to approve the Consent Agenda as presented was made by Councilman Drew Bastian and Seconded by Vice Mayor Scott Stiltner. Motion carried unanimously by roll call vote.

PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

Joseph Adazzio, resident, spoke regarding concerns within the Southwinds Subdivision. The first issue was limited sight visibility when exiting onto Madeline Ave. and the second was regarding drainage issues throughout the neighborhood. Mr. Adazzio asked for someone to check out these concerns and discuss them with the Homeowners Association.

Several residents spoke about development and flooding issues throughout the City.

Chuck Helman, resident, spoke regarding the hoarder who has moved back onto a vacant parcel in Sugar Forest subdivision. Mr. Helman is asking for help in getting this area cleaned up.

Karl Mandl, resident, brought up the property at 717 Dove Avenue in Laurelwood Estates. He explained how those living at the property have stolen power and water, had campfires in the backyard, code violations, and unsanitary conditions.

Keltie McCormick, resident, spoke about an upcoming member elect and a recent event that occurred and called for his resignation.

Eric Gregory, resident, advised he is on the Environmental Advisory Board and within the last 24-hours he was able to collect signatures for a petition to create a stormwater advisory board.

COUNCIL COMMENTS

17. Comments/Concerns from Council Members

Following public comments and concerns regarding flooding and the City's efforts, Wayne Clark, City Manager, provided an update on the Stormwater Master Plan.

Mayor Don Burnette asked for Mr. Clark to find out how we can address the flow of Nova Canal that goes through our City.

Mr. Clark discussed the major rainfall events over the last 100 years and explained there are challenges in the City that staff is working through in the Stormwater Master Plan.

Councilman Jonathan Foley asked Mr. Clark to explain the FEMA 50% rule, which he did.

Councilman Foley mentioned the flood zones are created by FEMA and the City has plans in place to follow the laws, which in turn will help the citizens. Councilman Foley also mentioned the Small Business Administration can help financially with possible loans to improve or repair homes.

Councilman Tracy Grubbs asked if there was common area land in the Sugar Forest subdivision that could possibly be tied in with land the City is buying to create drainage improvements.

Vice Mayor Scott Stiltner discussed the amount of rainfall we received during Hurricane Milton and how there were no mandates for stormwater infrastructure prior to 1990. The year 1924 was the last time we had a significant amount of rain similar to recent events. He further explained what a 100-year and 500-year storm actually means.

Vice Mayor Scott Stiltner also explained the process of the stormwater plan and the City will be in Tallahassee in January fighting for state dollars to help fund these projects.

Councilman Drew Bastian agreed with Vice Mayor Scott Stiltner and mentioned that the City has been successful in the past in asking for State funding and wants to get Sugar Forest some help in getting that area cleaned up due to the hoarding situation on one of the properties.

Vice Mayor Scott Stiltner mentioned the City will do everything they can to get the property in Sugar Forest cleaned up and touched on upcoming events that are being put on by the City's Parks and Recreation Department.

Councilman Tracy Grubbs mentioned Tiki Docs will be open November 25th and Officer McBride of the Port Orange Police Department took 1st place in the Top Dog category in a recent competition.

Mayor Don Burnette asked the City Attorney to look at the hoarder property and what the City has done before.

SPECIAL REPORTS

18. Capital Financing Discussion

Toby Wagner of Southeastern Investment Securities LLC and Joe Tindle of Hilltop Securities, Inc. provided presentations for the Capital Financing Discussion.

Mr. Clark indicated there will be infrastructure projects coming forth that will require funding.

Mayor Don Burnette expressed his thoughts on this debt and how it would make sense to move forward.

BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

19. Citizen Advisory Committee for TPO

Bobby Ball mentioned December's meeting has been canceled. The I-95 and pioneer project is out for bid. Construction is estimated to commence in 2025.

20. Planning Commission Board Appointments

Mayor Don Burnette stated there are three Planning Commission Board members that are up for re-appointment. Those members are Stan Schmidt, Bo Bofamy, and Maria Mills-Benat.

Motion to re-appoint all three current

members was made by Councilman Drew Bastian and seconded by Councilman Jonathan Foley. Motion carried unanimously by roll call vote.

There were two applicants for the vacant member seat. Daniel Mallegol and Kayden Schaper, applicants, addressed Council and told them a little about themselves and their experience.

Mayor Don Burnette opened nominations.

Motion to nominate Daniel Mallegol was made by Vice Mayor Scott Stiltner and seconded by Councilman Drew Bastian. No other nominations were made. Motion carried by voice vote 4-1 with Councilman Jonathan Foley voting no.

PUBLIC HEARING

21. Second Reading - Ordinance No. 2024-19 - Second Amendment to the Riveryard Master Development Agreement (Case No. PRZA-24-0006)

Matt Jones, City Attorney, read Ordinance No. 2024-19.

ORDINANCE NO. 2024-19

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE SECOND AMENDMENT TO THE RIVERYARD MASTER DEVELOPMENT AGREEMENT AND CONCEPTUAL DEVELOPMENT PLAN FOR APPROXIMATELY +/-11 ACRES GENERALLY LOCATED AT THE NORTHEAST CORNER OF DUNLAWTON AVENUE AND RIDGEWOOD AVENUE, AND INCLUDING PROPERTIES LOCATED AT 3641 RIDGEWOOD AVENUE AND 3840 RIDGEWOOD AVENUE, CLARIFYING PERMITTED USES, REVISING THE LOCATION OF PUBLIC PARKING, REVISING THE MULTI-FAMILY PARKING RATIO, AND UPDATING THE CONCEPTUAL DEVELOPMENT PLAN LAYOUT; PROVIDING FOR CONFLICTING ORDINANCES, SEVERABILITY, AND AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2024-19 was made by Vice Mayor Scott Stiltner and Seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

22. Second Reading - Ordinance No. 2024-23 - Amending Code of Ordinances
Chapter 6, Article 1 - Alcoholic Beverages

Mr. Jones read Ordinance No. 2024-23.

ORDINANCE NO. 2024-23

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 6, SECTION 6-3 RELATING TO THE LIST OF PROPERTIES EXEMPT FROM THE GENERAL PROHIBITION OF POSSESSION AND CONSUMPTION OF ALCOHOL ON PUBLIC PROPERTY OWNED OR CONTROLLED BY THE CITY OF PORT ORANGE AND ESTABLISHING CERTAIN PARAMETERS FOR THE CONSUMPTION THEREOF; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2024-23 was made by Vice Mayor Scott Stiltner and Seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

23. Second Reading - Ordinance No. 2024-24 - Amending Information
Technology Policies for City Boards and Commissions

Mr. Jones read Ordinance No. 2024-24.

ORDINANCE NO. 2024-24

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, ARTICLE III, BOARDS AND COMMISSIONS, DIVISION 1, ELECTRONIC INFORMATION SYSTEMS; AMENDING TERMINOLOGY TO BE CONSISTENT WITH RECENTLY ADOPTED INFORMATION TECHNOLOGY AND CYBERSECURITY POLICIES, EXPANDING APPLICABILITY, ADDING ADDITIONAL PROHIBITED USES, ADDRESSING SECURITY AND LICENSING ISSUES, AMENDING THE PUBLIC RECORDS REQUIREMENTS, ESTABLISHING A NEW SECTION 2-58 ADDING USE REQUIREMENTS, PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR

SEVERABILITY; PROVIDING FOR CODIFICATION, PROVIDING FOR SCRIVENER'S ERRORS AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2024-24 was made by Vice Mayor Scott Stiltner and Seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

REGULAR AGENDA

24. Arthaus Request to Paint Murals on the Eight Columns and Embankment Walls for the Dunlawton Avenue Bridge Located in the Down Under Area

Tim Burman, Community Development Director, provided a brief update and advised staff recommends approval.

Cameron Vintson, Executive Director of Arthaus, provided a presentation of their plan to paint murals under the Dunlawton Bridge.

Ms. Vintson discussed the economic impact to tourism, programs they provide at the Arthaus, and money they have raised and donated to give back to the community.

The funding plan for the Down Under Project will be completed in several ways. In an effort to not use tax payer dollars, they will be utilizing grants, sponsorship and donations. The entire project should take approximately two to three years.

Motion to approve Arthaus to Paint Murals under the Dunlawton Bridge was made by Councilman Tracy Grubbs and seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

ADDITIONAL ITEMS

25. City Attorney

There was nothing further.

26. City Manager

Mr. Clark, thanked Councilman Drew Bastian and Mayor Don Burnette for everything they have done for him and the community.

COUNCIL COMMITTEE REPORTS

27. City Council Committee Reports

a. Proposal for Advisory Board - Councilman Tracy Grubbs

Motion to create a Stormwater Advisory Board as presented was made by Councilman Tracy Grubbs and seconded by Vice Mayor Scott Stiltner.

Councilman Tracy Grubbs provided a recap of the advisory board plan he discussed at the November 6th City Council Meeting.

Vice Mayor Scott Stiltner appreciates the idea but stated he is resistant in doing anything that may slow down the process being made with the Stormwater Master Plan and staff. He welcomes any citizen with any expertise to bring their ideas forward.

Councilman Drew Bastian also appreciates the idea and Councilman Tracy Grubbs efforts but is also hesitant and commented on a time when he voted to create a committee, it went sour and it declined morale tremendously.

Councilman Jonathan Foley said the idea has some merit but he also shares some of the same concerns as Vice Mayor Scott Stiltner. He is concerned about creating a board for something so specific. He sees a potential benefit and where value could be added but also agreed with Vice Mayor Scott Stiltner, and said anyone who has ideas, should bring them forward. Councilman Jonathan Foley mentioned that he has faith in the City's staff.

Mayor Don Burnette mirrored Councilman Drew Bastian's views and also doesn't want processes to slow down. He suggested the motion and the second, be withdrawn so it can be brought back in the future if needed. If they don't withdraw, and it gets denied, this subject is done and doesn't come back.

Councilman Jonathan Foley asked what the City is missing that we would need to create a board and what data points that they don't have?

Councilman Tracy Grubbs withdrew his motion and Vice Mayor Scott Stiltner withdrew his second.

b. Arthaus - Councilman Tracy Grubbs

Councilman Tracy Grubbs provided a report and touched on Ms. Dunson's presentation.

c. Roundtable of Elected Officials - Mayor Don Burnette

Mayor Don Burnette touched on the introduction to City managers, Hurricane Milton

updates, asked the City to keep promoting Transform 386 as it is a great resource, and asked that the City continue to collaborate on the Nova Canal.

d. First Step Shelter - Mayor Don Burnette

Mayor Don Burnette reported that the shelter is at approximately 90% capacity.

e. Port Orange/South Daytona Chamber of Commerce - Mayor Don Burnette

Mayor Don Burnette mentioned the Tiki Adventure Zone had a ribbon cutting today.

f. Volusia Flagler TPO - Councilman Jonathan Foley

Nothing to report.

28. Mayor's Farewell Message

Councilman Drew Bastian expressed his appreciation to be able to serve the community and his appreciation to the City Manager.

Vice Mayor Scott Stiltner expressed his appreciation for Councilman Drew Bastian serving and dedicating his time to the community.

Mayor Don Burnette said it's been a joy and an honor to be the Mayor and expressed his thoughts and appreciation on both the community and working with his fellow council members.

ADJOURNMENT 9:20 p.m.

Mayor Donald O. Burnette

Attest:

Robin Fenwick, MMC
City Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 12/3/2024

SUBJECT: (B10a) Approval of Task Authorization No. 19 with Kimley-Horn & Associates, Inc. under the Master Contract for Engineering and Environmental Services (CA7763) for the Port Orange Water Treatment Plant (WTP) Lime Silo replacement

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Task Authorization No. 19 with Kimley-Horn & Associates, Inc. under the Master Contract for Engineering and Environmental Services (CA7763) for the Port Orange Garnsey Water Treatment Plant (WTP) Lime Silo Repairs for an amount not to exceed \$25,660 and authorize the Mayor and City Clerk to execute required documents.

SUMMARY: Engineering staff is requesting approval of Task Authorization No. 19 with Kimley-Horn & Associates, Inc. under the Master Contract for Engineering and Environmental Services (CA7763) for the Port Orange Garnsey Water Treatment Plant (WTP) Lime Silo Repairs for an amount not to exceed \$25,660.

The existing dust collectors on the lime silos at the Water Treatment Plant are severely corroded due to the harsh environment they operate in and need to be replaced. Kimley-Horn & Associates, Inc. has provided a proposal for the design and replacement of all three (3) existing lime silos.

Project funding is available in the current fiscal year Capital Improvements budget.

The completion date of Task Authorization No. 19 will be 365 days from the Notice to Proceed.

PRESENTER: Junos Reed

ATTACHMENTS:

1.	Kimley-Horn and Associates, Inc. Task Authorization No 19 - WTP Lime Silo Rehab	Kimley-Horn and Associates, Inc. Task Authorization No 19 - WTP Lime Silo Rehab.pdf
2.	WTP Lime Silo Proposal	WTP Lime Silo Proposal.pdf
3.	FY25 CIP Req	FY25 CIP Req.pdf
4.	Pg 91 - Budget Book to CC	Pg 91 - Budget Book to CC.pdf

5.	Kimley-Horn Contract CA7763	Kimley-Horn Contract CA7763.pdf
6.	Kimely Horn - Affidavit for Human Trafficking_08.29.2024	Kimely Horn - Affidavit for Human Trafficking_08.29.2024.pdf
7.	Kimley-Horn and Associates, Inc. ALL 4.1.2025	Kimley-Horn and Associates, Inc. ALL 4.1.2025.pdf

Julia Wiggins	Created/Initiated - 10/30/2024
Richard Colby	Approved - 10/30/2024
Junos Reed	Approved - 11/14/2024
John McKinney	Approved - 11/19/2024
Linda Truitt	Approved - 11/19/2024
Matthew Jones	Approved - 11/19/2024
Wayne Clark	Final Approval - 11/21/2024

TASK AUTHORIZATION NO. 19
Master Contract for Services dated January 18,2022
Between the City of Port Orange, Florida and Kimley-Horn and
Associates, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **KIMLEY-HORN AND ASSOCIATES, INC.**, North Carolina corporation, registered to transact business in Florida, with its principal place of business at 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Engineer"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering Services for Public Works, Utilities and Environmental Services, as dated above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.

2. In addition to all other terms and conditions contained in the Contract, Engineer shall provide services relating the Port Orange Garnsey Water Treatment Plant (WTP) Lime Silo Repairs, as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "1."

3. Engineer shall complete the services to be provided herein within 365 days of the date of written notice by the City to the Engineer.

4. In return for the services identified above, the City agrees to compensate Engineer at the prices set forth in Exhibit "1" attached hereto and made a part hereof, subject to a limit not to exceed **\$25,660.00**. All payments shall be governed by the Local Government Prompt Payment Act as Set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. Truth-in-Negotiations

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Engineer shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contractor Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Engineer's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Engineer has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization.

6. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Engineer and the City until the City signs this Task Authorization.

IN WITNESS WHEREOF, the Parties have made and executed this Task Authorization for the purposes herein expressed on the dates set forth below.

Witnesses:

KIMLEY-HORN AND ASSOCIATES, INC.

Printed Name: _____ By: _____
Jonathan D. Thigpen, Senior Vice President

Printed Name: _____ Date: _____

CITY OF PORT ORANGE

By: _____
Scott Stiltner, Mayor

Date: _____

ATTEST:

By: _____
Robin L. Fenwick, MMC, City Clerk

Date: _____

EXHIBIT “1”

Engineer's Quote

Consisting of 3 Pages

PROPOSAL FOR PORT ORANGE GARNSEY WATER TREATMENT PLANT (WTP) LIME SILO REPAIRS

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The City of Port Orange (the Client or the City) in accordance with the terms of the Master Agreement for Continuing Professional Services dated January 18, 2022, which is incorporated herein by reference.

Project Understanding

The scope of work presented below was prepared following discussions with the City of Port Orange staff regarding the replacement of the three existing lime silo dust collectors.

The proposed improvements include structural repairs and replacement of the mechanical equipment connection atop each silo. Kimley-Horn will design and provide contract documents detailing a connection that will be used to fasten new mechanical equipment to each existing silo.

Specific Scope of Basic Services:

Task 1: Data Collection

- A. Kimley-Horn will conduct one site visit to the WTP to evaluate the existing three silos and gather geometrical data.
- B. Coordination with equipment manufacturer for the structural and mechanical design of the lime silos. Coordination with the pump manufacturers for mechanical and electrical design of the transfer pump stations.

Task 2: Final Design

- A. Kimley-Horn will prepare 90% and 100% design plans, and opinion of probable construction cost (OPC) for the proposed improvements. Design plans for the lime silos shall include structural and mechanical improvements required to replace the mechanical equipment atop each lime silo. Project specifications for the proposed repairs will not be provided. General notes listed on the design plans will be used in lieu of providing specifications.
- B. Kimley-Horn will conduct structural calculations for the lime silo improvements to determine the new connection detail. Calculations will utilize letter size format. One PDF document will be submitted to the Client for review. Kimley-Horn will respond to one round of comments from the Client. One signed and sealed PDF document by a registered Florida Professional Engineer will be submitted to the Client for their records at the Final submittal. Structural calculations will be in accordance with the documents referenced in the project description.

Task 3: Bidding Services

- A. Prepare one (1) bid package consisting of plans and specifications (for the transfer pump station project, in CSI or EJCDC format) to be included in the City's bid package.
- B. Participate in one (1) pre-bid conference as the City's engineering representative. The City will be responsible for coordinating, scheduling, and administering the pre-bid conference.

- C. Respond to Requests for Information (RFIs) and prepare bid addenda as necessary during the bid process. The City will be responsible for addenda distribution.

Additional Services:

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Additional site visits
- Permitting services
- Construction Phase services

Schedule:

These services will be completed as expeditiously as possible. Kimley-Horn will begin services within 7 calendar days upon receipt of an executed agreement. Kimley-Horn will provide conceptual site plans within 60 days of the Notice to proceed. The 90% project submittal will be submitted within 90 days of the receiving initial review comments and the 100% project submittal within 30 days of receiving 90% comments.

Deliverables:

Deliverables for this project include the following:

- 90% plans and opinion of probable construction costs for
- Final plans and final opinion of probable construction
- Structural Calculations

Method of Compensation:

Kimley-Horn will perform these services for the total lump sum fee of \$25,660 inclusive of expenses. Invoices will be billed on a percent complete basis per task. A breakdown of the fee by task is as follows:

<i>Task</i>	<i>Description</i>	<i>Lump Sum Fee</i>
1	Data Collection	\$4,210
2	Final Design	\$20,100
3	Bidding Phase	\$1,330
	SubTotal	\$25,660
Project Total		\$25,660

Other Special Terms:

Services provided under this agreement will be invoiced on a monthly basis. All invoices will include a description of services provided.



ACCEPTED:

CITY OF PORT ORANGE, FLORIDA

KIMLEY-HORN AND ASSOCIATES, INC.

BY: See Page 4 of Task Authorization No.19

BY: _____
Jon Martin, PE

TITLE: _____

TITLE: Sr. Vice President

DATE: _____

DATE: _____



PROPOSAL FOR PORT ORANGE GARNSEY WATER TREATMENT PLANT (WTP) LIME SILO REPAIRS

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The City of Port Orange (the Client or the City) in accordance with the terms of the Master Agreement for Continuing Professional Services dated January 18, 2022, which is incorporated herein by reference.

Project Understanding

The scope of work presented below was prepared following discussions with the City of Port Orange staff regarding the replacement of the three existing lime silo dust collectors.

The proposed improvements include structural repairs and replacement of the mechanical equipment connection atop each silo. Kimley-Horn will design and provide contract documents detailing a connection that will be used to fasten new mechanical equipment to each existing silo.

Specific Scope of Basic Services:

Task 1: Data Collection

- A. Kimley-Horn will conduct one site visit to the WTP to evaluate the existing three silos and gather geometrical data.
- B. Coordination with equipment manufacturer for the structural and mechanical design of the lime silos. Coordination with the pump manufacturers for mechanical and electrical design of the transfer pump stations.

Task 2: Final Design

- A. Kimley-Horn will prepare 90% and 100% design plans, and opinion of probable construction cost (OPC) for the proposed improvements. Design plans for the lime silos shall include structural and mechanical improvements required to replace the mechanical equipment atop each lime silo. Project specifications for the proposed repairs will not be provided. General notes listed on the design plans will be used in lieu of providing specifications.
- B. Kimley-Horn will conduct structural calculations for the lime silo improvements to determine the new connection detail. Calculations will utilize letter size format. One PDF document will be submitted to the Client for review. Kimley-Horn will respond to one round of comments from the Client. One signed and sealed PDF document by a registered Florida Professional Engineer will be submitted to the Client for their records at the Final submittal. Structural calculations will be in accordance with the documents referenced in the project description.

Task 3: Bidding Services

- A. Prepare one (1) bid package consisting of plans and specifications (for the transfer pump station project, in CSI or EJCDC format) to be included in the City's bid package.
- B. Participate in one (1) pre-bid conference as the City's engineering representative. The City will be responsible for coordinating, scheduling, and administering the pre-bid conference.

- C. Respond to Requests for Information (RFIs) and prepare bid addenda as necessary during the bid process. The City will be responsible for addenda distribution.

Additional Services:

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Additional site visits
- Permitting services
- Construction Phase services

Schedule:

These services will be completed as expeditiously as possible. Kimley-Horn will begin services within 7 calendar days upon receipt of an executed agreement. Kimley-Horn will provide conceptual site plans within 60 days of the Notice to proceed. The 90% project submittal will be submitted within 90 days of the receiving initial review comments and the 100% project submittal within 30 days of receiving 90% comments.

Deliverables:

Deliverables for this project include the following:

- 90% plans and opinion of probable construction costs for
- Final plans and final opinion of probable construction
- Structural Calculations

Method of Compensation:

Kimley-Horn will perform these services for the total lump sum fee of \$25,660 inclusive of expenses. Invoices will be billed on a percent complete basis per task. A breakdown of the fee by task is as follows:

<i>Task</i>	<i>Description</i>	<i>Lump Sum Fee</i>
1	Data Collection	\$4,210
2	Final Design	\$20,100
3	Bidding Phase	\$1,330
	SubTotal	\$25,660
Project Total		\$25,660

Other Special Terms:

Services provided under this agreement will be invoiced on a monthly basis. All invoices will include a description of services provided.



ACCEPTED:

CITY OF PORT ORANGE, FLORIDA

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____

BY: _____
Jon Martin, PE

TITLE: _____

TITLE: Sr. Vice President

DATE: _____

DATE: _____

City of Port Orange Capital Improvement Request Form



Project Name	Garnsey Water Treatment Plant Lime Silos Dust Collector Replacement and Upgrade		
Department	Engineering	Program	Wastewater Treatment
Goal	2 - Infrastructure	Objective	2.4
Priority	I - Imperative (Must-Do)	Estimated Total Cost	\$ 1,000,000.00
Funding Source	403 Water & Sewer R&R Fund	Additional Funding Sources	

Description

- Removal and disposal of existing dust collectors.
- Installation of mounting flange to existing silos.
- Installation of new dust collectors to new mounting flanges.
- Touch up paint to new mounting flange and dust collector as required.

Explain the need for this improvement

The existing dust collectors on the Lime Silos are beginning to fail and need to be replaced.

Project Cost Per Year

FY24-25	FY25-26	FY26-27	FY27-28	FY28-29
\$ 1,000,000.00				
Construction	(Select)	(Select)	(Select)	(Select)

Operational Impact

Explain the change in daily operations for this improvement

Operating Cost Per Year

FY24-25	FY25-26	FY26-27	FY27-28	FY28-29
(Select)	(Select)	(Select)	(Select)	(Select)



City of Port Orange Project Request Form

Please email this form and supporting documentation to budgetteam@port-orange.org.

Department Head: Junos Reed, City Engineer

Date of Project Approval:

Date: 04/29/2024

Part of Approved CIP? ☒ Yes ☐ No

Department: Engineering

(Include pg. from CIP book as attachment)

Project Title: Garnsey Water Plant Lime Silos Dust Collector Upgrade

Fund: 403

Cost Center: Water and Sewer

Program: Water Production

Amount Budgeted: \$ 1,000,000.00

Grant Funded? ☐ Yes ☒ No

Grant Source:

City Cost Share:

Spend Category: Improvement Other that Bld - Design

Amount: \$ 100,000.00

Spend Category: Improvement Other - Construction

Amount: \$ 900,000.00

Spend Category:

Amount:

Start Date:

End Date:

Project Location (Full Address): 4400 Wellfield Road, Garnsey Water Treatment Plant

Project Description:

Design, Removal and replacement of the lime silos dust collector located at the Garney Water Treatment Plant.



CITY OF PORT ORANGE, FLORIDA
FIVE-YEAR CAPITAL IMPROVEMENT PLAN
WATER & SEWER R&R

SOURCES

Funding Source	Funding Source	New Funding 2024 - 25	2025 - 26	2026 - 27	2027 - 28	2028 - 29	Totals
Interfund Transfer	Transfer from Fund 401	\$ 5,450,000	\$ 2,750,000	\$ 1,250,000	\$ 1,250,000	\$ 1,250,000	\$ 11,950,000
TOTAL SOURCES		\$ 5,450,000	\$ 2,750,000	\$ 1,250,000	\$ 1,250,000	\$ 1,250,000	\$ 11,950,000

USES

Cost Center	Project #	Project Name	New Funding 2024 - 25	2025 - 26	2026 - 27	2027 - 28	2028 - 29	Totals
Wastewater		Charles Street Lift Station Rehab	\$ 150,000	\$ 1,500,000	\$ -	\$ -	\$ -	\$ 1,650,000
Wastewater		WWTP Effluent Discharge Improvements	400,000	-	-	-	-	400,000
Wastewater		Garnsey WTP Lime Silos Dust Collector Replacement & Upgrade	1,000,000	-	-	-	-	1,000,000
Wastewater	SSP201	Leisure Circle Sewer Improvements	1,000,000	-	-	-	-	1,000,000
Water/Sewer Distribution		Leslie Dr Sewer Improvements	650,000	-	-	-	-	650,000
Water/Sewer Distribution		Palm Shores Mobile Home Estates Septic to Sewer Cost Participation	1,000,000	-	-	-	-	1,000,000
Water/Sewer Distribution	✓ EUR000	Emergency Contingency Repairs	250,000	250,000	250,000	250,000	250,000	1,250,000
Water/Sewer Distribution	URH001	Sewer System Rehabilitation	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	5,000,000
TOTAL USES			\$ 5,450,000	\$ 2,750,000	\$ 1,250,000	\$ 1,250,000	\$ 1,250,000	\$ 11,950,000



CITY OF PORT ORANGE MASTER CONTRACT PROFESSIONAL ENGINEERING SERVICES FOR PUBLIC WORKS, UTILITIES AND ENVIRONMENTAL SERVICES

This Standard Contract for Services ("Contract") is entered into this 18 day of Jan, 2022, by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina corporation, registered to transact business in Florida, whose principal address is 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Engineer"). The City and Engineer are collectively referred to herein as the "Parties."

The City and the Engineer for Ten Dollars (\$10.00) and other good and valuable consideration hereby covenant and agree as set forth below.

1. Provision of Services

(a) The Engineer hereby agrees to provide the following services to the City of Port Orange:

(i) Professional continuous utility engineering consulting services to complete a wide range of projects led by the City of Port Orange Public Works and Utilities Department in accordance with Consultants Competitive Negotiation Act, and as more specifically described in Request for Statement of Qualifications 21-03 ("RFSQ 21-03"). This Contract together with RFSQ 21-03, Addendum No. 1, Addendum No. 2, and Engineer's Proposal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference shall constitute the formal written Contract between the City and Engineer. For convenience, Section 3, Scope of Services, of RFSQ 21-03, and the Schedule of Hourly Billing Rates as submitted by Engineer in Engineer's Proposal are attached hereto as Exhibit "1." A complete copy of RFSQ 21-03 is available in the Office of the City Clerk. Engineer represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

(b) The time, manner and place for performance of such services shall be:

Term: The term of this Contract shall commence on the date this Contract is signed by both of the Parties, and shall continue for a period of three (3) years, or until either party provides the other party written notice of its intent to terminate as provided in this Contract.

Renewals: Upon written agreement of the Parties and appropriation by City Council, this Contract may be renewed for up to two (2) additional one (1) year periods.

Manner and Place: The Engineer shall perform the services as outlined in each project assignment, in accordance with Standard Construction Details as required on all City owned facilities and properties (i.e. rights-of-way) and in a manner as required by all current federal, state, county, fire, building and land development codes, laws, ordinances and regulations, and with applicable permits and licenses per the City Code of Ordinances. Engineer shall not deliver goods or services without a fully executed task authorization and a written purchase order, signed by an authorized agent of the City of Port Orange.

Time and Essence: Engineer acknowledges that time is of the essence in the completion of the services contemplated by this contract, and shall complete all services within the timeline specified by this contract, and shall complete all services within the timeline specified in the project, and as reflected on the Notice to Proceed.

2. Authorization for Services This Contract standing alone does not authorize the performance of any work or services to be provided by the Engineer or require the City to place any orders for work or service. Authorization for performance of services by the Engineer under this Contract shall be in the form of written Task Authorization(s) ("Task Authorization") issued and executed by the City and signed by the Engineer. A sample Task Authorization is attached hereto as Exhibit "2."

- a. All Task Authorizations issued under this Contract shall terminate at the expiration of the term of the Task Authorization, unless amended in writing by the parties. If a Task Authorization issued before the expiration of this Contract cannot be completed until after the expiration of this Contract, then this Contract shall expire on the Completion of Services under said Task Authorization, including any Amendments thereto, and after all work or services under the Task Authorization have been approved and accepted by the City's Contract Administrator. The obligations entered herein by both parties under this Contract and said Task Authorizations shall remain in full force and effect until completion of all work or services performed under this Contract and/or the Task Authorization.
- b. No new or additional Task Authorization shall be issued after the original expiration date of this Contract. The extension of this Contract to coincide with the completion of an existing Task Authorization issued prior to the original expiration date of this Contract shall not be construed as or constitute authorization by the City or the Engineer to enter into a new or additional Task Authorization after the original expiration date of this Contract, unless this Contract is renewed prior to entering into a Contract for a new or additional Task Authorization.

3. City Obligations The City reserves the right to utilize lump sum or hourly rate compensation, at the hourly rate compensation as set forth in Exhibit "1." Rates may be adjusted on the anniversary of the effective date of this Contract, upon mutual written agreement of the Parties. The City's obligation to pay Engineer under this Contract is limited to an amount not to exceed the appropriated budget per fiscal year. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended. The Engineer shall be paid compensation for all services, labor and material required thereby, and for all expenditures as specified in each Task Authorization. The fee shall be negotiated for each Project Task Authorization to this Contract. The Engineer shall submit a monthly statement for professional services rendered and expenses incurred to date of the statement. The statements for lump sum shall be based upon Engineer's estimate of the proportion of the total services actually completed at the time of billing to the total services to be performed. Such estimates are to be prepared by the Engineer and accompanied by such supporting data as may be required by the Contract Administrator. Compensation for any authorized cost which is not set forth in the Contract shall not exceed the actual, documented out-of-pocket cost to the Engineer, plus fifteen percent (15%). The Contract and Task Authorization(s) do not include retainer fees, nor is there a minimum fee guaranteed during the Contract period.

4. Contract Administration The Public Works and Utilities Director, Lynn Stevens, shall perform contract administration of this Contract. The City may change the contract administrator, from time to time and at any time, upon written notice to Engineer. For notice provisions, see the paragraph below entitled "Notice."

5. Liens Engineer acknowledges that Engineer shall not be entitled to lien the City or other public property.

6. Statement of Engineering Services The Engineer shall:

- (a) Provide all certifications ("Engineer of Record" function) surveys, calculations, drawings, and any other documents required for special permits and authorizations from various government bodies or agencies having jurisdiction over the project;
- (b) Prepare a time scaled diagram showing the dates of completion of various design phases and scheduled completion of working drawings and specifications and submit for Contract Administrator's review and approval;
- (c) Verify and evaluate technical proposals furnished by the construction Engineer if requested by the City and provide such amplifications and explanations that may be necessary to clarify the intent of the drawings and specifications.
- (d) Furnish consultation and advice as requested by the City during the construction of project, including Construction Administration Services (unless otherwise stipulated in a specific amendment attached hereto and made a part thereof);
- (e) Furnish all other engineering services including without limitation those specified hereinafter and those required for the completion of specific projects as described in amendments to this contract:
 - (i) Site Visits/Special Permits The Engineer shall visit the site and shall initiate and hold such conferences with representatives of the City and other agencies, boards or government bodies having jurisdiction over the area the project covers and take such other action as may be necessary to obtain permits and authorizations (except the construction permits) and other data upon which to develop the design and preliminary sketches showing the contemplated project.
 - (ii) Preliminary Sketches and Opinion of Probable Construction Costs The preliminary sketches shall include plans, elevations and sections development in such detail and with such descriptive specifications as will clearly indicate the scope of work, and make possible a reasonable opinion of the construction cost and satisfy the requirements of permitting and regulatory agencies having jurisdiction. An opinion of probable construction costs shall be prepared.
 - (iii) Working Drawings and Specifications After the preliminary sketches and opinion of probable construction costs have been approved, the Engineer shall proceed with the preparation of working drawings and specifications as required by the Contract Administrator for the construction of said project. Working drawings, specifications and estimates shall be delivered to the Contract Administrator in such sequence and at such times as required by the City such that the construction work can be initiated promptly, procurement of materials made without delay and continuous prosecution of the work promoted, all in strict accordance with the approved design schedule as provided in Paragraph 5 (b) above. Working drawings and specifications shall be revised as necessary and as required by the Contract Administrator. After working drawings and specifications have been approved by the Contract Administrator, the Engineer shall furnish such number of sets of prints of the approved working drawings and such number of sets of the approved specifications, as may be required by the Contract Administrator.

- (iv) Original Drawings - Final Plans Upon approval of final plans the Engineer shall deliver to the City one set of original drawings, in such medium and on such materials, as may be required by the Contract Administrator, suitable for blueprinting, showing approved constructed requirements (not of "as-built" construction unless otherwise stipulated), provided, however, that should this contract be terminated by the City the Engineer shall deliver to the City one set of originals as they exist at the time of termination. Such plans as are delivered shall become and remain the property of the City.
- (v) Revision of Final Drawings and Specifications The engineer shall without additional fee correct and revise the drawings, specifications, or other materials furnished under this contract, if the Contract Administrator finds that such revision is necessary to correct errors or deficiencies for which the Engineer is responsible.
- (vi) Bidding The Engineer shall perform all necessary engineering services required in connection with the competitive bidding for construction of the project and the preparation of all documents required thereof, including preparation of documents for separate bid packages for multiple contractors if so required by Contract Administrator.

7. Responsibility of the Engineer The Engineer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, and specifications and other work or materials furnished by the Engineer under this contract. The Engineer shall without additional cost or fee to the City, correct or revise any errors or deficiencies in his performance.

8. Reuse of Documents The City shall have unlimited rights, for the benefit of the City in all drawings, designs, specifications, notes and other engineer's work produced in the performance of this contract, or in contemplation thereof, and all as-built drawings produced after completion of the work, including the right to use same on any other City work without additional cost to the City. All documents including Drawings and Specifications prepared by Engineer pursuant to this Contract are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by City or others for any other project. Reuse for another project without written verification or adaption by Engineer for the specific purpose intended will be at City's risk. Any such verification or adaption will entitle Engineer to further compensation at rates to be agreed upon by City and Engineer. A reproducible set of plans and specifications shall be delivered to and become the property of the City upon completion of the Project by the Engineer.

9. Expert Witness The Engineer shall serve as an expert witness for the City in any legal proceedings regarding this project if the City so requests. The expert witness fee for Engineer shall be negotiated at the time the Engineer is called as an expert.

10. Modifications to Scope of Work/Change Orders

(a) Change Orders. The Contract Administrator, upon written approval as required by the City's Purchasing Policy, shall without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in one or more of the following: the services to be performed, the contract price or the time of the performance. The City will not be held liable for any changes which have not been properly authorized and approved in accordance with this Contract.

(b) If any change under this clause causes an increase or decrease in Engineer's cost of, or time required for the performance of the work hereunder, Engineer shall receive an equitable adjustment and the contract

shall be modified in writing accordingly. Any change shall include all costs and damages related to or incidental to such change.

(c) Any claim by the Engineer for adjustment under this clause shall be asserted in writing within thirty (30) days from the date of receipt by the Engineer of the notification of change unless the Contract Administrator grants a further period of time before the date of final payment under the contract. The Engineer shall proceed with the prosecution of the work as changed. Except as provided in this Contract, the Engineer shall not be entitled to payment for a charge for any extra work or material.

11. Subcontractors or Sub-Subcontractors

(a) Any subcontractors and outside associates or consultants required by the Engineer in connection with the services covered by the Contract will be limited to such individuals or firms as are specifically identified in an amendment to this Contract. Any substitution in such subcontractors, associates, or consultants shall be subject to the prior approval of the Contract Administrator.

(b) Engineer shall save and hold the City harmless from any and all claims or actions by Engineer's Subcontractors or Sub-subcontractors for payment of monies such Subcontractor or Sub-subcontractor claims to be owed by Engineer for work performed under this Contract.

(c) Nothing in this Contract shall create any obligation on the part of the City to pay directly to any Subcontractors or Sub-subcontractors or claims of a Subcontractor or Sub-subcontractors for amounts owed by Engineer to Subcontractor or Sub-subcontractor for work performed under this Contract.

(d) Engineer shall be fully responsible for all negligent acts and omissions of it Subcontractors and Sub-subcontractors and of persons directly or indirectly employed by them and of persons of whose negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in the Contract documents shall create any contractual relationship between any subcontractor and the City or any obligation on the part of the City to pay or to see to the payment of any moneys due any subcontractor to the extent practicable, evidence of amounts paid to the Engineer on account of specific work done in accordance with the schedule of values.

(e) The Engineer shall require all subcontractors or sub-subcontractors or outside associates employed in connection with the performance of this Contract to comply fully with the terms and conditions of this Contract between the City and the Engineer.

12. Termination

(a) The performance of work under this Contract may be terminated by the City in accordance with this clause in whole, or from time to time in part, whenever the Contract Administrator shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the Engineer of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contract Administrator, the Engineer shall:

(i) Stop work under the Contract on the date and to the extent specified in the Notice of Termination.

(ii) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as it is not terminated.

- (iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
 - (iv) Assign to the City in the manner, at the times and to the extent directed by the Contract Administrator, all of the right, title, and interest of the Engineer under the orders and subcontracts so terminated, in which case the City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - (v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator, to the extent the City may require which approval or ratification shall be final for all the purposes of this clause.
 - (vi) Transfer title and deliver to the City in the manner, at the times, and to the extent, if any, directed by the Contract Administrator.
 - a. The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and
 - b. The completed or partially completed plans, drawings, information, and other property which, if the contract has been completed, would have been required to be furnished to the City.
 - (vii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.
- (c) After receipt of a Notice of Termination, the Engineer shall submit to the City's Contract Administrator his termination claim, in the form and with certification prescribed by the Contract Administrator. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one or more extensions in writing are granted by the Contract Administrator, upon request of the Engineer made in writing within such thirty (30) days period or authorized extension thereof. Upon failure of the Engineer to submit his termination claim within the time allowed, the Contract Administrator may determine on the basis of information available to him, the amount, if any, due to the Engineer by reason of the termination and shall thereupon pay to the Engineer the amount so determined.
- (d) Subject to the provisions of Paragraph 11 (c), the Engineer and the Contract Administrator may agree upon the whole or any part of the amount or amounts to be paid the Engineer by reason of the total or partial termination of work pursuant to this clause, the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The Contract shall be amended accordingly and the Engineer shall be paid the agreed amount. Nothing in Paragraph 11 prescribing the amount to be paid to the Engineer, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid.
- (e) In the event of the failure of the Engineer and the Contract Administrator to agree as provided in Paragraph 11 (d), upon the whole amount to be paid to the Engineer by reason of the termination of work pursuant to this subparagraph, the Contract Administrator shall pay to the Engineer the amounts determined by the Contract Administrator, but without duplication of any amounts agreed upon, as follows:

(i) For completed work and services accepted by the City, the price or prices specified in the contract for such work, less any payments previously made.

(ii) The total of:

a. The costs incurred in the performance of the work and service terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to the work and services paid or to be paid for under Paragraph 11 (e)(i) hereof;

b. The cost of settling and paying claims arising out of the termination of work or services under subcontracts or orders as provided in Paragraph 11 (b)(v) above, which are properly chargeable to the terminated portion of the contract exclusive of amounts paid or payable on account of work or services delivered or furnished by subcontractors prior to the effective date of termination, which amounts shall be included in the costs payable under Paragraph 11 (a) above; and

c. A sum, as profit on Paragraph 11 (a) above, determined by the Contract Administrator to be fair and reasonable, not to exceed 5% of the Task Authorization.

(iii) In the event the contract is terminated because of Engineer's default, the City may take over the work and services and complete the same by contract or otherwise, and the Engineer shall be liable to the City for any increased cost of the project.

13. Termination for Non-Appropriation of Funds

(a) If funds are not appropriated for any succeeding fiscal years subsequent to the one in which this contract is entered into, for the purpose of this Contract, then the City may terminate this Contract upon thirty (30) days prior written notice to the Engineer. Should termination be accomplished in accordance with this Section, the City shall be liable only for payments due through the date of termination. The City agrees that should it terminate in accordance with this Section, it shall not obtain services which are substantially equal to or similar to those for which this contract was entered into. This provision shall survive any termination of the Contract.

14. Engineer's Records. The design, permits and all other records prepared by the Engineer, assembled for the City, subcontracted for the City, and any other records related to the scope of work in the possession of the Engineer shall be retained by the Engineer for the requisite time set forth in Florida Administrative Code Rule 1 B-24 <http://dos.myflorida.com/library-archives/records-management/>. Engineer may dispose of the records in accordance with Florida law, upon receipt of a signed written release signed by the City Attorney. During the term of this Contract, as amended from time to time, Engineer agrees to indemnify the City for failure to comply with the requirements of this paragraph including costs of litigation and legal fees incurred through all appeals. City reserves the right to select and approve the defense attorney. The Engineer's obligations pursuant to this paragraph shall survive the termination of this Contract, and as amended from time to time.

15. Examination of Records

(a) The Engineer agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after final payment hereunder, have access to and the right to examine and copy any pertinent books, documents, papers and records of the Engineer involving transactions related to this Contract.

(b) The Engineer further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to

and the right to examine and copy any pertinent books, documents, papers and records of such Engineer involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

(c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

16. Public Records Compliance Engineer shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:

(a) Keep and maintain public records required by the City to perform the service.

(b) Upon request from the City's custodian of public records, provide the City with a copy of the requested record or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are 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 Engineer does not transfer the records to the City.

(d) Upon completion of the Contract, Engineer shall transfer to the City, at no cost, all public records in possession of the Engineer and destroy any duplicate public records that are exempt from public records disclosure requirements. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

If Engineer does not comply with a public records request, the City shall deem the non-compliance a breach of this Contract, and the Engineer may be subject to penalties under Section 119.0701, Florida Statutes.

ENGINEER QUESTIONS RELATING TO ENGINEER'S DUTIES TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT MUST BE FORWARDED TO THE OFFICE OF THE CITY CLERK, CITY HALL, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129; TELEPHONE: (386) 506-5563; E-MAIL: CITYCLERK@PORT-ORANGE.ORG.

17. Insurance Engineer shall maintain insurance, as required herein, during the life of this Contract. Engineer shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Engineer shall be primary and non-contributory. All insurance coverages of the Engineer shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Engineer's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation. The City shall not accept Workers' Compensation Exemptions. Engineer may use leased employees if the Engineer ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Engineer using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Engineer shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing

the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

Engineer shall require and ensure each of its subcontractors to maintain, until the completion of the subcontractor's work, insurance of the types and to the limits set forth herein. All insurance coverages shall be primary and non-contributory. All insurance coverages of the subcontractors shall not seek contribution from any other insurance or self-insurance available to the City. The Engineer is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the Engineer to ensure the subcontractors maintain the required coverage, shall not relieve the Engineer of any contractual responsibility, obligation or liability.

The City reserves the right to increase insurance coverage as determined for higher risk contracts.

The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with this Contract and does not waive the insurance required by this Contract.

Should at any time the Engineer or subcontractors not maintain the insurance coverages required herein, the City may terminate the Contract or at its sole discretion shall be authorized to purchase such coverages and charge the Engineer for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract.

Standard Insurance Requirements				
	Insurance	Standards		Additional Requirements
☒	<u>Workers' Compensation</u> The Engineer shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any Engineer using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	<u>Contract Amount</u> Up to \$10 million \$10 - \$20 million Contracts over \$20 million To Be Determined by the City.	<u>Limits</u> Statutory/\$500,000 Statutory/\$1,000,000	☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of \$500,000 required.

☒	Comprehensive General Liability (including Completed Operations and Contractual Liability)	Limits: Combined Single Limit Bodily Injury and Property damage \$1,000,000 occurrence \$1,000,000 aggregate	☐ When work is on or under Railroad rights of way or properties, the Engineer shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles.	Limits: Auto Liability Bodily Injury and Property Damage: \$1,000,000 each occurrence \$1,000,000 aggregate	
Additional Insurance Requirements			
☐	Property Insurance Builders Risk. Additional Coverage:	Limits: Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☒	Professional Liability	Limits: Coverage - \$1,000,000	
☐	Installation Floater (IT)	Limits: Coverage - \$ To be determined.	
☐	Engineer Pollution Liability	Limits: Coverage - \$1,000,000	
☒	Errors and Omissions	Limits: Coverage - \$1,000,000	
☐	Umbrella Policy	Limits: Coverage - \$ To be determined.	
☐	Payment and Performance Bond Required	Limits: Coverage - Equal to amount of Contract.	
☐	City Manager waives Payment and Performance Bond for work under \$25,000.00.		
☐	Unless otherwise required by law, City Manager waives Insurance for FOB goods under \$25,000.00.		

18. Assignability of Contract Neither this contract, nor any part hereof, may be assigned by the Engineer to any other party without the express written approval of the City Council.

19. Sovereign Immunity The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

20. Liability for Loss or Damage

(a) Engineer shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Engineer, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death

of any person or damage to property other than City property, to the extent caused by negligent performance of the Contract by Engineer, his/its agents, servants and employees. Engineer shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.

21. Non-discrimination. During the performance of this Contract, Engineer agrees as follows:

(a) Engineer will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, marital status, age or national origin, except where such is a bona-fide occupational qualification reasonably necessary to the normal operation of Engineer. Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Engineer agrees and fully supports and complies with the Americans with Disabilities Act of 1990.

(b) Engineer shall state in all solicitations or advertisements for employees placed by or on behalf of Engineer that Engineer is an equal opportunity employer.

(c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision. Engineer shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

22. E-Verify. Engineer 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 Engineer on or after the effective date of this Contract and thereafter during the remaining term of this Contract, including all subcontractors. Any subcontract entered into by Engineer with any subcontractor performing work under this Contract shall include the following language: "The Sub-Engineer 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 Engineer on or after the effective date of this Contract and thereafter during the remaining term of the Contract." The Engineer covenants and agrees that if it is found in violation of this section of the Executive Order, such violation shall be a material breach of this Contract and Engineer shall indemnify, defend and hold harmless the City from any fines or penalties levied by a government agency, including the loss or repayment of grant funds by the City.

23. Disputes The City Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to Engineer, shall decide disputes with respect to this Contract in the first instance. The decision shall be final and binding unless, within ten (10) days from the date of receipt of the decision of the City Manager, appeal is made to the City Council. The decision of the City Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, or not to be supported by any evidence. Pending a final determination of a properly appealed decision of the City Council, Engineer shall proceed diligently with the performance of this Contract in accordance with that decision.

24. Force Majeure Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

25. Controlling Law **THIS AGREEMENT CONTAINS IMPORTANT MATTERS AFFECTING LEGAL RIGHTS AND IS ACCEPTED AND ENTERED INTO IN FLORIDA AND ANY QUESTION REGARDING ITS VALIDITY, CONSTRUCTION, ENFORCEMENT, OR PERFORMANCE SHALL BE GOVERNED BY FLORIDA LAW. ANY**

LEGAL PROCEEDING ARISING FROM OR IN ANY WAY REGARDING THE AGREEMENT SHALL HAVE ITS VENUE LOCATED EXCLUSIVELY IN THE CIRCUIT COURT OF VOLUSIA COUNTY, FLORIDA, AND THE PARTIES HEREBY EXPRESSLY CONSENT AND SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION AND VENUE OF THE COURT.

26. Additional Provisions. This Contract includes all additional provisions as may have been outlined in written quotes and purchase orders and any attachments or exhibits to this Contract whether delivered herewith or subsequently approved as a part hereof, such as drawings or technical specifications prepared in the performance of this work. In the event of a conflict between any attachments or exhibits to this Contract, and this Contract, the language of this Contract shall control.

28. Integration This Contract and the documents incorporated herein by reference shall constitute the whole agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Contract shall supersede all previous communications, representations, or agreements, written or verbal, between the parties hereto.

29. Notice For purposes of this agreement, notices shall be sent as follows:

City: City of Port Orange
Attention: City Manager
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5501

Copy to: City of Port Orange
Attention: Lynn Stevens, Public Works & Utilities Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5575

Engineer: ~~Kimley-Horn and Associates, Inc.~~
~~Attention: Brian A. Good, Director~~
~~421 Fayetteville Street~~
~~Suite 600~~
~~Raleigh, North Carolina 27601~~

Attention: Jonathan D. Thigpen, Senior Vice President
189 South Orange Avenue
Suite 1000
Orlando, Florida 32801
(407) 898-1511 – Telephone
(561) 863-8175 – Facsimile

~~Wayne.White@kimley-horn.com~~ jonathan.thigpen@kimley-horn.com

Any notice or other communication given under the Contract will be in writing and delivered by hand, sent by facsimile (provided acknowledgement of receipt thereof is delivered to the sender), sent by certified, registered mail, or sent by any nationally recognized overnight courier service to the addresses provided herein. The parties may,

from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.

30. Truth-in-Negotiations

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Engineer shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Engineer's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Engineer has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract or Task Authorization.

31. Waiver of Breach and Materiality Failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed as a modification of the terms of this Contract.

32. Contract Construction

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered. No contract shall be formed between Engineer and the City until the City signs this Agreement.

33. Authority to Sign Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

[Remainder of this page intentionally left blank]

Witnesses:

Nicole McConnell
Printed Name: NICOLE MCCONNELL

Tucker Hunter
Printed Name: Tucker Hunter

KIMLEY-HORN AND ASSOCIATES, INC.

By: Jonathan D. Thigpen
Jonathan D. Thigpen, Senior Vice President

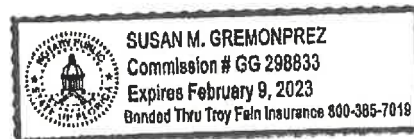
If this Contract is signed by an individual not identified as the President of the corporation in the records of the Florida Department of State, Division of Corporations, please provide written authorization for that individual to enter into contracts on behalf of the corporation.

Date: January 7, 2022

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 7th day of January, 2022, by Jonathan D. Thigpen, as Senior Vice President of Kimley-Horn and Associates, Inc., a North Carolina corporation, registered to transact business in Florida. He is ☒ personally known or ☐ produced _____ as identification.

Susan M. Gremonprez
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:



Witnesses:

CITY OF PORT ORANGE

Printed Name: Samie Miller

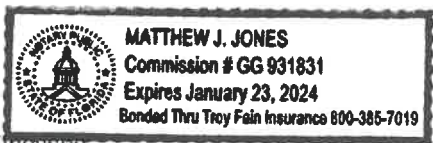
By: Donald O. Burnette
Donald O. Burnette, Mayor

Printed Name: Matt Jones

Date: 1/18/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 18 day of Jan., 2022, by Donald O. Burnette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He is ☒ personally known or ☐ produced as identification.



Matthew J. Jones
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:

Witnesses:

ATTEST:

Printed Name: Samie Miller



By: Robin L. Fenwick
Robin L. Fenwick, MMC, City Clerk

Printed Name: Matt Jones

Date: 1/18/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 18 day of Jan., 2022, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. She is ☒ personally known or ☐ produced as identification.



Matthew J. Jones
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:

EXHIBIT “1”

Engineer's Schedule of Hourly Billing Rates and RFSQ 21-03 Section 3

Consisting of 2 Pages

**KIMLEY HORN AND ASSOCIATES
SCHEDULE OF HOURLY BILLING RATES**

Labor Position/Classification Level	Hourly Rate
Principal	\$300.00
Senior Project Manager	\$230.00
Project Manager	\$190.00
Senior Project Engineer	\$210.00
Project Engineer	\$170.00
Analyst 3	\$145.00
Analyst 2	\$125.00
Analyst 1	\$115.00
Senior Environmental Scientist	\$185.00
Environmental Scientist	\$130.00
GIS Analyst	\$130.00
Grants Coordinator	\$175.00
Sr CAD Designer	\$185.00
CAD Designer	\$150.00
CAD Technician	\$110.00
Administrative	\$95.00
Clerical	\$75.00

Notes:

1. Billing rates listed in the table above are for the period from FY2022 through FY2024.
2. The salary multiplier billing rates include all payroll burden, overheads, and profit.
3. Subconsultants will be billed at 115% of actual cost
- ~~4. Standard project expenses will be billed as an allocation equivalent to 5.0% of the labor fee.~~

SECTION 3 – SCOPE OF SERVICES AND REQUIREMENTS

SCOPE OF SERVICES

The City of Port Orange is soliciting proposals from qualified firms for professional continuous engineering consulting services to complete a wide range of needs lead by the City of Port Orange Public Works & Utilities Department. The City will select a minimum of three, and up to five firms who can provide all, some, or one of the category service disciplines outlined in the scope of services. Firms do not have to be able to provide all of the services listed in the scope of services. For instance, if a firm only provides Environmental Services then they should state that in their initial Statement and provide all of the supporting data within the submittal to support the type of services provided. Individual firms are the focus of this RFSQ process, therefore the City will not accept Statements of Qualifications submitted with multiple firms (i.e., teams). The City is seeking the most highly qualified firms in the following category service disciplines;

- **Public Utilities (Water, Wastewater, & Reclaimed Water):**
 - Analysis, survey, design, permitting, bidding assistance, engineering services during construction, and State Revolving Funds (SRF) loan assistance for the Cities water, wastewater, and reuse systems. Including but not limited to the Cities wastewater collection and treatment systems, raw water wells, raw water transmission, water treatment, and reclaimed water storage and distribution systems
- **Public Works (Stormwater, Roadways, and Sidewalls/Trails):**
 - Analysis, survey, design, permitting, bidding assistance and engineering during construction for the Cities roadways and sidewalks
 - General stormwater needs as required by the Stormwater Utility Program. The list of services shall consist of, but not be limited to, the following:
 - National Pollutant Discharge Elimination System (NPDES) program assistance and implementation,
 - Total Maximum Daily Load (TMDL) program assistance and implementation including, but not limited to, the evaluation and establishment of estuarine TMDLS and NNC, developing ecosystem goals and targets based on the requirements of the environmental and biological indicators, hydrodynamic modeling, water quality statistical analysis, natural systems analysis and habitat analysis,
 - Watershed management planning including, but not limited to, initial hydrologic and hydraulic modeling of the watersheds in Port Orange, as well as pollutant loading modeling and updates to existing Stormwater Management Master Plans of the watersheds,
 - Engineering analysis/design and permitting of capital improvement projects, and
 - Other stormwater/environmental needs that may arise.
- **Environmental Services:**
 - Provide services related to wetlands mitigation bank management, gopher tortoise mitigation bank management, potable drinking water Consumptive Use Permit (CUP) permit monitoring, reporting, and compliance assistance, hydrologic services related to potable water wellfield management and development
 - Monitoring, sampling, and reporting services as required for permits issued and regulated by various local and State agencies such as Consumptive Use Permitting and other operational permits issued to the City by St. Johns River Water Management, U.S. Army Corps of Engineers, and the Florida Department of Environmental Protection for the operation of the Cities Wetlands Mitigation Bank, Gopher Tortoise Mitigation Bank each have very specific and differing water sampling, monitoring, and reporting procedures and requirements.
- **Grant Compliance Assistance:**
 - Provide Grant Compliance assistance for local, state, and federally administered grants, including but not limited to, HUD Community Development Block Grants, FEMA Hazard Mitigation Grant Program, FDEP Legislative Appropriation grants. Services will include tasks such as; Assistance with U.S. Department of Housing and Urban Development Environmental Review Record Development for projects funded with Community Development Block Grant Funds. Reviewing, monitoring, evaluating and acting upon documentation required for Construction Contract compliance.

[End of Scope of Services - Remainder of this page left intentionally blank]

EXHIBIT "2"

Task Authorization Template

Consisting of 4 Pages

TASK AUTHORIZATION NO. ____

**Master Contract for Services dated _____
Between the City of Port Orange, Florida and Kimley-Horn and Associates, Inc.**

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **KIMLEY-HORN AND ASSOCIATES, INC.**, North Carolina corporation, registered to transact business in Florida, with its principal place of business at 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Engineer"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering Services for Public Works, Utilities and Environmental Services, as dated above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.

2. In addition to all other terms and conditions contained in the Contract, Engineer shall provide services relating to _____, as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "1."

3. Engineer shall complete the services to be provided herein within _____ days of the date of written notice by the City to the Engineer.

4. In return for the services identified above, the City agrees to compensate Engineer at the prices set forth in Exhibit "1" attached hereto and made a part hereof, subject to a limit not to exceed \$_____. All payments shall be governed by the Local Government Prompt Payment Act as Set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. Truth-in-Negotiations

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Engineer shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Engineer's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Engineer has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract or Task Authorization

6. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Engineer and the City until the City signs this Task Authorization.

IN WITNESS WHEREOF, the Parties have made and executed this Task Authorization for the purposes herein expressed on the dates set forth below.

Witnesses:

KIMLEY-HORN AND ASSOCIATES, INC.

Printed Name: _____ By: _____
Jonathan D. Thigpen, Senior Vice President

Printed Name: _____ Date: _____

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____

Donald Burnette, Mayor or
Wayne Clark, City Manager

Printed Name: _____

Date: _____

Witnesses:

ATTEST:

Printed Name: _____

By: _____

Robin L. Fenwick, MMC, City Clerk

Printed Name: _____

Date: _____

STATE OF FLORIDA §
§
COUNTY OF VOLUSIA §

1. My name is Hao Chau. I am over the age of Twenty-one years old. I am the Vice President of Kimley-Horn and Associates, Inc. a non-governmental entity which does business in the State of Florida, hereinafter called the "Entity."
(Title) (Business Name)
2. I have personal knowledge of each and every statement of fact contained herein, and each and every statement of fact is true and correct.
3. Entity does not use coercion, as defined in Section 787.06, Florida Statutes, for labor or services.
4. The undersigned is an officer or representative of the entity and is authorized to execute this affidavit on behalf of the Entity.
5. Under penalties of perjury, I declare that I have read the foregoing Human Trafficking Affidavit and that the facts stated herein are true.

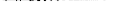
Date: August 29, 2024

Signed: 

Print Name: Hao Chan

Title: Vice President

(Notary Seal)



SKB.7.8.2024
CA7985



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/18/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Edgewood Partners Ins. Center/Greyling 3780 Mansell Rd. Suite 370 Alpharetta GA 30022		CONTACT NAME: Jerry Noyola PHONE (A/C, No, Ext): 7702207699 E-MAIL ADDRESS: greylingcerts@greyling.com		FAX (A/C, No):		
INSURED Kimley-Horn and Associates, Inc. 421 Fayetteville Street, Suite 600 Raleigh, NC 27601		KIMLASS		INSURER(S) AFFORDING COVERAGE		NAIC #
				INSURER A : National Union Fire Ins Co of Pittsburg		19445
				INSURER B : Allied World Assurance Co (U.S.) Inc.		19489
				INSURER C : New Hampshire Insurance Company		23841
				INSURER D : Lloyd's of London		85202
				INSURER E :		
INSURER F :						

COVERAGES

CERTIFICATE NUMBER: 221548564

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC ☐ OTHER:			GL5268169	4/1/2024	4/1/2025	EACH OCCURRENCE	\$ 2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
							MED EXP (Any one person)	\$ 25,000
							PERSONAL & ADV INJURY	\$ 2,000,000
							GENERAL AGGREGATE	\$ 4,000,000
							PRODUCTS - COMP/OP AGG	\$ 4,000,000
								\$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			CA4489663 (AOS) CA2970071 (MA)	4/1/2024 4/1/2024	4/1/2025 4/1/2025	COMBINED SINGLE LIMIT (Ea accident)	\$ 2,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
B	☒ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			03127930	4/1/2024	4/1/2025	EACH OCCURRENCE	\$ 5,000,000
							AGGREGATE	\$ 5,000,000
								\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N N	N / A	WC015893685 (AOS) WC015893686 (CA)	4/1/2024 4/1/2024	4/1/2025 4/1/2025	☒ PER STATUTE ☐ OTH-ER	
							E.L. EACH ACCIDENT	\$ 2,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 2,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 2,000,000
D	Professional Liability			B0146LDUSA2404949	4/1/2024	4/1/2025	Per Claim Aggregate	\$2,000,000 \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Comprehensive Plan Update; Kelley Klepper. The City of Port Orange is named as an Additional Insured with respects to General & Automobile Liability where required by written contract. Waiver of Subrogation applies to Workers Compensation where required by written contract & allowed by law.

CERTIFICATE HOLDER**CANCELLATION**

City of Port Orange
1000 City Center Circle
Port Orange FL 32129-0000

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 12/3/2024

SUBJECT: (B10b) Approval of Task Authorization No. 20 with Kimley-Horn & Associates, Inc. under the Master Contract for Engineering and Environmental Services (CA7763) for the Water Treatment Plant (WTP) Transfer Pump Stations Rehabilitation.

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Motion to approve Task Authorization No. 20 with Kimley-Horn & Associates, Inc. under the Master Contract for Engineering and Environmental Services for the Water Treatment Plant (WTP) Transfer Pump Stations Rehabilitation for an amount not to exceed \$93,815; authorize the Mayor and City Clerk to execute all contract required documents.

SUMMARY: Engineering staff is requesting approval of Task Authorization No. 20 with Kimley-Horn & Associates, Inc. under the Master Contract for Engineering and Environmental Services (CA7763) for the Water Treatment Plant (WTP) Transfer Pump Stations Rehabilitation for an amount not to exceed \$93,815.

The Garnsey Water Treatment Plant (WTP) has three (3) transfer pump station buildings. The existing mechanical equipment and transfer pumps associated are past their useful life and require replacement with new equipment that will meet the water plant needs.

Kimley-Horn & Associates, Inc. has provided a proposal for improvements that will include replacement of each pump, electrical upgrades, piping, valves, and fittings within the transfer pump station buildings.

This task authorization is for the design phase only and additional funding for construction will be requested in the FY25/26 budget.

The completion date of Task Authorization No. 20 will be 365 days from the Notice to Proceed.

PRESENTER: Junos Reed

ATTACHMENTS:

1.	Kimley-Horn and Associates, Inc. Task	Kimley-Horn and Associates, Inc. Task
----	---------------------------------------	---------------------------------------

	Authorization No 20- WTP Transfer Pump Station Modifications	Authorization No 20- WTP Transfer Pump Station Modifications.pdf
2.	WTP Transfer PS Proposal	WTP Transfer PS Proposal.pdf
3.	Kimley-Horn Contract CA7763	Kimley-Horn Contract CA7763.pdf
4.	Kimely Horn - Affidavit for Human Trafficking_08.29.2024	Kimely Horn - Affidavit for Human Trafficking_08.29.2024.pdf
5.	Kimley-Horn and Associates, Inc. ALL 4.1.2025	Kimley-Horn and Associates, Inc. ALL 4.1.2025.pdf

Julia Wiggins	Created/Initiated - 10/30/2024
Richard Colby	Approved - 10/30/2024
Junos Reed	Approved - 11/14/2024
John McKinney	Approved - 11/19/2024
Linda Truitt	Approved - 11/19/2024
Matthew Jones	Approved - 11/19/2024
Wayne Clark	Final Approval - 11/21/2024

TASK AUTHORIZATION NO. 20
Master Contract for Services dated January 18,2022
Between the City of Port Orange, Florida and Kimley-Horn and
Associates, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **KIMLEY-HORN AND ASSOCIATES, INC.**, North Carolina corporation, registered to transact business in Florida, with its principal place of business at 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Engineer"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering Services for Public Works, Utilities and Environmental Services, as dated above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.

2. In addition to all other terms and conditions contained in the Contract, Engineer shall provide services relating the Garnsey Water Treatment Plant (WTP) Transfer Pump Stations Modifications, as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "1."

3. Engineer shall complete the services to be provided herein within 365 days of the date of written notice by the City to the Engineer.

4. In return for the services identified above, the City agrees to compensate Engineer at the prices set forth in Exhibit "1" attached hereto and made a part hereof, subject to a limit not to exceed **\$93,815.00**. All payments shall be governed by the Local Government Prompt Payment Act as Set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. Truth-in-Negotiations

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Engineer shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contractor Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Engineer's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Engineer has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization.

6. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Engineer and the City until the City signs this Task Authorization.

IN WITNESS WHEREOF, the Parties have made and executed this Task Authorization for the purposes herein expressed on the dates set forth below.

KIMLEY-HORN AND ASSOCIATES, INC.

Witnesses:

Printed Name: _____ By: _____
Jonathan D. Thigpen, Senior Vice President

Printed Name: _____ Date: _____

CITY OF PORT ORANGE

By: _____
Scott Stiltner, Mayor

Date: _____

ATTEST:

By: _____
Robin L. Fenwick, MMC, City Clerk

EXHIBIT “1”

Contractor's Quote

Consisting of 3 Pages

PROPOSAL FOR PORT ORANGE GARNSEY WATER TREATMENT PLANT (WTP) TRANSFER PUMP STATION MODIFICATIONS

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The City of Port Orange (the Client or the City) in accordance with the terms of the Master Agreement for Continuing Professional Services dated January 18, 2022, which is incorporated herein by reference.

Project Understanding

The scope of work presented below was prepared following discussions with the City of Port Orange staff regarding the replacement of equipment associated with three transfer pump stations.

The proposed improvements include replacement of each pump, piping, valves, and fittings within all three pump station buildings. Existing equipment is past its useful life and requires replacement. Electrical upgrades will be included. The enclosed figures outline the expected limits of design.

Specific Scope of Basic Services:

Task 1: Data Collection

- A. Evaluate pump options for each transfer pump station. The City does not have a preference between horizontal or vertical pump options. Kimley-Horn will maintain the existing pump duty points and will evaluate the best pump style for this application.
- B. Kimley-Horn will enlist the services of an electrical engineering subconsultant, Electrical Design Associates, to provide electrical engineering design.

Task 2: Final Design

- A. Kimley-Horn will prepare 60%, 90% and 100% design plans, and opinion of probable construction cost (OPC) for the proposed improvements. Design plans for the transfer pump stations include mechanical and electricals improvements required to replace the mechanical equipment within each pump station. Technical specifications for the proposed improvements will be provided.

Task 3: Bidding Services

- A. Prepare one (1) bid package consisting of plans and specifications (in CSI or EJCDC format) to be included in the City's bid package.
- B. Participate in one (1) pre-bid conference as the City's engineering representative. The City will be responsible for coordinating, scheduling, and administering the pre-bid conference.
- C. Respond to Requests for Information (RFIs) and prepare bid addenda as necessary during the bid process. The City will be responsible for addenda distribution.

Additional Services:



Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Additional site visits
- Permitting services
- Construction Phase services

Schedule:

These services will be completed as expeditiously as possible. Kimley-Horn will begin services within 7 calendar days upon receipt of an executed agreement. Kimley-Horn will provide 60% design plans within 90 days of the Notice to proceed. The 90% project submittal will be submitted within 60 days of the receiving initial review comments and the 100% project submittal within 30 days of receiving 90% comments.

Deliverables:

Deliverables for this project include the following:

- 60% plans and opinion of probable construction costs
- 90% plans and opinion of probable construction costs
- Final plans and final opinion of probable construction costs

Method of Compensation:

Kimley-Horn will perform these services for the total lump sum fee of \$93,815 inclusive of expenses. Invoices will be billed on a percent complete basis per task. A breakdown of the fee by task is as follows:

<i>Task</i>	<i>Description</i>	<i>Lump Sum Fee</i>	<i>Subconsultants</i>
1	Data Collection	\$4,140	\$1,500
2	Final Design	\$78,345	\$7,500
3	Bidding Services	\$1,330	\$1,000
	SubTotal	\$83,815	\$10,000
Project Total			\$93,815

Other Special Terms:

Services provided under this agreement will be invoiced on a monthly basis. All invoices will include a description of services provided.



ACCEPTED:

CITY OF PORT ORANGE, FLORIDA

KIMLEY-HORN AND ASSOCIATES, INC.

BY: See Page 4 of Task Authorization No. 20

BY: _____
Jon Martin, PE

TITLE: _____

TITLE: Sr. Vice President

DATE: _____

DATE: _____

PROPOSAL FOR PORT ORANGE GARNSEY WATER TREATMENT PLANT (WTP) TRANSFER PUMP STATION MODIFICATIONS

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The City of Port Orange (the Client or the City) in accordance with the terms of the Master Agreement for Continuing Professional Services dated January 18, 2022, which is incorporated herein by reference.

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Deliverables:

Deliverables for this project include the following:

- 60% plans and opinion of probable construction costs
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- Final plans and final opinion of probable construction costs

Method of Compensation:

Kimley-Horn will perform these services for the total lump sum fee of \$93,815 inclusive of expenses. Invoices will be billed on a percent complete basis per task. A breakdown of the fee by task is as follows:

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3	Bidding Services	\$1,330	\$1,000
	SubTotal	\$83,815	\$10,000
Project Total			\$93,815

Other Special Terms:

Services provided under this agreement will be invoiced on a monthly basis. All invoices will include a description of services provided.



ACCEPTED:

CITY OF PORT ORANGE, FLORIDA

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____

BY: _____
Jon Martin, PE

TITLE: _____

TITLE: Sr. Vice President

DATE: _____

DATE: _____



CITY OF PORT ORANGE MASTER CONTRACT PROFESSIONAL ENGINEERING SERVICES FOR PUBLIC WORKS, UTILITIES AND ENVIRONMENTAL SERVICES

This Standard Contract for Services ("Contract") is entered into this 18 day of Jan, 2022, by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina corporation, registered to transact business in Florida, whose principal address is 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Engineer"). The City and Engineer are collectively referred to herein as the "Parties."

The City and the Engineer for Ten Dollars (\$10.00) and other good and valuable consideration hereby covenant and agree as set forth below.

1. Provision of Services

(a) The Engineer hereby agrees to provide the following services to the City of Port Orange:

(i) Professional continuous utility engineering consulting services to complete a wide range of projects led by the City of Port Orange Public Works and Utilities Department in accordance with Consultants Competitive Negotiation Act, and as more specifically described in Request for Statement of Qualifications 21-03 ("RFSQ 21-03"). This Contract together with RFSQ 21-03, Addendum No. 1, Addendum No. 2, and Engineer's Proposal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference shall constitute the formal written Contract between the City and Engineer. For convenience, Section 3, Scope of Services, of RFSQ 21-03, and the Schedule of Hourly Billing Rates as submitted by Engineer in Engineer's Proposal are attached hereto as Exhibit "1." A complete copy of RFSQ 21-03 is available in the Office of the City Clerk. Engineer represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

(b) The time, manner and place for performance of such services shall be:

Term: The term of this Contract shall commence on the date this Contract is signed by both of the Parties, and shall continue for a period of three (3) years, or until either party provides the other party written notice of its intent to terminate as provided in this Contract.

Renewals: Upon written agreement of the Parties and appropriation by City Council, this Contract may be renewed for up to two (2) additional one (1) year periods.

Manner and Place: The Engineer shall perform the services as outlined in each project assignment, in accordance with Standard Construction Details as required on all City owned facilities and properties (i.e. rights-of-way) and in a manner as required by all current federal, state, county, fire, building and land development codes, laws, ordinances and regulations, and with applicable permits and licenses per the City Code of Ordinances. Engineer shall not deliver goods or services without a fully executed task authorization and a written purchase order, signed by an authorized agent of the City of Port Orange.

Time and Essence: Engineer acknowledges that time is of the essence in the completion of the services contemplated by this contract, and shall complete all services within the timeline specified by this contract, and shall complete all services within the timeline specified in the project, and as reflected on the Notice to Proceed.

2. Authorization for Services This Contract standing alone does not authorize the performance of any work or services to be provided by the Engineer or require the City to place any orders for work or service. Authorization for performance of services by the Engineer under this Contract shall be in the form of written Task Authorization(s) ("Task Authorization") issued and executed by the City and signed by the Engineer. A sample Task Authorization is attached hereto as Exhibit "2."

- a. All Task Authorizations issued under this Contract shall terminate at the expiration of the term of the Task Authorization, unless amended in writing by the parties. If a Task Authorization issued before the expiration of this Contract cannot be completed until after the expiration of this Contract, then this Contract shall expire on the Completion of Services under said Task Authorization, including any Amendments thereto, and after all work or services under the Task Authorization have been approved and accepted by the City's Contract Administrator. The obligations entered herein by both parties under this Contract and said Task Authorizations shall remain in full force and effect until completion of all work or services performed under this Contract and/or the Task Authorization.
- b. No new or additional Task Authorization shall be issued after the original expiration date of this Contract. The extension of this Contract to coincide with the completion of an existing Task Authorization issued prior to the original expiration date of this Contract shall not be construed as or constitute authorization by the City or the Engineer to enter into a new or additional Task Authorization after the original expiration date of this Contract, unless this Contract is renewed prior to entering into a Contract for a new or additional Task Authorization.

3. City Obligations The City reserves the right to utilize lump sum or hourly rate compensation, at the hourly rate compensation as set forth in Exhibit "1." Rates may be adjusted on the anniversary of the effective date of this Contract, upon mutual written agreement of the Parties. The City's obligation to pay Engineer under this Contract is limited to an amount not to exceed the appropriated budget per fiscal year. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended. The Engineer shall be paid compensation for all services, labor and material required thereby, and for all expenditures as specified in each Task Authorization. The fee shall be negotiated for each Project Task Authorization to this Contract. The Engineer shall submit a monthly statement for professional services rendered and expenses incurred to date of the statement. The statements for lump sum shall be based upon Engineer's estimate of the proportion of the total services actually completed at the time of billing to the total services to be performed. Such estimates are to be prepared by the Engineer and accompanied by such supporting data as may be required by the Contract Administrator. Compensation for any authorized cost which is not set forth in the Contract shall not exceed the actual, documented out-of-pocket cost to the Engineer, plus fifteen percent (15%). The Contract and Task Authorization(s) do not include retainer fees, nor is there a minimum fee guaranteed during the Contract period.

4. Contract Administration The Public Works and Utilities Director, Lynn Stevens, shall perform contract administration of this Contract. The City may change the contract administrator, from time to time and at any time, upon written notice to Engineer. For notice provisions, see the paragraph below entitled "Notice."

5. Liens Engineer acknowledges that Engineer shall not be entitled to lien the City or other public property.

6. Statement of Engineering Services The Engineer shall:

- (a) Provide all certifications ("Engineer of Record" function) surveys, calculations, drawings, and any other documents required for special permits and authorizations from various government bodies or agencies having jurisdiction over the project;
- (b) Prepare a time scaled diagram showing the dates of completion of various design phases and scheduled completion of working drawings and specifications and submit for Contract Administrator's review and approval;
- (c) Verify and evaluate technical proposals furnished by the construction Engineer if requested by the City and provide such amplifications and explanations that may be necessary to clarify the intent of the drawings and specifications.
- (d) Furnish consultation and advice as requested by the City during the construction of project, including Construction Administration Services (unless otherwise stipulated in a specific amendment attached hereto and made a part thereof);
- (e) Furnish all other engineering services including without limitation those specified hereinafter and those required for the completion of specific projects as described in amendments to this contract:
 - (i) Site Visits/Special Permits The Engineer shall visit the site and shall initiate and hold such conferences with representatives of the City and other agencies, boards or government bodies having jurisdiction over the area the project covers and take such other action as may be necessary to obtain permits and authorizations (except the construction permits) and other data upon which to develop the design and preliminary sketches showing the contemplated project.
 - (ii) Preliminary Sketches and Opinion of Probable Construction Costs The preliminary sketches shall include plans, elevations and sections development in such detail and with such descriptive specifications as will clearly indicate the scope of work, and make possible a reasonable opinion of the construction cost and satisfy the requirements of permitting and regulatory agencies having jurisdiction. An opinion of probable construction costs shall be prepared.
 - (iii) Working Drawings and Specifications After the preliminary sketches and opinion of probable construction costs have been approved, the Engineer shall proceed with the preparation of working drawings and specifications as required by the Contract Administrator for the construction of said project. Working drawings, specifications and estimates shall be delivered to the Contract Administrator in such sequence and at such times as required by the City such that the construction work can be initiated promptly, procurement of materials made without delay and continuous prosecution of the work promoted, all in strict accordance with the approved design schedule as provided in Paragraph 5 (b) above. Working drawings and specifications shall be revised as necessary and as required by the Contract Administrator. After working drawings and specifications have been approved by the Contract Administrator, the Engineer shall furnish such number of sets of prints of the approved working drawings and such number of sets of the approved specifications, as may be required by the Contract Administrator.

- (iv) Original Drawings - Final Plans Upon approval of final plans the Engineer shall deliver to the City one set of original drawings, in such medium and on such materials, as may be required by the Contract Administrator, suitable for blueprinting, showing approved constructed requirements (not of "as-built" construction unless otherwise stipulated), provided, however, that should this contract be terminated by the City the Engineer shall deliver to the City one set of originals as they exist at the time of termination. Such plans as are delivered shall become and remain the property of the City.
- (v) Revision of Final Drawings and Specifications The engineer shall without additional fee correct and revise the drawings, specifications, or other materials furnished under this contract, if the Contract Administrator finds that such revision is necessary to correct errors or deficiencies for which the Engineer is responsible.
- (vi) Bidding The Engineer shall perform all necessary engineering services required in connection with the competitive bidding for construction of the project and the preparation of all documents required thereof, including preparation of documents for separate bid packages for multiple contractors if so required by Contract Administrator.

7. Responsibility of the Engineer The Engineer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, and specifications and other work or materials furnished by the Engineer under this contract. The Engineer shall without additional cost or fee to the City, correct or revise any errors or deficiencies in his performance.

8. Reuse of Documents The City shall have unlimited rights, for the benefit of the City in all drawings, designs, specifications, notes and other engineer's work produced in the performance of this contract, or in contemplation thereof, and all as-built drawings produced after completion of the work, including the right to use same on any other City work without additional cost to the City. All documents including Drawings and Specifications prepared by Engineer pursuant to this Contract are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by City or others for any other project. Reuse for another project without written verification or adaption by Engineer for the specific purpose intended will be at City's risk. Any such verification or adaption will entitle Engineer to further compensation at rates to be agreed upon by City and Engineer. A reproducible set of plans and specifications shall be delivered to and become the property of the City upon completion of the Project by the Engineer.

9. Expert Witness The Engineer shall serve as an expert witness for the City in any legal proceedings regarding this project if the City so requests. The expert witness fee for Engineer shall be negotiated at the time the Engineer is called as an expert.

10. Modifications to Scope of Work/Change Orders

(a) Change Orders. The Contract Administrator, upon written approval as required by the City's Purchasing Policy, shall without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in one or more of the following: the services to be performed, the contract price or the time of the performance. The City will not be held liable for any changes which have not been properly authorized and approved in accordance with this Contract.

(b) If any change under this clause causes an increase or decrease in Engineer's cost of, or time required for the performance of the work hereunder, Engineer shall receive an equitable adjustment and the contract

shall be modified in writing accordingly. Any change shall include all costs and damages related to or incidental to such change.

(c) Any claim by the Engineer for adjustment under this clause shall be asserted in writing within thirty (30) days from the date of receipt by the Engineer of the notification of change unless the Contract Administrator grants a further period of time before the date of final payment under the contract. The Engineer shall proceed with the prosecution of the work as changed. Except as provided in this Contract, the Engineer shall not be entitled to payment for a charge for any extra work or material.

11. Subcontractors or Sub-Subcontractors

(a) Any subcontractors and outside associates or consultants required by the Engineer in connection with the services covered by the Contract will be limited to such individuals or firms as are specifically identified in an amendment to this Contract. Any substitution in such subcontractors, associates, or consultants shall be subject to the prior approval of the Contract Administrator.

(b) Engineer shall save and hold the City harmless from any and all claims or actions by Engineer's Subcontractors or Sub-subcontractors for payment of monies such Subcontractor or Sub-subcontractor claims to be owed by Engineer for work performed under this Contract.

(c) Nothing in this Contract shall create any obligation on the part of the City to pay directly to any Subcontractors or Sub-subcontractors or claims of a Subcontractor or Sub-subcontractors for amounts owed by Engineer to Subcontractor or Sub-subcontractor for work performed under this Contract.

(d) Engineer shall be fully responsible for all negligent acts and omissions of it Subcontractors and Sub-subcontractors and of persons directly or indirectly employed by them and of persons of whose negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in the Contract documents shall create any contractual relationship between any subcontractor and the City or any obligation on the part of the City to pay or to see to the payment of any moneys due any subcontractor to the extent practicable, evidence of amounts paid to the Engineer on account of specific work done in accordance with the schedule of values.

(e) The Engineer shall require all subcontractors or sub-subcontractors or outside associates employed in connection with the performance of this Contract to comply fully with the terms and conditions of this Contract between the City and the Engineer.

12. Termination

(a) The performance of work under this Contract may be terminated by the City in accordance with this clause in whole, or from time to time in part, whenever the Contract Administrator shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the Engineer of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contract Administrator, the Engineer shall:

(i) Stop work under the Contract on the date and to the extent specified in the Notice of Termination.

(ii) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as it is not terminated.

- (iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
 - (iv) Assign to the City in the manner, at the times and to the extent directed by the Contract Administrator, all of the right, title, and interest of the Engineer under the orders and subcontracts so terminated, in which case the City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - (v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator, to the extent the City may require which approval or ratification shall be final for all the purposes of this clause.
 - (vi) Transfer title and deliver to the City in the manner, at the times, and to the extent, if any, directed by the Contract Administrator.
 - a. The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and
 - b. The completed or partially completed plans, drawings, information, and other property which, if the contract has been completed, would have been required to be furnished to the City.
 - (vii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.
- (c) After receipt of a Notice of Termination, the Engineer shall submit to the City's Contract Administrator his termination claim, in the form and with certification prescribed by the Contract Administrator. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one or more extensions in writing are granted by the Contract Administrator, upon request of the Engineer made in writing within such thirty (30) days period or authorized extension thereof. Upon failure of the Engineer to submit his termination claim within the time allowed, the Contract Administrator may determine on the basis of information available to him, the amount, if any, due to the Engineer by reason of the termination and shall thereupon pay to the Engineer the amount so determined.
- (d) Subject to the provisions of Paragraph 11 (c), the Engineer and the Contract Administrator may agree upon the whole or any part of the amount or amounts to be paid the Engineer by reason of the total or partial termination of work pursuant to this clause, the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The Contract shall be amended accordingly and the Engineer shall be paid the agreed amount. Nothing in Paragraph 11 prescribing the amount to be paid to the Engineer, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid.
- (e) In the event of the failure of the Engineer and the Contract Administrator to agree as provided in Paragraph 11 (d), upon the whole amount to be paid to the Engineer by reason of the termination of work pursuant to this subparagraph, the Contract Administrator shall pay to the Engineer the amounts determined by the Contract Administrator, but without duplication of any amounts agreed upon, as follows:

(i) For completed work and services accepted by the City, the price or prices specified in the contract for such work, less any payments previously made.

(ii) The total of:

a. The costs incurred in the performance of the work and service terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to the work and services paid or to be paid for under Paragraph 11 (e)(i) hereof;

b. The cost of settling and paying claims arising out of the termination of work or services under subcontracts or orders as provided in Paragraph 11 (b)(v) above, which are properly chargeable to the terminated portion of the contract exclusive of amounts paid or payable on account of work or services delivered or furnished by subcontractors prior to the effective date of termination, which amounts shall be included in the costs payable under Paragraph 11 (a) above; and

c. A sum, as profit on Paragraph 11 (a) above, determined by the Contract Administrator to be fair and reasonable, not to exceed 5% of the Task Authorization.

(iii) In the event the contract is terminated because of Engineer's default, the City may take over the work and services and complete the same by contract or otherwise, and the Engineer shall be liable to the City for any increased cost of the project.

13. Termination for Non-Appropriation of Funds

(a) If funds are not appropriated for any succeeding fiscal years subsequent to the one in which this contract is entered into, for the purpose of this Contract, then the City may terminate this Contract upon thirty (30) days prior written notice to the Engineer. Should termination be accomplished in accordance with this Section, the City shall be liable only for payments due through the date of termination. The City agrees that should it terminate in accordance with this Section, it shall not obtain services which are substantially equal to or similar to those for which this contract was entered into. This provision shall survive any termination of the Contract.

14. Engineer's Records. The design, permits and all other records prepared by the Engineer, assembled for the City, subcontracted for the City, and any other records related to the scope of work in the possession of the Engineer shall be retained by the Engineer for the requisite time set forth in Florida Administrative Code Rule 1 B-24 <http://dos.myflorida.com/library-archives/records-management/>. Engineer may dispose of the records in accordance with Florida law, upon receipt of a signed written release signed by the City Attorney. During the term of this Contract, as amended from time to time, Engineer agrees to indemnify the City for failure to comply with the requirements of this paragraph including costs of litigation and legal fees incurred through all appeals. City reserves the right to select and approve the defense attorney. The Engineer's obligations pursuant to this paragraph shall survive the termination of this Contract, and as amended from time to time.

15. Examination of Records

(a) The Engineer agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after final payment hereunder, have access to and the right to examine and copy any pertinent books, documents, papers and records of the Engineer involving transactions related to this Contract.

(b) The Engineer further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to

and the right to examine and copy any pertinent books, documents, papers and records of such Engineer involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

(c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

16. Public Records Compliance Engineer shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:

(a) Keep and maintain public records required by the City to perform the service.

(b) Upon request from the City's custodian of public records, provide the City with a copy of the requested record or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are 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 Engineer does not transfer the records to the City.

(d) Upon completion of the Contract, Engineer shall transfer to the City, at no cost, all public records in possession of the Engineer and destroy any duplicate public records that are exempt from public records disclosure requirements. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

If Engineer does not comply with a public records request, the City shall deem the non-compliance a breach of this Contract, and the Engineer may be subject to penalties under Section 119.0701, Florida Statutes.

ENGINEER QUESTIONS RELATING TO ENGINEER'S DUTIES TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT MUST BE FORWARDED TO THE OFFICE OF THE CITY CLERK, CITY HALL, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129; TELEPHONE: (386) 506-5563; E-MAIL: CITYCLERK@PORT-ORANGE.ORG.

17. Insurance Engineer shall maintain insurance, as required herein, during the life of this Contract. Engineer shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Engineer shall be primary and non-contributory. All insurance coverages of the Engineer shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Engineer's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation. The City shall not accept Workers' Compensation Exemptions. Engineer may use leased employees if the Engineer ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Engineer using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Engineer shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing

the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

Engineer shall require and ensure each of its subcontractors to maintain, until the completion of the subcontractor's work, insurance of the types and to the limits set forth herein. All insurance coverages shall be primary and non-contributory. All insurance coverages of the subcontractors shall not seek contribution from any other insurance or self-insurance available to the City. The Engineer is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the Engineer to ensure the subcontractors maintain the required coverage, shall not relieve the Engineer of any contractual responsibility, obligation or liability.

The City reserves the right to increase insurance coverage as determined for higher risk contracts.

The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with this Contract and does not waive the insurance required by this Contract.

Should at any time the Engineer or subcontractors not maintain the insurance coverages required herein, the City may terminate the Contract or at its sole discretion shall be authorized to purchase such coverages and charge the Engineer for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract.

Standard Insurance Requirements				
	Insurance	Standards		Additional Requirements
☒	<u>Workers' Compensation</u> The Engineer shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any Engineer using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	<u>Contract Amount</u> Up to \$10 million \$10 - \$20 million Contracts over \$20 million To Be Determined by the City.	<u>Limits</u> Statutory/\$500,000 Statutory/\$1,000,000	☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of \$500,000 required.

☒	Comprehensive General Liability (including Completed Operations and Contractual Liability)	Limits: Combined Single Limit Bodily Injury and Property damage \$1,000,000 occurrence \$1,000,000 aggregate	☐ When work is on or under Railroad rights of way or properties, the Engineer shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles.	Limits: Auto Liability Bodily Injury and Property Damage: \$1,000,000 each occurrence \$1,000,000 aggregate	
Additional Insurance Requirements			
☐	Property Insurance Builders Risk. Additional Coverage:	Limits: Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☒	Professional Liability	Limits: Coverage - \$1,000,000	
☐	Installation Floater (IT)	Limits: Coverage - \$ To be determined.	
☐	Engineer Pollution Liability	Limits: Coverage - \$1,000,000	
☒	Errors and Omissions	Limits: Coverage - \$1,000,000	
☐	Umbrella Policy	Limits: Coverage - \$ To be determined.	
☐	Payment and Performance Bond Required	Limits: Coverage - Equal to amount of Contract.	
☐	City Manager waives Payment and Performance Bond for work under \$25,000.00.		
☐	Unless otherwise required by law, City Manager waives Insurance for FOB goods under \$25,000.00.		

18. Assignability of Contract Neither this contract, nor any part hereof, may be assigned by the Engineer to any other party without the express written approval of the City Council.

19. Sovereign Immunity The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

20. Liability for Loss or Damage

(a) Engineer shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Engineer, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death

of any person or damage to property other than City property, to the extent caused by negligent performance of the Contract by Engineer, his/its agents, servants and employees. Engineer shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.

21. Non-discrimination. During the performance of this Contract, Engineer agrees as follows:

(a) Engineer will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, marital status, age or national origin, except where such is a bona-fide occupational qualification reasonably necessary to the normal operation of Engineer. Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Engineer agrees and fully supports and complies with the Americans with Disabilities Act of 1990.

(b) Engineer shall state in all solicitations or advertisements for employees placed by or on behalf of Engineer that Engineer is an equal opportunity employer.

(c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision. Engineer shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

22. E-Verify. Engineer 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 Engineer on or after the effective date of this Contract and thereafter during the remaining term of this Contract, including all subcontractors. Any subcontract entered into by Engineer with any subcontractor performing work under this Contract shall include the following language: "The Sub-Engineer 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 Engineer on or after the effective date of this Contract and thereafter during the remaining term of the Contract." The Engineer covenants and agrees that if it is found in violation of this section of the Executive Order, such violation shall be a material breach of this Contract and Engineer shall indemnify, defend and hold harmless the City from any fines or penalties levied by a government agency, including the loss or repayment of grant funds by the City.

23. Disputes The City Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to Engineer, shall decide disputes with respect to this Contract in the first instance. The decision shall be final and binding unless, within ten (10) days from the date of receipt of the decision of the City Manager, appeal is made to the City Council. The decision of the City Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, or not to be supported by any evidence. Pending a final determination of a properly appealed decision of the City Council, Engineer shall proceed diligently with the performance of this Contract in accordance with that decision.

24. Force Majeure Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

25. Controlling Law **THIS AGREEMENT CONTAINS IMPORTANT MATTERS AFFECTING LEGAL RIGHTS AND IS ACCEPTED AND ENTERED INTO IN FLORIDA AND ANY QUESTION REGARDING ITS VALIDITY, CONSTRUCTION, ENFORCEMENT, OR PERFORMANCE SHALL BE GOVERNED BY FLORIDA LAW. ANY**

LEGAL PROCEEDING ARISING FROM OR IN ANY WAY REGARDING THE AGREEMENT SHALL HAVE ITS VENUE LOCATED EXCLUSIVELY IN THE CIRCUIT COURT OF VOLUSIA COUNTY, FLORIDA, AND THE PARTIES HEREBY EXPRESSLY CONSENT AND SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION AND VENUE OF THE COURT.

26. Additional Provisions. This Contract includes all additional provisions as may have been outlined in written quotes and purchase orders and any attachments or exhibits to this Contract whether delivered herewith or subsequently approved as a part hereof, such as drawings or technical specifications prepared in the performance of this work. In the event of a conflict between any attachments or exhibits to this Contract, and this Contract, the language of this Contract shall control.

28. Integration This Contract and the documents incorporated herein by reference shall constitute the whole agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Contract shall supersede all previous communications, representations, or agreements, written or verbal, between the parties hereto.

29. Notice For purposes of this agreement, notices shall be sent as follows:

City: City of Port Orange
Attention: City Manager
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5501

Copy to: City of Port Orange
Attention: Lynn Stevens, Public Works & Utilities Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5575

Engineer: ~~Kimley-Horn and Associates, Inc.
Attention: Brian A. Good, Director
421 Fayetteville Street
Suite 600
Raleigh, North Carolina 27601~~

Attention: Jonathan D. Thigpen, Senior Vice President
189 South Orange Avenue
Suite 1000
Orlando, Florida 32801
(407) 898-1511 – Telephone
(561) 863-8175 – Facsimile

~~Wayne.White@kimley-horn.com~~ jonathan.thigpen@kimley-horn.com

Any notice or other communication given under the Contract will be in writing and delivered by hand, sent by facsimile (provided acknowledgement of receipt thereof is delivered to the sender), sent by certified, registered mail, or sent by any nationally recognized overnight courier service to the addresses provided herein. The parties may,

from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.

30. Truth-in-Negotiations

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Engineer shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Engineer's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Engineer has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract or Task Authorization.

31. Waiver of Breach and Materiality Failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed as a modification of the terms of this Contract.

32. Contract Construction

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered. No contract shall be formed between Engineer and the City until the City signs this Agreement.

33. Authority to Sign Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

[Remainder of this page intentionally left blank]

Witnesses:

Nicole McConnell
Printed Name: NICOLE MCCONNELL

Tucker Hunter
Printed Name: Tucker Hunter

KIMLEY-HORN AND ASSOCIATES, INC.

By: Jonathan D. Thigpen
Jonathan D. Thigpen, Senior Vice President

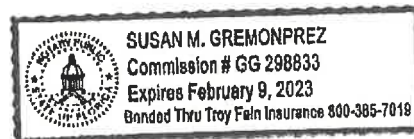
If this Contract is signed by an individual not identified as the President of the corporation in the records of the Florida Department of State, Division of Corporations, please provide written authorization for that individual to enter into contracts on behalf of the corporation.

Date: January 7, 2022

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 7th day of January, 2022, by Jonathan D. Thigpen, as Senior Vice President of Kimley-Horn and Associates, Inc., a North Carolina corporation, registered to transact business in Florida. He is ☒ personally known or ☐ produced as identification.

Susan M. Gremonprez
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:



Witnesses:

CITY OF PORT ORANGE

Printed Name: Samie Miller

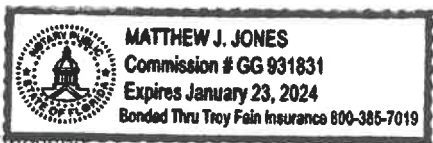
By: Donald O. Burnette
Donald O. Burnette, Mayor

Printed Name: Matt Jones

Date: 1/18/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 18 day of Jan., 2022, by Donald O. Burnette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He is ☒ personally known or ☐ produced as identification.



Matthew J. Jones
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:

Witnesses:

ATTEST:

Printed Name: Samie Miller



By: Robin L. Fenwick
Robin L. Fenwick, MMC, City Clerk

Printed Name: Matt Jones

Date: 1/18/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 18 day of Jan., 2022, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. She is ☒ personally known or ☐ produced as identification.



Matthew J. Jones
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:

EXHIBIT “1”

Engineer's Schedule of Hourly Billing Rates and RFSQ 21-03 Section 3

Consisting of 2 Pages

**KIMLEY HORN AND ASSOCIATES
SCHEDULE OF HOURLY BILLING RATES**

Labor Position/Classification Level	Hourly Rate
Principal	\$300.00
Senior Project Manager	\$230.00
Project Manager	\$190.00
Senior Project Engineer	\$210.00
Project Engineer	\$170.00
Analyst 3	\$145.00
Analyst 2	\$125.00
Analyst 1	\$115.00
Senior Environmental Scientist	\$185.00
Environmental Scientist	\$130.00
GIS Analyst	\$130.00
Grants Coordinator	\$175.00
Sr CAD Designer	\$185.00
CAD Designer	\$150.00
CAD Technician	\$110.00
Administrative	\$95.00
Clerical	\$75.00

Notes:

1. Billing rates listed in the table above are for the period from FY2022 through FY2024.
2. The salary multiplier billing rates include all payroll burden, overheads, and profit.
3. Subconsultants will be billed at 115% of actual cost
- ~~4. Standard project expenses will be billed as an allocation equivalent to 5.0% of the labor fee.~~

SECTION 3 – SCOPE OF SERVICES AND REQUIREMENTS

SCOPE OF SERVICES

The City of Port Orange is soliciting proposals from qualified firms for professional continuous engineering consulting services to complete a wide range of needs lead by the City of Port Orange Public Works & Utilities Department. The City will select a minimum of three, and up to five firms who can provide all, some, or one of the category service disciplines outlined in the scope of services. Firms do not have to be able to provide all of the services listed in the scope of services. For instance, if a firm only provides Environmental Services then they should state that in their initial Statement and provide all of the supporting data within the submittal to support the type of services provided. Individual firms are the focus of this RFSQ process, therefore the City will not accept Statements of Qualifications submitted with multiple firms (i.e., teams). The City is seeking the most highly qualified firms in the following category service disciplines;

- **Public Utilities (Water, Wastewater, & Reclaimed Water):**
 - Analysis, survey, design, permitting, bidding assistance, engineering services during construction, and State Revolving Funds (SRF) loan assistance for the Cities water, wastewater, and reuse systems. Including but not limited to the Cities wastewater collection and treatment systems, raw water wells, raw water transmission, water treatment, and reclaimed water storage and distribution systems
- **Public Works (Stormwater, Roadways, and Sidewalls/Trails):**
 - Analysis, survey, design, permitting, bidding assistance and engineering during construction for the Cities roadways and sidewalks
 - General stormwater needs as required by the Stormwater Utility Program. The list of services shall consist of, but not be limited to, the following:
 - National Pollutant Discharge Elimination System (NPDES) program assistance and implementation,
 - Total Maximum Daily Load (TMDL) program assistance and implementation including, but not limited to, the evaluation and establishment of estuarine TMDLS and NNC, developing ecosystem goals and targets based on the requirements of the environmental and biological indicators, hydrodynamic modeling, water quality statistical analysis, natural systems analysis and habitat analysis,
 - Watershed management planning including, but not limited to, initial hydrologic and hydraulic modeling of the watersheds in Port Orange, as well as pollutant loading modeling and updates to existing Stormwater Management Master Plans of the watersheds,
 - Engineering analysis/design and permitting of capital improvement projects, and
 - Other stormwater/environmental needs that may arise.
- **Environmental Services:**
 - Provide services related to wetlands mitigation bank management, gopher tortoise mitigation bank management, potable drinking water Consumptive Use Permit (CUP) permit monitoring, reporting, and compliance assistance, hydrologic services related to potable water wellfield management and development
 - Monitoring, sampling, and reporting services as required for permits issued and regulated by various local and State agencies such as Consumptive Use Permitting and other operational permits issued to the City by St. Johns River Water Management, U.S. Army Corps of Engineers, and the Florida Department of Environmental Protection for the operation of the Cities Wetlands Mitigation Bank, Gopher Tortoise Mitigation Bank each have very specific and differing water sampling, monitoring, and reporting procedures and requirements.
- **Grant Compliance Assistance:**
 - Provide Grant Compliance assistance for local, state, and federally administered grants, including but not limited to, HUD Community Development Block Grants, FEMA Hazard Mitigation Grant Program, FDEP Legislative Appropriation grants. Services will include tasks such as; Assistance with U.S. Department of Housing and Urban Development Environmental Review Record Development for projects funded with Community Development Block Grant Funds. Reviewing, monitoring, evaluating and acting upon documentation required for Construction Contract compliance.

[End of Scope of Services - Remainder of this page left intentionally blank]

EXHIBIT "2"

Task Authorization Template

Consisting of 4 Pages

TASK AUTHORIZATION NO. ____

**Master Contract for Services dated _____
Between the City of Port Orange, Florida and Kimley-Horn and Associates, Inc.**

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **KIMLEY-HORN AND ASSOCIATES, INC.**, North Carolina corporation, registered to transact business in Florida, with its principal place of business at 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Engineer"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering Services for Public Works, Utilities and Environmental Services, as dated above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.

2. In addition to all other terms and conditions contained in the Contract, Engineer shall provide services relating to _____, as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "1."

3. Engineer shall complete the services to be provided herein within _____ days of the date of written notice by the City to the Engineer.

4. In return for the services identified above, the City agrees to compensate Engineer at the prices set forth in Exhibit "1" attached hereto and made a part hereof, subject to a limit not to exceed \$_____. All payments shall be governed by the Local Government Prompt Payment Act as Set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. Truth-in-Negotiations

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Engineer shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Engineer's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Engineer has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization

6. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Engineer and the City until the City signs this Task Authorization.

IN WITNESS WHEREOF, the Parties have made and executed this Task Authorization for the purposes herein expressed on the dates set forth below.

Witnesses:

KIMLEY-HORN AND ASSOCIATES, INC.

Printed Name: _____ By: _____
Jonathan D. Thigpen, Senior Vice President

Printed Name: _____ Date: _____

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____

Donald Burnette, Mayor or
Wayne Clark, City Manager

Printed Name: _____

Date: _____

Witnesses:

ATTEST:

Printed Name: _____

By: _____

Robin L. Fenwick, MMC, City Clerk

Printed Name: _____

Date: _____

[illegible]

1. My name is Hao Chau. I am over the age of Twenty-one years old. I am the Vice President of Kimley-Horn and Associates, Inc. a non-governmental entity which does business in the State of Florida, hereinafter called the "Entity."
(Title) (Business Name)
2. I have personal knowledge of each and every statement of fact contained herein, and each and every statement of fact is true and correct.
3. Entity does not use coercion, as defined in Section 787.06, Florida Statutes, for labor or services.
4. The undersigned is an officer or representative of the entity and is authorized to execute this affidavit on behalf of the Entity.
5. Under penalties of perjury, I declare that I have read the foregoing Human Trafficking Affidavit and that the facts stated herein are true.

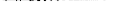
Date: August 29, 2024

Signed: 

Print Name: Hao Chan

Title: Vice President

(Notary Seal)



SKB.7.8.2024
CA7985



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/18/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Edgewood Partners Ins. Center/Greyling 3780 Mansell Rd. Suite 370 Alpharetta GA 30022	CONTACT NAME: Jerry Noyola PHONE (A/C. No. Ext): 7702207699 E-MAIL ADDRESS: greylingcerts@greyling.com	FAX (A/C. No):
INSURED Kimley-Horn and Associates, Inc. 421 Fayetteville Street, Suite 600 Raleigh, NC 27601	KIMLASS	
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: National Union Fire Ins Co of Pittsburg		19445
INSURER B: Allied World Assurance Co (U.S.) Inc.		19489
INSURER C: New Hampshire Insurance Company		23841
INSURER D: Lloyd's of London		85202
INSURER E:		
INSURER F:		

COVERAGES**CERTIFICATE NUMBER:** 221548564**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC ☐ OTHER:			GL5268169	4/1/2024	4/1/2025	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$25,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			CA4489663 (AOS) CA2970071 (MA)	4/1/2024 4/1/2024	4/1/2025 4/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			03127930	4/1/2024	4/1/2025	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC015893685 (AOS) WC015893686 (CA)	4/1/2024 4/1/2024	4/1/2025 4/1/2025	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$2,000,000 E.L. DISEASE - EA EMPLOYEE \$2,000,000 E.L. DISEASE - POLICY LIMIT \$2,000,000
D	Professional Liability			B0146LDUSA2404949	4/1/2024	4/1/2025	Per Claim \$2,000,000 Aggregate \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Comprehensive Plan Update; Kelley Klepper. The City of Port Orange is named as an Additional Insured with respects to General & Automobile Liability where required by written contract. Waiver of Subrogation applies to Workers Compensation where required by written contract & allowed by law.

CERTIFICATE HOLDER**CANCELLATION**

City of Port Orange
1000 City Center Circle
Port Orange FL 32129-0000

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 12/3/2024

SUBJECT: (B10c) Approval of Contract for Sale and Purchase of real property located at 1201 Reed Canal Road to Landsea Development Group

DEPARTMENT: Community Development

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve the Contract for Sale and Purchase of 1201 Reed Canal Road to Landsea Development Group, LLC; authorize Mayor and City Clerk to sign the Contract for Sale and Purchase and all documents associated with closing.

SUMMARY: At the March 19, 2024, meeting, the Council approved Resolution No. 24-04, thereby establishing the City-owned property, generally located on the south side of Reed Canal Road, east of Atlantic High School, to be surplus and authorized staff to market the property for sale. In June 2024, the City's Broker, Colliers International Florida, LLC (Colliers), began to market the approximately 8.7 acres of land for sale. This effort resulted in two development groups submitting offers. Colliers has compiled the information from the two offers into a summary that includes the total purchase price, intended use of the property, and anticipated closing date. The two groups that submitted offers are listed alphabetically as follows:

1. Landsea Development Group
2. Volta Global



According to the 10th Amendment of the Crystal Lake Master Development Agreement, the allowed uses on the subject property include those allowed in the City's Light Industrial (LI) and Commercial Industrial (CI) zoning districts. The LI Zoning District typically allows manufacturing-type uses for industrial operations engaged in the fabrication or processing of products into finished goods, while the uses listed in the CI zoning district tend to be less intense storage, repair, services, and limited manufacturing uses. Both of the proposed uses are permitted on this property.

PURCHASER	CURRENT TOTAL PURCHASE PRICE	INTENDED USE	TOTAL POSSIBLE TIME FROM EFFECTIVE DATE TO CLOSE
Landsea Development Group	\$950,000	Outside storage of Heavy Equipment and Construction Materials + Office and Warehouse	9 months
Volta Global	\$900,000	Self-storage Facility	5 months, 15 days

Staff is recommending that the City Council approve the contract with Landsea Development Group ("Landsea"). While the anticipated closing may be a few months longer than the other proposed offer, Landsea's offer is higher by \$50,000. The difference in the anticipated timing has little consequence on the City. If the City Council approves the contract with Landsea, the City will have additional funds to apply to projects throughout the City.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Contract for Sale and Purchase with Landsea Development Signed by Purchaser	Real estate Sales Contract w Landsea Dev REVISED CLEAN Signed by Purchaser.pdf
2.	Land Sea DG - Reed Canal Port Orange, FL - LOI	Land Sea DG - Reed Canal Port Orange, FL - LOI .pdf
3.	VG - Reed Canal Rd, Port Orange, FL - LOI	VG - Reed Canal Rd, Port Orange, FL - LOI .pdf

Tim Burman
Tim Burman
Shannon Balmer
Wayne Clark

Created/Initiated - 9/11/2024
Approved - 9/11/2024
Approved - 9/25/2024
Final Approval - 11/25/2024



CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY

THIS CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY, hereinafter, the "Contract" is made and entered into this _____ day of _____, 2024, between: Landsea Development Group LLC, a Florida limited liability company, mailing address 8807 S.W. 153 TERRACE PALMETTO BAY, FL 33157, hereinafter referred to as "Purchaser"; and CITY OF PORT ORANGE, FLORIDA, a municipal corporation, mailing address: c/o City Manager, 1000 City Center Circle, Port Orange FL 32129-4144, hereinafter referred to as "Seller."

1. Purchase and Sale.

(a) Seller agrees to sell, and Purchaser agrees to purchase the following described real estate, with its appurtenances, located in Port Orange, County of Volusia, State of Florida:

NOW ESTABLISHED, ALL BEING A PORTION FRACTIONAL SECTION 32, TOWNSHIP 15 SOUTH RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA. BE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS A POINT OF REFERENCE COMMENCE AT THE SOUTHWEST CORNER OF FRACTIONAL SECTION 32, TOWNSHIP 15 SOUTH, RANGE 33 EAST, COUNTY OF VOLUSIA, FLORIDA RUN THENCE NORTH 89 DEGREES 43 MINUTES 25 SECONDS EAST ALONG THE SOUTH LINE OF SAID FRACTIONAL SECTION 32, A DISTANCE OF 311.43 FEET TO THE SOUTH RIGHT-OF-WAY LINE AS REED CANAL ROAD (A 80 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED), SAID POINT BEING THE POINT OF BEGINNING, SAID POINT ALSO BEING ON A CURVE CONCAVE NORTHWESTERLY AND TO THE LEFT, SAID CURVE HAVING A RADIUS 1203.32 FEET, A CENTRAL ANGLE OF 34 DEGREES 51 MINUTES 52 SECONDS, A CHORD BEARING OF NORTH 57 DEGREES 28 MINUTES 33 SECONDS EAST, A CHORD DISTANCE OF 720.97 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 732.22 FEET TO THE POINT OF TANGENCY THEREOF; THENCE NORTH 40 DEGREES 02 MINUTES 37 SECONDS EAST ALONG THE SAID SOUTH RIGHT-OF-WAY LINE OF REED CANAL ROAD A DISTANCE OF 470.45 FEET; THENCE SOUTH 49 DEGREES 57 MINUTES 23 SECONDS EAST A DISTANCE OF 308.95 FEET; THENCE SOUTH 01 DEGREES 55 MINUTES 34 SECONDS EAST A DISTANCE OF 308.03 FEET TO THE NORTH OF LOT 1, MAGNOLIA GROVE, AS RECORDED IN MAP BOOK 2, PAGE 69, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE SOUTH 88 DEGREES 04 MINUTES 26 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT 1, MAGNOLIA GROVE A DISTANCE OF 147.46 FEET TO THE NORTHWEST CORNER OF SAID LOT 1, MAGNOLIA GROVE; THENCE SOUTH 01 DEGREES 03 MINUTES 31 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 1, MAGNOLIA GROVE, A DISTANCE OF 231.39; THENCE SOUTH 89 DEGREES 4 MINUTES 25 SECONDS WEST ALONG THE SAID SOUTH LINE OF FRACTIONAL SECTION 32, A DISTANCE OF 1317.25 FEET TO THE POINT OF BEGINNING.

Parcel ID. 5332-00-00-0020

The subject real estate being hereinafter referred to as the "Property".

- (b) The Property is conveyed AS IS WHERE IS and NO WARRANTIES other than those set forth in the Special Warranty Deed.

This Contract shall be subject to the Standards for Real Estate Transactions ("the Title Standards") set forth in **Exhibit "A"**, attached hereto and made a part hereof by reference. In the event of a conflict between the terms of the Contract and the terms contained in **Exhibit "A,"** the Contract shall control.

2. Purchase Price and Method of Payment. The purchase price payable to Seller is as follows:

- (a) The Purchase Price for the Property is **Nine Hundred Fifty Thousand Dollars (\$950,000.00)**; and
- (b) A good faith deposit of **Ten Thousand Dollars (\$10,000.00)** ("Initial Deposit") shall be submitted within three (3) business days of acceptance of this offer by the City Council and the balance to be paid at closing. Upon execution of the Contract by the Mayor and the City Clerk, Purchaser's Initial Deposit shall be paid to and held in trust by Columbia Title Research Corporation Trust Account, 200 Forest Lake Boulevard, Daytona Beach, FL 32119; referred to as "Escrow Agent," pending the closing of this transaction and to be delivered to Seller at the time of closing.
- (c) At the end of the Due Diligence Inspection Period, defined hereinbelow, if Purchaser elects to continue forward with closing, an additional deposit of Ten Thousand and NO/100 Dollars (\$10,000.00) ("Additional Deposit") shall be submitted to the Escrow Agent within three (3) business days. The Initial Deposit and Additional Deposit are collectively referenced as "Deposit". The Deposit shall become non-refundable except for Seller's default or breach, or Purchaser's failure to obtain the required Governmental Approval for Purchaser's Intended Use, defined hereinbelow. The balance of the Purchase Price shall be paid at closing as set forth herein.
- (d) Purchaser will pay cash for the Property with no financing contingency.
- (e) The total Purchase Price, which includes the Purchaser's Deposit of Twenty Thousand Dollars (\$20,000.00), less expenses, closing costs, and prorations as provided herein, by wire transfer payable to the order of Seller, to be delivered at the time of closing.

3. Title

- (a) Marketable Title. Seller shall convey to Purchaser marketable title to the Property, determined according to the Title Standards in Exhibit "A".

- (b) Title Insurance and Survey. Within THIRTY (30) days of the Effective Date of

this Contract ("Title Evidence Deadline"), Seller shall cause a title insurance commitment for owner's title insurance to be issued by a Florida licensed title insurance company of Seller's choice (in compliance with the requirements of Title Standard A of Exhibit "A") and provided to Purchaser, together with legible copies of instruments listed as exceptions and a special assessment and real property tax search ("Title Commitment"), by which Commitment the title company shall agree to issue to Purchaser, upon recording the deed for the Property, an Owner's ALTA policy in the amount of the full Purchase Price.

Within FORTY-FIVE (45) days of the Effective Date of this Contract, Purchaser, at Purchaser's expense, may obtain a survey of the Property prepared by a duly licensed land surveyor licensed in the State of Florida and depicting the Property and all plottable exceptions to the Commitment ("Survey"). Purchaser shall have until the end of the Due Diligence Inspection Period, defined hereinbelow, to examine the condition of the Seller's title to the Property.

If the Commitment or Survey reflects that title to the Property is subject to exceptions or survey matters that the Purchaser finds objectionable, then the Purchaser shall, prior to the expiration of the Due Diligence Inspection Period, give written notice of the specific title defects ("Title Objections"). If Purchaser does not timely object to the exceptions listed in the Commitment, then Purchaser shall be deemed to have waived any right to disapprove of any exceptions contained therein, and said exceptions shall be deemed to be permitted exceptions ("Permitted Exceptions"). If Purchaser timely gives such notice of Title Objections, Seller shall have THIRTY (30) days from the receipt of such notice to cure the Title Objections so specified (the "Curative Period") or to provide notice that it has declined to cure such matters. If Seller is unable, or unwilling, to correct such objections within the Curative Period, then Purchaser shall have the option to accept the title in its existing condition by sending written notice of such acceptance and proceed with the transaction or terminate this Contract by sending written notice of termination within FIVE (5) days of the receipt of Seller's response to the notice to cure Title Objections. In such instance of termination, the Initial Deposit provided in Paragraph 2(b) to the Escrow Agent shall be released forthwith to the Purchaser and neither party shall have any further obligations under this Contract, except which expressly survive termination.

If Purchaser gives notice of Title Objections and the Curative Period is utilized to cure said title objections and said period is beyond the expiration of the Due Diligence Inspection Period, said inspection period shall be extended to allow Seller a reasonable opportunity to cure said Title Objections, but not to exceed THIRTY-FIVE (35) days.

4. Due Diligence Inspection Period.

- (a) For the period beginning with the Effective Date and continuing until 5:00 PM Eastern Standard time on the date that is ONE HUNDRED TWENTY (120)

- days after the Effective Date, said date being April 2, 2025, ("Due Diligence Inspection Period"), Seller hereby grants to Purchaser the right to make or obtain any and all investigations, test studies, evaluations, assessments and reports Purchaser deems necessary or desirable with respect to the Property.
- (b) During the Due Diligence Inspection Period, Seller hereby grants to Purchaser and its agents, employees, contractors, and representatives, a right of entry upon the Property, for the purpose of making any and all inspections and investigations of the condition of the Property which it may deem necessary, including, but not limited to, soil borings, percolation tests, engineering, and topographical studies, environmental audits, wetland jurisdictional surveys, and investigations of the availability of utilities, all of which inspections and investigations shall be undertaken at Purchaser's sole cost and expense. If, after completing its inspection of the Property and review of the title matters thereto, Purchaser determines, in Purchaser's sole and absolute discretion, that the Property is not suitable or feasible for Purchaser's intended purposes, prior to the expiration of the Due Diligence Inspection Period, Purchaser may terminate this Contract by providing written notice thereof to Seller before the expiration of the Due Diligence Inspection Period. In such instance, the Deposit provided in Paragraph 2(b) to the Escrow Agent shall be released forthwith to the Purchaser and neither party shall have any further obligations under this Contract except with respect to those matters which expressly survive termination. If Purchaser elects to terminate this Contract in accordance with this paragraph, Purchaser shall leave the Property in the condition existing on the Effective Date. If Purchaser does not timely terminate the Contract pursuant to this Paragraph 4, then Purchaser shall be deemed to have waived any right to terminate hereunder, and the condition of the Property shall be presumed acceptable for Purchaser's intended purposes.
 - (c) Purchaser assumes liability for all acts of its agents who enter onto the Property and agrees to indemnify and hold harmless the Seller from any loss, damage, cost or expense incurred by Seller as a result of such acts by the Purchaser and its agents that cause injury to person or damage to property.
 - (d) Seller shall make available to Purchaser for examination and copying Seller's files, and shall deliver to Purchaser copies of Seller's owner's policies of title insurance, surveys, wetland delineation reports, rent rolls, leases, engineering reports, soils reports, environmental reports, Brownfield Agreement documents, notices of violation, certificates of occupancy, warranties, plans and other documents relevant to the Property, subject to Seller having said files in their possession.
 - (e) Upon acceptance of the condition of the Property and the title thereto, and not later than the expiration of the Due Diligence Inspection Period, Purchaser shall, within three (3) business days, deposit with the Escrow Agent the Additional Deposit in accordance with the provisions set forth in Paragraph 2(c), hereinabove.

5. Government Approvals. Purchaser shall have six (6) months from the Effective Date of this Contract in which to obtain a Development Order (as defined by the City's Land Development Code), evidencing the requisite government approvals for a site plan for the

development of the Property to accommodate Purchaser's anticipated use as an industrial use with outdoor storage (the "Intended Use"), said date being June 3, 2025 (hereinafter the "Governmental Approval Period"). Purchaser shall be responsible for obtaining the Government Approval of the Property to accommodate Purchaser's Intended Use, including any variances required. It is Purchaser's responsibility to obtain all governmental approvals from the City and other governmental agencies necessary to obtain a Development Order for the development of the Property for its Intended Use described hereinabove. In the event that a Development Order is not obtained within the Governmental Approval Period and said time period is not otherwise extended as provided herein or by mutual agreement of the Seller and Purchaser, then this Agreement shall automatically terminate, and the Deposit shall be refunded to Purchaser and neither party shall have any further obligations under this Contract, except with respect to those matters which expressly survive termination. However, solely for the purpose of obtaining a Development Order, Purchaser has the option to extend the Governmental Approval Period for up to two (2) times for thirty (30) days each period and in consideration of such, Purchaser shall provide 15 days' notice and place an additional Ten Thousand and NO/100 Dollars (\$10,000.00) with the Escrow Agent for each extension period exercised ("Extension Option"). These Extension Options will **not** be credited towards the purchase price at closing and shall be considered vested in the Seller upon exercise of said option and receipt of said monies. This provision shall survive termination of this Contract.

6. Taxes and assessments. Seller agrees to pay before delinquency all taxes, assessments and utility charges, if any, which may be due currently or may hereafter become due on the premises until and including the day of closing.

7. Risk of loss. Risk of loss or damage to the Property by fire or other casualty between the date of this Contract and Closing shall be and is assumed by Seller.

8. Deed. Seller agrees on full payment of the purchase price in the manner herein specified, to make, execute and deliver to Purchaser a good and sufficient Special Warranty Deed to the Property.

9. Closing. Closing shall take place in Volusia County, Florida at the office of the Escrow Agent referenced in Paragraph 2(b) on or before July 3, 2025, subject to the City's approval and acceptance of this Contract. However, if Purchaser opts to exercise the Extension Options contemplated in Paragraph 5, Government Approvals, then the time for closing shall be extended per each Extension Option exercised. Except as otherwise stated herein, the date of closing may be extended upon mutual written agreement of the parties. At the closing, Seller shall provide Purchaser with the deed to the premises and other documents in accordance with Title Standard I(ii). Following closing, Purchaser shall have the right to exclusive possession of the property.

10. Closing Costs. Seller shall pay for title insurance premium, costs of recording the deed, and recording fees for documents necessary to cure title. Costs for documentary stamp tax on the deed, environmental audits, surveys, other inspections, and any other costs or fees associated with closing shall be paid by the Purchaser. However, upon Purchaser's request, Seller shall provide Purchaser with copies of any such audits, surveys, and other inspections covering the property that Seller has possession of and the right to disclose to third parties prior

to closing.

11. Fees. Seller has utilized the services of a Florida Real Estate Broker for the sale and purchase of the Property. The Escrow Agent, referenced herein, is directed to disburse the full amount of the brokerage fees as specified in separate brokerage agreement with the Seller. The Seller's Broker is Colliers International Florida, LLC and will be compensated by Seller pursuant to a brokerage agreement. Purchaser shall be responsible for the appraisal report prepared at its request, and Purchaser shall be responsible for fees incurred for Purchaser's independent review of this proposal and for the services of attorneys, engineers and other professionals, if any.

12. Failure of Performance. If Purchaser fails, neglects, or refuses to perform Purchaser's obligations under this Contract, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract and in full settlement of any claims, whereupon Purchaser and Seller shall be relieved from all further obligations under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects, or refuses to perform under this Contract, Purchaser may seek specific performance or elect to receive return of Purchaser's deposit without thereby waiving any action for damages resulting from Seller's breach. and, pursuant to Paragraph 13, may seek to recover such damages or seek specific performance.

13. Dispute Resolution. Unresolved controversies, claims and other matters in question between Purchaser and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

(a) Purchaser and Seller will have TEN (10) days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Purchaser and Seller shall submit such Dispute to mediation under Paragraph 13(b).

(b) Purchaser and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 13(b). Disputes not settled pursuant to this Paragraph 13 may be resolved by instituting action in the appropriate court having jurisdiction of the matter.

(c) The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation.

This Paragraph 13 shall survive Closing or termination of this Contract.

14. Access to Property. Seller agrees to allow Purchaser and Purchaser's employees, consultants, agents and representatives access to the Property upon execution of this Contract

by Seller and extending to the time of closing for the purpose of conducting surveys, environmental audits and inspections of the Property. Purchaser assumes liability for all acts of its agents who enter onto the Property and agrees to indemnify and hold harmless the Seller from any loss, damage, cost or expense incurred by Seller as a result of such acts by the Purchaser and its agents that cause injury to person or damage to property.

15. Assignment. Neither party may assign or delegate its rights or obligations pursuant to this Agreement without the prior written consent of the other. However, no consent is required for an assignment that occurs to an entity in which the transferring party or the principals of the transferring party holds majority ownership in said entity. Any assignment or delegation in violation of this paragraph shall be void.

16. Effective Date. The Effective Date for the Contract shall be the date of approval of the Contract by the City Council for the City of Port Orange, Florida, such approval shall be evidenced by the signing of all parties to this Contract.

17. Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The electronic transmittal of an executed copy of this Contract shall be deemed valid as if an original signature was delivered.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

This Contract is executed by the parties as of the respective dates shown below.

FOR CONTRACT FOR SALE AND PURCHASE OF
REAL PROPERTY

WITNESSES:


First Witness Signature Above, Printed Name Below:

NORA M Fernandez



Second Witness Signature Above, Printed Name Below:

William Landsea

PURCHASER: Landsea Development Group, LLC, a
Florida limited liability company

By: 
Douglas F. Landsea, Manager

Date: Nov. 25, 2024

STATE OF FLORIDA
COUNTY OF Miami Dade

The foregoing Contract was sworn to and acknowledged before me by means of [XX] physical presence or [] online notarization this 25th day of Nov, 2024, by Douglas F. Landsea, Manager of Landsea Development Group, LLC, the Purchaser named in the foregoing Contract, who (Notary, please check as applicable): ☒ took an oath or ☐ did not take an oath; and who ☐ is personally known to me or ☒ has produced FL ID as identification.

L532-166-70-427-0


Notary Public, State of FLORIDA at Large
Printed Name, Commission Seal and Term Expiration Date



CHRISTOPHER ADAM STOCKERT
Commission # HH 588150
Expires October 29, 2028

WITNESSES:

FOR CONTRACT FOR SALE AND PURCHASE
OF REAL PROPERTY

SELLER:
CITY OF PORT ORANGE, FLORIDA,
a chartered municipal corporation

Printed Name: _____

By: _____
Scott Stiltner, Mayor

Date: _____, 2024

Printed Name: _____

Attest: _____
Robin L. Fenwick, MMC, City Clerk

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Contract was acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____, 2024, by Scott Stiltner as Mayor, and Robin Fenwick as City Clerk, both of the **City of Port Orange, Florida**, a chartered municipal corporation, on behalf of the city. They are personally known to me.

Notary Public, State of Florida at Large
Printed Name, Commission Seal and Term Expiration Date

EXHIBIT "A"

this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.

- (b) ~~SELLER DEFAULT: If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.~~

~~This Paragraph 15 shall survive Closing or termination of this Contract.~~

- ~~16. DISPUTE RESOLUTION: Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:~~

- ~~(a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).~~

- ~~(b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.~~

- ~~17. ATTORNEY'S FEES, COSTS: The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.~~

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

18. STANDARDS:

A. TITLE:

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) - (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period,

Buyer's Initials

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Seller's Initials

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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

383 deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which
384 Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or
385 (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has
386 passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c)
387 electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all
388 further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and
389 Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit,
390 thereby releasing Buyer and Seller from all further obligations under this Contract.

391 **B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon
392 encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable
393 governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of
394 such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later
395 than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and
396 Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a
397 prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the
398 preparation of such prior survey, to the extent the affirmations therein are true and correct.

399 **C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to
400 the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

401 **D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from
402 tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security
403 deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s)
404 the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit
405 and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or
406 Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph
407 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller
408 within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this
409 Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under
410 this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations
411 thereunder.

412 **E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing
413 statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or
414 repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been
415 improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all
416 general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth
417 names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges
418 for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been
419 paid or will be paid at Closing.

420 **F. TIME:** Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other
421 than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates
422 specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur
423 on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property
424 is located) of the next business day.

425 **G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be
426 liable to each other for damages so long as performance or non-performance of the obligation, or the availability of
427 services, insurance or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force
428 Majeure. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God,
429 unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent
430 effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including
431 Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure no longer prevents
432 performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under
433 this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering
434 written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all
435 further obligations under this Contract.

436 **H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's,
437 personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters
438 described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be

Buyer's Initials

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Seller's Initials

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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:

(i) **LOCATION:** Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance and will take place in the county where the Real Property is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable, the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) **FinCEN GTO NOTICE.** If Closing Agent is required to comply with the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Orders ("GTOs"), then Buyer shall provide Closing Agent with the information related to Buyer and the transaction contemplated by this Contract that is required to complete IRS Form 8300, and Buyer consents to Closing Agent's collection and report of said information to IRS.

(iv) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

J. ESCROW CLOSING PROCEDURE: If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

K. PRORATIONS; CREDITS: The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH: Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

M. RISK OF LOSS: If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated

Buyer's Initials

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Seller's Initials

FloridaRealtors/FloridaBar-ASIS-5x

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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

N. 1031 EXCHANGE: If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

P. INTEGRATION; MODIFICATION: This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

Q. WAIVER: Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

S. COLLECTION or COLLECTED: "COLLECTION" or "COLLECTED" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.

T. RESERVED.

U. APPLICABLE LAW AND VENUE: This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

V. FIRPTA TAX WITHHOLDING: If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding.

(i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum required, if any, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the

Buyer's Initials

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Seller's Initials

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

W. RESERVED

X. BUYER WAIVER OF CLAIMS: *To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.*

ADDENDA AND ADDITIONAL TERMS

19. ADDENDA: The following additional terms are included in the attached addenda or riders and incorporated into this Contract (Check if applicable):

- | | | |
|--|---|---|
| ☐ A. Condominium Rider | ☐ K. RESERVED | ☐ T. Pre-Closing Occupancy |
| ☐ B. Homeowners' Assn. | ☐ L. RESERVED | ☐ U. Post-Closing Occupancy |
| ☐ C. Seller Financing | ☐ M. Defective Drywall | ☐ V. Sale of Buyer's Property |
| ☐ D. Mortgage Assumption | ☐ N. Coastal Construction Control Line | ☐ W. Back-up Contract |
| ☐ E. FHA/VA Financing | ☐ O. Insulation Disclosure | ☐ X. Kick-out Clause |
| ☐ F. Appraisal Contingency | ☐ P. Lead Paint Disclosure (Pre-1978) | ☐ Y. Seller's Attorney Approval |
| ☐ G. Short Sale | ☐ Q. Housing for Older Persons | ☐ Z. Buyer's Attorney Approval |
| ☐ H. Homeowners/Flood Ins. | ☐ R. Rezoning | ☐ AA. Licensee Property Interest |
| ☐ I. RESERVED | ☐ S. Lease Purchase/Lease Option | ☐ BB. Binding Arbitration |
| ☐ J. Interest-Bearing Acct. | | ☐ CC. Miami Dade County Special Taxing District Disclosure |
| | | ☐ Other: _____ |

20. ADDITIONAL TERMS:

COUNTER-OFFER/REJECTION

☐ Seller counters Buyer's offer (to accept the counter offer, Buyer must sign or initial the counter offered terms and deliver a copy of the acceptance to Seller).

☐ Seller rejects Buyer's offer.

Buyer's Initials

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Seller's Initials



August 21, 2024

Mr. David Calcanis
Colliers
255 South Orange Avenue
Suite 1300
Orlando, FL 32801

RE: 8.76 +/- Acres of Land
Located at 1201 Reed Canal Rd, Port Orange, FL 32129

Dear Mr. Calcanis:

This letter of intent is only for the purposes of outlining the parties' confidential interest in structuring a purchase and sale agreement (the "Agreement"). This letter of intent shall not be binding in any way upon either party until such time as a mutually acceptable Purchase and Sale Agreement has been prepared, negotiated, and executed by both parties.

Outlined below are the terms which Landsea Development Group, LLC., proposes to offer for purchase of this property.

PROPERTY: **8.76 +/- Acres of Land**
APN: 5332-00-00-0020

PURCHASER: Landsea Development Group, LLC or its affiliated assignee.

SELLER: City of Port Orange

PURCHASE PRICE: \$950,000.00

TERMS: Cash at Closing.

INSPECTION PERIOD: Purchaser shall have one hundred twenty (120) days (the "Inspection Period") from the date of the Purchase and Sale Agreement within which to conduct its normal due diligence which, at Purchaser's discretion, shall include but not be limited to obtaining a title insurance commitment, having the property surveyed and completing its environmental inspections of the Property. If at any time during the Inspection Period, Purchaser determines that the parcel cannot be used for Purchaser's intended

use and notice of such is given to the Seller prior to the end of the Inspection Period, the Purchase and Sale Agreement shall terminate and the Deposit, together with the interest thereon, if any, shall be returned to the Purchaser.

CLOSING: Thirty (30) days following the satisfaction of the Closing Conditions as hereinafter defined.

LAND USE

AND REZONING: The Purchaser has obtained a Governmental Approval for the Property to accommodate Purchaser's anticipated use as an industrial use with outdoor storage (the "Intended Use"). Purchaser shall be responsible for obtaining the Government Approval of the Property to accommodate Purchaser's Intended Use, including any variances required.

DEPOSIT: Purchaser agrees to deposit with Purchaser's counsel a deposit in the amount of Ten Thousand Dollars (\$10,000.00) (the "Deposit") within 3 business days upon the execution of the Purchase and Sale Agreement. The Deposit shall be held in an escrow account and, if the Purchase and Sale Agreement is terminated by Purchaser prior to the end of the Inspection Period, the Deposit shall be returned to Purchaser. If Purchaser does not terminate the Purchase and Sale Agreement prior to the end of the Inspection Period, then Purchaser shall add a second deposit of Ten Thousand Dollars (\$10,000.00) the Total Deposit shall become non-refundable except for Seller's default or breach or failure to obtain the required Governmental Approval for buyers intended use. Upon Closing, Purchaser shall receive a credit for the Total Deposit and the Deposit shall be paid to Seller at Closing.

CLOSING COSTS: Seller and Purchaser shall be responsible for their own legal fees in connection herewith. Seller and Purchaser shall each pay one-half of the documentary stamps and the surtax on the deed. Purchaser shall pay for the title examination, title insurance, its due diligence costs, including those relating to site plan approval and the recording charges. All other closing costs are to be allocated in the manner typical of similar transactions conducted within the county the Property is located.

**CLOSING
CONDITIONS:**

The environmental and soils conditions shall have not changed after the Inspection Period and no environmental and soils contamination exist on the Property
The Property shall have the appropriate Zoning designation and Governmental Approval for Purchaser's contemplated Industrial Use development; Purchaser shall have received final, non-appealable governmental approval. Purchaser shall have a period of time equal to six (6) months from a fully executed PSA within which to obtain its required governmental approval. Purchaser shall close on the purchase of the Property within thirty (30) days following the date Purchaser has obtained its required

governmental approvals and the expiration of the appeals period. If Purchaser fails to obtain its required site plan approval prior to the end of the said six (6) month period, then Purchaser may terminate the Purchase and Sale Agreement by giving written notice to Seller, in which event the Purchase and Sale Agreement shall terminate and the Deposit, together with the interest accrued thereon, shall be returned to the Purchaser. Purchaser has the option to extend the Governmental Approval period for up to 2 time for thirty days each period provided that Purchaser provides 15 days notice and places an additional \$10,000.00 deposit for each extension period. These additional deposits will not be credited towards the purchase price at closing.

The condition of Title has not changed after the Inspection Period.

COMMISSIONS: Seller and Purchaser represent and warrant that no brokers have been involved in the contemplated transaction other than Colliers who represents the Seller. Sellers broker will be compensated by the seller per their agreement.

SELLER'S RECORDS: Seller to make available to Purchaser copies of all non-proprietary records and files pertaining to the Property.

The foregoing sets forth the general terms and conditions upon which Landsea Development Group, LLC would be interested in purchasing the Property. If the foregoing general terms and conditions are acceptable to you, please indicate such in the space provided below and return to us. Neither party shall be bound until an acceptable Purchase and Sale Agreement can be executed by both parties.

Very truly yours,



Douglas Landsea
Landsea Development Group, LLC

The foregoing general terms and conditions are acceptable to the undersigned this ____ day of August, 2024

(Seller)
City of Port Orange

By: _____



08/22/2024

David Calcanis
Colliers
(407) 421-2311
David.Calcanis@colliers.com

Letter of Intent for Purchase of 8.76 acres at Reed Canal Rd, Port Orange, FL

This letter sets forth certain terms for the proposed purchase by **1700 LLC** or an affiliate thereof ("Purchaser") from the undersigned Seller ("Seller") of the ~8.76-acre parcel of land located at Reed Canal Rd, Port Orange, FL (see **Exhibit 1**), together with all easements, rights, licenses, plans, permits and other appurtenances thereto, including the (collectively the "Property").

This letter constitutes a letter of intent between Seller and Purchaser to sell and acquire the Property upon the following general terms and conditions:

- 1) **Purchase Price:** The Purchase price ("Purchase Price") of the Property shall be \$900,000.
- 2) **Deposit:** An earnest money deposit of \$20,000 (the "Deposit") will be deposited by Purchaser with Purchaser's title insurer as escrow agent ("Escrow Agent") within 3 business days of full execution and delivery of the Contract (as hereinafter defined). At Closing, the Deposit, together with any interest earned thereon, shall be credited against the Purchase Price. The Deposit shall be refundable during the Inspection Period, but thereafter shall not be refundable except for Seller default, casualty or condemnation.
- 3) **Inspection Period:** Purchaser shall have a period of ninety (90) days following the later of (i) the execution of the Contract by both parties, or (ii) the delivery by Seller of the Seller Deliverables, as defined below (the "Inspection Period"), to perform investigations, testing and assessments of the Property deemed advisable by Purchaser, and to otherwise satisfy itself that the Property is acceptable to the Purchaser. Purchaser may extend the Inspection Period by up to one (1) thirty (30) day period upon increase of the Deposit by an additional \$4,000. The \$4,000 shall be refundable during the Inspection Period if the Purchaser, in its sole discretion, determines that the Property is not suitable for its use, but thereafter shall not be refundable except for Seller default, casualty or condemnation.
- 4) **Title:** Title to the Property shall be good, insurable and marketable fee simple title, and shall not inhibit the use of the Property as Purchaser's intended use or other uses permitted under the PUD zoning district according to Crystal Lake's UDO. This LOI is contingent on the Property having at least 7 acres of developable land.



There must be no liens or leases encumbering the Property, other than liens that Seller will pay at Closing. Closing shall be in escrow through Escrow Agent and subject to issuance of owner's title insurance to Purchaser at Closing insuring title to the Property in Purchaser as provided above.

- 5) **Closing Date:** The closing ("Closing") shall take place thirty (30) days after the expiration of the Inspection Period or an earlier date selected by Purchaser. Purchaser shall have the right to extend the Closing Date for a period of up to fifteen (15) days.
- 6) **Brokers:** Intentionally Omitted.
- 7) **Closing Costs:** The cost of Purchaser's title insurance policy, title search, title company fees, inspection costs, and survey shall be paid by the Purchaser. Purchaser shall select the title agent and title company. The cost of all documentary stamp taxes and surtax, if any, due in connection with the execution and recordation of the warranty deed of conveyance shall be paid by Seller. All proratable items shall be prorated as of the date of Closing. Each party will be responsible for its own attorneys' fees. Seller must terminate at or prior to Closing all management and leasing agreements, and any service agreements that Purchaser does not elect to assume. All management or leasing fees or commissions due to anyone with respect to the Property shall be the responsibility of the Seller and paid at or prior to Closing.
- 8) **Property Information:** Upon full execution of this letter of intent, Seller shall make available to Purchaser for examination and copying Seller's files, and shall deliver to Purchaser copies of Seller's owner's policies of title insurance, surveys, wetland delineation reports, rent rolls, leases, engineering reports, soils reports, environmental reports, Brownfield Agreement documents, notices of violation, certificates of occupancy, warranties, plans and other documents relevant to the Property. (the "Seller Deliverables"). The Seller Deliverables will be used by Purchaser solely for the purpose of evaluating the possible acquisition of the Property.
- 9) **Exclusivity.** In consideration of the time, effort and expense to be incurred by Purchaser in preparing the Contract and commencing its investigation of the Property, Seller agrees to grant Purchaser the exclusive right to pursue the purchase of the Property for the longer of, a period of thirty (30) days from the date that this letter is signed by Seller (the "Exclusivity Period"), or until the Contract is executed and fully delivered, Seller agrees not to solicit or engage in negotiations or discussions with any person or entity, other than Purchaser and its representatives, concerning the sale of the Property. The Purchaser intends to begin the process of drafting the Contract immediately upon receipt of the signed Letter of Intent.



- 10) **Binding/Non-Binding Provisions:** The terms and provisions of Section 9 above are binding on Seller. The remainder of the terms and provisions set forth in this letter represent only a general outline of the suggested major points of a proposed agreement between Seller and Purchaser for the sale and purchase of the Property and do not constitute an offer or acceptance of these terms and provisions by either party. The terms and provisions relating to such transaction shall be set forth in more detail in a purchase agreement to be prepared by Purchaser (the “Contract”). Both Purchaser and Seller agree to work in good faith with the intention to complete a fully executed and delivered Contract within thirty (30) days from the signing of this letter. Notwithstanding anything to the contrary contained herein, in the event the Contract is not agreed upon and executed by Purchaser and Seller for any reason, neither party shall have any liability to the other, except that Seller shall be and remain liable for any breach of Section 9 above. Except for Section 9 above, this letter is merely an expression of understanding between the parties hereto and shall not have the effect of a binding contract.

[Signature on following page]

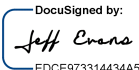


This letter of intent will remain open until **close of business on September 17th 2024**, and if not accepted by that date, shall be deemed withdrawn. Seller’s acceptance may be evidenced by Seller’s signature below on a copy of this letter returned to Purchaser.

Sincerely,

1700 LLC

By: Volta Global LLC, managing member

By:  _____
Name: Jeffrey Evans
Title: President

AGREED AND ACCEPTED

This ____ day of _____, 2024

SELLER:

By: _____
Name: _____
Title: _____



Exhibit 1

Property ID: 5332-00-00-0020





CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 12/3/2024

SUBJECT: (B11) Resolution No. 24-52 - Approval of the Subgrant Agreement with the Florida Department of Transportation accepting a grant in the amount of \$50,000 for a Motorcycle Safety and Awareness High Visibility Enforcement Campaign

DEPARTMENT: Police Services

GOAL: 1 - Public Safety

RECOMMENDED MOTION: Move to approve Resolution No. 24-52.

SUMMARY: The Port Orange Police Department (POPD) has received a \$50,000.00 grant award through the Florida Department of Transportation (FDOT) to conduct a Motorcycle Safety and Awareness High Visibility Enforcement Campaign. The POPD seeks to utilize this funding to engage in a proactive approach to reduce the number of motorcycle-related serious injuries/fatality crashes within the City. POPD staff utilized data from the Fiscal Year (FY) 2025 Highway Safety Matrix ranking of Florida counties, (population 200,001 and above) which illustrates that motorcycle safety was a major contributor to traffic crashes and fatalities in Volusia County. Volusia County ranked 4 out of 26 counties of a similar size in the State of Florida. Additionally, out of 104 cities with a population of 15,000 to 74,999, Port Orange ranked 10th highest for motorcycle-related crashes and fatalities.

The campaign will focus on conducting motorcyclist-focused enforcement operations throughout the funding period to address motorcyclists for safety issues and violations of state statutes. Officers will also conduct traffic stops on other motor vehicle drivers for committing violations deemed dangerous to motorcyclists. Officers will focus their attention on the roadways with the highest rate of motorcycle-related crashes. Additionally, High Visibility Enforcement operations will be increased during any bike events occurring in the area. Lastly, the POPD staff will utilize a combination of social media communication, and electronic message boards along roadways to display motorcycle-related safety messages.

The funds will be used to provide additional high-visibility patrols to focus on motorcycle safety and awareness through education and enforcement. Personnel assigned to this initiative will be paid overtime and will not affect minimum patrol staffing levels. Staff participating in this program will receive the required training.

The grant will be concluded prior to the end of the FY25 fiscal year, and there are no match requirements.

PRESENTER: Manuel Marino

ATTACHMENTS:

1.	Resolution No. 24-52 w exhibit	Resolution No. 24-52 w exhibit.pdf
2.	FDOTSubgrantAgreement-2025 w Mayor and City Clerk	FDOTSubgrantAgreement-2025 w Mayor and City Clerk.pdf

Amanda Bonin	Created/Initiated - 11/13/2024
Manuel Marino	Approved - 11/13/2024
John McKinney	Approved - 11/13/2024
Matthew Jones	Approved - 11/25/2024
Wayne Clark	Final Approval - 11/25/2024

RESOLUTION NO. 24-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; APPROVING THE SUBGRANT AGREEMENT WITH FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) TO CONDUCT A MOTORCYCLE SAFETY AND AWARENESS HIGH VISIBILITY ENFORCEMENT CAMPAIGN AND ACCEPTING THE ASSOCIATED GRANT IN THE AMOUNT OF \$50,000.00; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE ANY AGREEMENTS OR CONTRACTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange has been awarded a grant from Florida Department of Transportation (FDOT) in the amount of \$50,000.00 for conducting a Motorcycle Safety and Awareness High Visibility Enforcement Campaign; and

WHEREAS, Florida Department of Transportation (FDOT) approved the subgrant agreement with the City of Port Orange in the amount of \$50,000.00, attached hereto as **Exhibit “A”** and made a part hereof by reference (“Subgrant”); and

WHEREAS, the City Council of the City of Port Orange approves submitting reimbursements for eligible project expenditures; and

WHEREAS, the City Council of the City of Port Orange desires to budget for the reimbursement grant from Florida Department of Transportation (FDOT) for conducting a Motorcycle Safety and Awareness High Visibility Enforcement Campaign in the amount of \$50,000.00.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City Council of the City of Port Orange hereby approves the Subgrant agreement with the Florida Department of Transportation (FDOT), and thereby accepts the grant funding in the amount of \$50,000.00.

Section 2. The City Manager is hereby authorized and directed to take such action as may be deemed necessary and appropriate in order to implement the provisions of this Resolution related to the budgeting of said grant for the revenues and expenditures for the above-referenced project. The City Manager may, as deemed appropriate, necessary, and convenient, delegate the powers of implementation as set forth herein to such City employees as deemed effectual and prudent in furtherance thereof.

Section 3. The Mayor and City Clerk are hereby authorized to sign any and all necessary documents to implement the provisions of this Resolution.

Section 4. This resolution shall become effective immediately upon adoption.

Scott Stiltner, Mayor

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Senior Assistant City Attorney

EXHIBIT "A"

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)

SUBGRANT FOR HIGHWAY TRAFFIC SAFETY FUNDS

<i>For FDOT Use Only</i> Project Number: MC-2025-00060	FDOT Contract Number: G3574
Federal Funds Awarded: \$50,000	FDOT UEI Number: RFKGNHR7ZH37
Subgrant Award (Start) Date:	Subgrant End Date: 09/30/2025
Part I: GENERAL ADMINISTRATIVE INFORMATION	
1. Project Title: Motorcycle Safety and Awareness High Visibility Enforcement Campaign	
2. Federal Funding: \$50,000 Match: \$0 Total Cost: \$50,000	
3. Subrecipient Agency: Agency Name: City of Port Orange Address: 1000 City Center Circle City: Port Orange State: Florida Zip: 32129	4. Implementing Agency: Agency Name: City of Port Orange Address: 1000 City Center Circle City: Port Orange State: Florida Zip: 32129
5. Federal ID Number or 29 Digit FLAIR Account Number (State Agencies): 59-6000412 024	
6. Federal Unique Entity Identifier (UEI) Number: LV8ZD1LYF3H4	
7. Chief Financial Officer: Name: Linda Truitt Address: 1000 City Center Circle City: Port Orange State: Florida Zip: 32129 Telephone: (386) 506-5743 E-mail: ltruitt@port-orange.org	8. Project Director: (Can not receive any benefit under this subgrant) Name: Chief Manuel Marino Address: 4545 S. Clyde Morris Blvd. City: Port Orange State: Florida Zip: 32129 Telephone: (386) 506-5870 E-mail: mmarino@port-orange.org
9. Financial Reimbursement Contact: Name: Linda Truitt Title: Asst. Finance Director Telephone: (386) 506-5743 E-Mail: ltruitt@port-orange.org	10. Project Activity Contact: Name: Gregory Gaver Title: Sergeant Telephone: (386) 506-5840 E-Mail: ggaver@port-orange.org
11. Payment Remittance Address: Name: City of Port Orange Address: 1000 City Center Circle. City: Port Orange State: Florida Zip: 32129	

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
2. Proposed Solution
3. Project Objectives
4. Evaluation

1. Statement of the Problem:

The city Port Orange is a city in Volusia County, Florida. The city's population was estimated at 64,842 in 2019 by the U.S. Census Bureau. Port Orange is part of the Deltona–Daytona Beach–Ormond Beach metropolitan area, and has a total area of 28.7 square miles with 217 miles of city-maintained public roadways. The city also consists of several county and state roadways, the larger being State Road (SR) 9 (Interstate 95), SR5 (US1), and SR421 (Dunlawton Ave). Additionally, SR421 connects the mainland to the beachside via State Road A1A and the Dunlawton Bridge. Since this is the only bridge to the beachside within a 5-mile radius, the traffic especially on the weekends is heavy through the main corridors. Located just south of Daytona Beach and north of New Smyrna Beach our city sees a huge increase in traffic during major special events. Most of those events are in Daytona Beach.

The Daytona International Speedway events such as the Rolex 24, Daytona 500, and Coke Zero 400 cause a significant increase in traffic for our city. Motorcycle-specific events such as Bike Week and Biketoberfest bring hundreds of thousands of motorcyclists to our area. Port Orange an already popular motorcycling destination is overwhelmed with the additional motorcycle traffic passing through our city. This increase in motorcycle traffic increases the risk of motorcycle-related crashes resulting in injuries and fatalities.

The data offered by the Fiscal Year (FY) 2025 Highway Safety Matrix ranking of Florida Counties, (population 200,001 and above) illustrates that motorcycle safety was a major contributor to traffic crashes and fatalities in Volusia County. Volusia County ranked 4 out of 26 counties of a similar size in the State of Florida. Additionally, out of 104 cities with a population of 15,000 to 74,999, the City of Port Orange ranked 10th highest for motorcyclist-related crashes and fatalities.

The motorcyclist often has some fault in the crash, i.e., improper braking, incorrect vehicle placement in the travel lane, following too closely, etc.

With motorcycle crashes continuing to be such a priority in the city of Port Orange and the State of Florida, there is a need for increased motorcycle safety education and enforcement to save lives and improve the safety of the city's roadways.

2. Proposed Solution:

The Port Orange Police Department (POPD) seeks funding to engage in a three-pronged, proactive approach to reduce the number of motorcycle-related serious injuries/fatality crashes in the City of Port Orange. The success of any traffic safety program is not solely hinged on either component of enforcement, education, or engineering. The Police Department seeks to engage in social media communication, educational efforts, and enforcement.

POPD will be implementing countermeasures from the National Highway Traffic Safety Administration's (NHTSA) "Countermeasures That Work: A Highway Safety Countermeasure Guide for State Highway Safety Offices, 11th Edition, 2023." These countermeasures will include Chapter 4 Speeding and Speed Management: High-Visibility Enforcement; Chapter 6 Motorcycle Safety: Alcohol-Impaired Motorcyclist Detection and Enforcement and Communication and Outreach

Social media: Communication and outreach by utilizing the Police Department's official social media accounts to increase motorcycle safety awareness. Notify the media of upcoming High Visibility Enforcement (HVE) details.

Educational efforts: Utilize electronic message boards along roadways to display motorcycle-related safety messages. Officers will educate all motorcyclists who are stopped for safety issues. Distribution of safety brochures during enforcement and education efforts.

Enforcement: Conduct motorcyclists-focused enforcement operations throughout the funding period to address motorcyclists for safety issues and violations of state statutes. Conduct traffic stops on other motor vehicle drivers for committing violations deemed dangerous to motorcyclists. Educate with warnings, educational materials, and enforcement through traffic citations. Officers will focus their attention on the roadways with the highest rate of motorcycle-related crashes (per sig4 crash data). Additionally, HVE operations will be increased during any Bike events occurring in the area.

The Traffic Unit consists of 7 Police Motorcycles that will be used for the enforcement. Marked patrol vehicles may also be used. Officers will show zero tolerance to any motorcycle operator or other vehicle operator who commits traffic violations that are deemed unsafe including, but not limited to: passing within occupied lanes, riding in bicycle lane, aggressive driving, stunting, excessive speed, failure to yield, driving under the influence (DUI), etc. Personal protective equipment violations, motorcycle equipment violations, and safety violations will also be addressed. All motorcyclists who are stopped will be checked for proper licensing, educated, and either warned or cited accordingly.

Funding will be utilized to pay overtime salaries for officers to conduct motorcyclist safety-focused enforcement operations.

3. Project Objectives:

- a. Start project activities within 60 days of subgrant award, unless otherwise approved by the FDOT State Safety Office.
- b. Conduct a minimum of 2 motorcyclist safety focused overtime enforcement operations each month.
- c. Conduct and/or participate in a minimum of 2 educational/community outreach events to increase motorcyclist safety awareness during the project period and provide event details
- d. Provide motorcyclist safety information and education to the public each month utilizing multimedia outlets (social media, message boards, printed materials, etc.).
- e. Strive to decrease motorcycle crashes and fatalities by 3% city wide, when compared to the 10/01 to 06/30 time period from the previous year.

4. Evaluation:

- a. Project activity start date.
- b. The number of motorcyclist safety focused enforcement operations conducted [monthly
- c. Detail all educational/community outreach events conducted or participated in to increase motorcyclist safety awareness during the project period.
- d. The number of instances that motorcyclist safety messaging information and education was provided to the public.
- e. Crash data will be collected and analyzed at the end of the project period to determine the increase or decrease of motorcyclist crashes when compared to the 10/01 to 06/30 time period from the previous year.

Part III: PROJECT DETAIL BUDGET

Project Title: Motorcycle Safety and Awareness High Visibility Enforcement Campaign
Project Number: MC-2025-00060
FDOT Contract Number: G3574

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	NARRATIVE	FEDERAL FUNDS	MATCH	TOTAL COST	INDIRECT ELIGIBLE
A. Personnel Services					
Overtime Salary and benefits	Overtime salary and benefits for law enforcement officers, benefits to include FICA (Social Security and Medicare), Workers Comp, and Retirement.	\$50,000	\$0	\$50,000	No
Subtotal:		\$50,000	\$0	\$50,000	
B. Contractual Services					
Subtotal:		\$0	\$0	\$0	
C. Expenses					
Subtotal:		\$0	\$0	\$0	
D. Equipment Costing \$10,000 or More					
Subtotal:		\$0	\$0	\$0	
E. Indirect Cost					
%		\$0		\$0	
Subtotal:		\$0		\$0	
Total Cost of Project:		\$50,000	\$0	\$50,000	

Part IV: PERFORMANCE REPORT

Project Title: Motorcycle Safety and Awareness High Visibility Enforcement Campaign
Project Number: MC-2025-00060
FDOT Contract Number: G3574

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 and other data (high motorcycle traffic areas) to determine focus areas for targeted motorcycle enforcement.
4. Conduct motorcyclist safety-focused enforcement operations.
5. Conduct motorcyclist safety outreach/educational activities.
6. Provide motorcyclist safety education/messaging through multiple media outlets.
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.

Part V: Acceptance and Agreement

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

FEDERAL REGULATIONS

1. **Access to Public Records and Monitoring.** The Florida Department of Transportation (FDOT or "Department"), 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 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 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 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 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 Agreement. By entering into this 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 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 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 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 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 §200.332 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 Office of Management and Budget (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 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);
 - 5. Withhold further Federal awards for the Project or program; and/or
 - 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, F. S., 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 submitting 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.

3. Offsets. If, after Agreement 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) as amended, 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) as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251-1389) as amended. 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, will maintain, and enforce 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.
- (a) The Subrecipient agrees to the following disclosures:
- The Subrecipient shall disclose any conflict of interest identified as soon as reasonably possible, making an immediate and full disclosure in writing to NHTSA. The disclosure shall include a description of the action which the Subrecipient has taken or proposes to take to avoid or mitigate such conflict.
 - NHTSA will review the disclosure and may require additional relevant information from the Subrecipient. If a conflict of interest is found to exist, NHTSA may (a) terminate the award, or (b) determine that it is otherwise in the best interest of NHTSA to continue the award and include appropriate provisions to mitigate or avoid such conflict.
 - Conflicts of interests that require disclosure must include all past, present, or currently planned organizational, financial, contractual, or other interest(s) with an organization regulated by NHTSA or with an organization whose interests may be substantially affected by NHTSA activities, and which are related to this award. The interest(s) that require disclosure include those of any subrecipient, affiliate, proposed consultant, proposed subcontractor, and key personnel of any of the above. Past interest shall be limited to within one year of the date of the award. Key personnel shall include any person owning more than 20 percent interest in a Subrecipient, and the officers, employees or agents of a Subrecipient who are responsible for making decision or taking an action under an award where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.
- 7. Conferences and Inspection of Work.** Conferences may be held at the request of any party to this 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 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 Agreement, will be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 and 1200 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 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
 - (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. 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), 49 CFR part 21, and 28 CFR 50.3;
 - (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. 100–259), (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) Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities through the Federal Government by ensuring that equity is advanced across the Federal Government;
 - (k) Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation by ensuring that sex discrimination includes discrimination on the grounds of gender identity or sexual orientation; and
 - (l) 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; and
- (e) To insert this clause, including paragraphs (a) through (e), in every subcontract and sub-agreement and 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 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 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, 200.310-200.316, herein incorporated by reference. This obligation continues as long as the property is retained by the Subrecipient notwithstanding the ending of this 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, 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; and
- 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 31 U.S.C 1352. 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.

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 §200.340 through 200.343.
- (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 this 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 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) calendar 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. 2000e 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 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 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;
 - 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; and
 - 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 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 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 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 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 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:

- (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 Agreement; 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 Agreement term.
- (c) Shall adhere to the requirements in Section 448.095, F.S.

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, F.S., 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. The Subrecipient shall 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. To the extent permitted by law and 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 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 Agreement specifically agree that no provision in this Agreement is intended to create in the public or any member thereof, a third-party beneficiary, 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.

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 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.
- "Material Interest" means direct or indirect ownership of more than 5% of the total assets or capital stock of any business entity.
 - 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.
 - 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.
- 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 this 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.

GRANT MANAGEMENT

53. Amendments. The Subrecipient shall obtain prior written approval from the FDOT State Safety Office for changes to this Agreement. Amendments to this Agreement will be approved if the modification(s) to be made will achieve or improve upon the outcome of this Agreement's scope of work, or where factors beyond the control of the Subrecipient require the change. Requested amendments to this Agreement shall be in the form of a written request signed by one of the original signatories of this Agreement, or successor in the same position. Specific delegation(s) for amendments must be provided in writing from the original signatory of the Subrecipient.

54. Disputes and Appeals. Any dispute, disagreement, or question of fact arising under this Agreement may be addressed to the Traffic Safety Administrator of the FDOT State Safety Office in writing within 6 months of the end of the subgrant period. 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 Agreement and in accordance with the Department's decision(s).

55. Equipment. Any equipment purchased under this 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 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 \$10,000 or More.** Equipment with a useful life of more than one year and an acquisition cost of \$10,000 or more per unit shall be subject to the following requirements:
 - i. Biannual certification of appropriate use and condition of equipment shall be provided to the FDOT State Safety Office.
 - ii. Dispositions must be requested and shall receive prior written approval from the FDOT State Safety Office.
- (c) **Disposition of Equipment Costing \$10,000 or More.** In the event the equipment is no longer needed for the originally authorized Agreement purpose(s) or has reached the end of its useful life, Subrecipients shall use the Equipment Disposition Request Form 500-065-26 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 \$10,000.** Equipment that does not meet the unit purchase price threshold of \$10,000 shall be disposed of in accordance with the agency's own procurement and disposition policies. Documentation of this disposition shall 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.
- (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 § 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 §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 §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.

- 56. 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.
- 57. 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 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.
- 58. How this Agreement is Affected by Provisions Being Held Invalid.** If any provision of this Agreement is held invalid, the remainder of this 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.
- 59. 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 provide required performance and final narrative reports in the required time frame;
 - (c) Failure to perform work described in Part II of this Agreement;
 - (d) Failure to provide reimbursement requests and performance reports in the required time frame;
 - (e) Providing fraudulent performance reports or reimbursement requests; or
 - (f) Misuse of equipment purchased with Federal highway safety funds.
- 60. Performance.** In the event of default, noncompliance, or violation of any provision of this 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 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.
- 61. Personnel Hired or Paid Under this Agreement.**
- (a) **Project Director.** Persons holding the position of Project Director for this Agreement shall not receive reimbursement for personnel hours nor receive any other benefit under this Agreement.
 - (b) **Employer Responsibility.** Any and all employees of the Subrecipient whose positions are funded, in whole or in part through this 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 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 Agreement 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 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. **Reserve Officer Hours.** Subgrant funds can be used to reimburse detail pay for reserve officers to perform traffic safety enforcement. An agency must have an active policy authorizing payment for reserve officer detail to receive reimbursement for reserve officer hours. A copy of the policy shall be maintained by the Subrecipient and made available for review if requested.
 - iii. **Extra Duty Detail Pay.** Subgrant funds can be used to reimburse extra duty detail pay for officers to perform traffic safety enforcement. An agency must have an active policy authorizing payment for detail or extra duty pay outside of regular duties to receive reimbursement for officer hours. A copy of the policy shall be maintained by the Subrecipient and made available for review if requested.
 - iv. **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.

62. 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 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 Agreement monitoring.

63. Term of this Agreement. This Agreement shall begin on the date the last party signs 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 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."

64. 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 Agreement 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 Agreement period.
- (c) **Prerequisite Approvals.** All Agreement travel that has billable costs 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 Agreement activities and is within the travel budget of the Project and relevant to the Project. Additional detail is required if the travel meets any of the following criteria:
 - i. Purchase of airfare;
 - ii. Travel to conference;
 - iii. Travel which includes a registration fee;
 - iv. Out-of-subgrant-specified work area travel; or
 - 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 the travel budget.

- (d) **Lodging Reimbursement Limit.** The FDOT State Safety Office shall not pay for overnight lodging/hotel room rates that exceed \$225.00 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 \$225.00 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 \$225.00 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 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.
- (f) **Rental Vehicles.** Some rental companies will offer electric vehicles (EV); however, these types of vehicles are not allowable under this subgrant. Any electric vehicle rentals and associated fees will not be reimbursed under this subgrant.

65. 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 Agreement shall be subject to repossession by the FDOT State Safety Office.

FINANCIAL/FISCAL

66. Allowable Costs. The allowability of costs incurred under this 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 Agreement shall be allowable.

67. Subcontract Agreements.

- (a) **Requirement for Pre-Approval.** All subcontract agreements must be submitted to the FDOT State Safety Office in draft form for review and written approval. Approval of this Agreement does not constitute approval of subcontract agreements.
- (b) **Minimum Mandatory Subcontract Language.** All subcontract agreements shall include at a minimum the following information:
 - i. Beginning and end dates of the subcontract agreement (not to exceed this 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; and
 - 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) or payment will be forfeited."
 - 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 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 of \$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)

68. Indirect Costs. Indirect costs included in this 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 Part 200 and the Subrecipients federally approved rate agreement. If the Subrecipient does not have a federally approved costs rate agreement, a maximum de minimis rate of 15% 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 written 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.

69. Obligation of Subgrant Funds. Subgrant funds shall not be obligated prior to the effective date or subsequent to the end date of this Agreement period. Only Project costs incurred on or after the effective date and on or prior to the end date of this Agreement are eligible for reimbursement. A cost is incurred when the Subrecipient's employee or approved contractor or consultant performs the service required or when goods are received by the Subrecipient, notwithstanding the date of order.

70. Procedures for Reimbursement.

- (a) **Overview.** The Department agrees to compensate the Subrecipient for services described in Part II (Project Plan and Supporting Data). The Schedule of Financial Assistance is included as Part III (Project Detail Budget).
- (b) **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 as established in Parts II (Project Plan and Supporting Data), III (Project Detail Budget), and IV (Performance Report). **ALL requests for reimbursement shall include FDOT Form 500-065-19 Performance Report for the period of reimbursement.** Deliverables must be received and accepted in writing by the Department's Project Manager prior to payments.
- (c) **Supporting Documentation.** Supporting documentation must establish that the deliverables were received and accepted in writing by the Subrecipient and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Parts II (Project Plan and Supporting Data), III (Project Detail Budget), and IV (Performance Report) was met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of charges. 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: http://www.fldfs.com/aadir/reference_guide.htm

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 can be submitted. If this document does not reflect the information needed, the Subrecipient shall submit additional pay documentation in a timely manner when requested.

- 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. Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.
- 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 \$10,000 or More.** 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.
- 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 the 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.

- (d) **Non-Aligned Purchases Pre-Approval Requirement:** Pre-approval is required if there are any purchases that cross subgrant years (October 1st – September 30th). A letter requesting pre-approval for purchases crossing into the next subgrant year must be submitted to the FDOT State Safety Office in draft form for review and approval. Only after the written approval from the FDOT State Safety Office is received, can a purchase be made.

(e) **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 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 Agreement period. Such a 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 Agreement period.

- (f) **Travel Reimbursement.** Bills for travel expenses specifically authorized in this 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.
- (g) **Equipment Reimbursement.** All requests for reimbursement of equipment having a unit cost of \$10,000 or more and a useful life of one year or more shall be accompanied by an Equipment Accountability Form (FDOT Form No. 500-065-09). Reimbursement of these equipment costs shall not be made before receipt of this form.

- (h) **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.
- (i) **Artificial Intelligence (AI) Reimbursement.** Artificial Intelligence (AI) software such as ChatGPT, Google AI, etc. are not an allowable expense under the subgrant. Any purchases of this software and associated fees will not be reimbursed under this subgrant.
- (j) **Signature Requirements.** All requests for reimbursement shall be signed by an Authorized Representative of the Subrecipient.
- (k) **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 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.
- (l) **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 Agreement non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or 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 Agreement term.
- (m) **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.
- (n) **Projects with Non-profit Entities.** Pursuant to Section 216.1366, F. S., the Subrecipient shall provide documentation to indicate the amount of state funds:
 - i. Allocated to be used during the full term of this Agreement for remuneration to any member of the board of directors or an officer of the Subrecipient.
 - ii. Allocated under each payment by the Department to be used for remuneration of any member of the board of directors or an officer of the Subrecipient. The documentation must indicate the amounts and recipients of the remuneration.

Such information will be posted by the Department to the Florida Accountability Contract Tracking System maintained pursuant to Section 215.985, F.S. and must additionally be posted to the Subrecipient's website, if the Subrecipient is a non-profit organization and maintains a website. The Subrecipient shall utilize FDOT Form No. 350-090-19, Compensation to Non-Profits Using State Funds, for purposes of documenting the compensation. The subject form is required for every contract for services executed, amended, or extended on or after July 2023, with non-profit organizations.

Pursuant to Section 216.1366, F.S., the term:

- iii. "Officer" means a chief executive officer, chief financial officer, chief operating officer, or any other position performing an equivalent function.

- iv. "Remuneration" means all compensation earned by or awarded to personnel, whether paid or accrued, regardless of contingency, including bonuses, accrued paid time off, severance payments, incentive payments, contributions to a retirement plan, or in-kind payments, reimbursements, or allowances for moving expenses, vehicles and other transportation, telephone services, medical services, housing, and meals.
- v. "State funds" means funds paid from the General Revenue Fund or any state trust fund, funds allocated by the Federal Government and distributed by the state, or funds appropriated by the state for distribution through any grant program. The term does not include funds used for the state Medicaid program.

- 71. 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 Agreement shall be maintained and made available upon request to the Department at all times during the period of this 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 on the Project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- 72. 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 Agreement award during the Agreement 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 Agreement award must be used to reduce the Federal award and Subrecipient contributions rather than to increase the funds committed to the Project.
- 73. Registration for Attendance.** No activities funded under this Agreement shall charge a registration fee for attendance.
- 74. 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 the 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

- 75. Child Safety Seats.** Any agency that receives child safety seats must have at least one staff member who is a current Certified Child Passenger Safety Technician.
- 76. 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 handheld 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) **Aircraft Enforcement.** Subgrant funding will not be utilized or reimbursed for enforcement from aircraft (airplane, helicopter, drone, etc.) without prior written approval from the FDOT State Safety Office.
 - (c) **Investigations and Court.** Subgrant funding will not be utilized or reimbursed for continuing priorly initiated investigations, court, or administrative hearings.
 - (d) **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 Agreement period.
 - (e) **High Visibility Enforcement.** All law enforcement agencies shall conduct High Visibility Enforcement while conducting enforcement under this 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.

- (f) **Hours Limit.** Each officer is limited to a maximum of eight (8) hours of reimbursable overtime in any single day (defined as 12:00 a.m. to 11:59 p.m.), unless there are extenuating circumstances at the end of a shift that causes the hours to exceed this limit. Extenuating circumstances must be documented in the activity report. There is no pay period limit on hours worked.
- (g) **Conforming Product List.** Any speed measuring device purchased with subgrant funding shall be in accordance with State approved Speed Measuring Devices listed in 15B-2.013 F.A.C.
- (h) **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 written 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; or
 - f. Be an active certified Drug Recognition Expert (DRE).
- (i) **Motorcycle Enforcement.** No subgrant funds will be used for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.
 - i. **Required Credentials for High Visibility 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. Officers not certified to use radar or laser speed detection system may work in a saturation/wolfpack/roving patrol with prior written approval by the FDOT State Safety Office.
- (j) **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.
- (k) **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 Slow Down.
 - i. **Required Credentials for High Visibility 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. Officers not certified to use radar or laser speed detection system may work in a saturation/wolfpack/roving patrol with prior written approval by the FDOT State Safety Office.
- (l) **Teen Safe Driving Enforcement.**

- i. **Hours of Emphasis.** Emphasis of enforcement operations should be during the hours of 11:00 pm to 6:00 am aligning with the parameters of Florida's Graduated Driver Licensing (GDL) Laws. Expansion of enforcement operation hours can be adjusted based on supporting data and prior written approval by the FDOT State Safety Office. The agency will maintain detailed records of enforcement operations. The FDOT State Safety Office reserves the right to request a copy of any subgrant funded Computer Aided Report (CAD).
- ii. **Required Credentials for High Visibility 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. Officers not certified to use radar or laser speed detection system may work in a saturation/wolfpack/roving patrol with prior written approval by the FDOT State Safety Office.

77. 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; and
 - 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 Agreement or any of their traffic safety partners unless the item or service is regularly made available to the general public at no cost.

78. 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 written 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; and
- (f) Current inventory levels (if any) of the item.

The FDOT State Safety Office shall provide written approval for reimbursement if the items are appropriate for purchase under this 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 Agreement.

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

- (a) **Review and Publication.** During this Agreement period, but before publication or printing, the final draft of any report or reports required under this Agreement or pertaining to this Agreement shall be submitted to the FDOT State Safety Office for review and concurrence. After 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 prior written approval.
- (c) **Required Language.** Each publication or other printed report covered by Paragraph 79(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.

80. 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.

81. Special Conditions.

Part VI: Federal Financial Assistance (Single Audit Act)

Federal resources awarded pursuant to this Agreement 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)
- ☐ 20.205 - Highway Planning and Construction (FHWA Federal Aid Highway Program, Federal Lands Highway Program)

***Federal Funds Awarded:** \$50,000

Awarding Agency: Florida Department of Transportation

Indirect Cost Rate: 0%

****Award is for R&D:** No

*The federal award amount may change with supplemental agreements

**Research and Development as defined at 2 CFR §200.87

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

- (a) Federal Funding Accountability and Transparency Act (FFATA) Sub-award Reporting System (FSRS)
www.fsr.gov
- (b) Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58)
<https://www.congress.gov/117/bills/hr3684/BILLS-117hr3684enr.pdf>

<u>Federal Award Identification Number (FAIN):</u>	<u>FAIN Award Date:</u>
69A37522300004020FLO	05/16/2022

Project Title: Motorcycle Safety and Awareness High Visibility Enforcement Campaign
Project Number: MC-2025-00060
FDOT Contract Number: G3574

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.

(For FDOT Use Only)

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____
Authorized FDOT State Safety Office Representative

Date: _____
Date Signed

Reviewed for the Florida Department of Transportation:

By: _____
Authorized FDOT Attorney

Date: _____
Date Signed

SUBRECIPIENT

By: _____
Signature of Authorized Representative

Name: Scott Stiltner
Authorized Representative's Name Printed

Title: Mayor
Authorized Representative's Title Printed

Attest: _____
Robin L. Fenwick

Date: _____
Date Signed

IMPLEMENTING AGENCY

By: _____
Signature of Authorized Representative

Name: Scott Stiltner
Authorized Representative's Name Printed

Title: Mayor
Authorized Representative's Title Printed

Attest: _____
Robin L. Fenwick

Date: _____
Date Signed

NOTE: These signatures are the only recognized authorized representatives for this Agreement, unless delegation is granted in writing.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)

SUBGRANT FOR HIGHWAY TRAFFIC SAFETY FUNDS

<i>For FDOT Use Only</i> Project Number: MC-2025-00060		FDOT Contract Number: G3574	
Federal Funds Awarded: \$50,000		FDOT UEI Number: RFKGNHR7ZH37	
Subgrant Award (Start) Date:		Subgrant End Date: 09/30/2025	
Part I: GENERAL ADMINISTRATIVE INFORMATION			
1. Project Title: Motorcycle Safety and Awareness High Visibility Enforcement Campaign			
2. Federal Funding: \$50,000		Match: \$0	Total Cost: \$50,000
3. Subrecipient Agency: Agency Name: City of Port Orange Address: 1000 City Center Circle City: Port Orange State: Florida Zip: 32129		4. Implementing Agency: Agency Name: City of Port Orange Address: 1000 City Center Circle City: Port Orange State: Florida Zip: 32129	
5. Federal ID Number or 29 Digit FLAIR Account Number (State Agencies): 59-6000412 024			
6. Federal Unique Entity Identifier (UEI) Number: LV8ZD1LYF3H4			
7. Chief Financial Officer: Name: Linda Truitt Address: 1000 City Center Circle City: Port Orange State: Florida Zip: 32129 Telephone: (386) 506-5743 E-mail: ltruitt@port-orange.org		8. Project Director: (Can not receive any benefit under this subgrant) Name: Chief Manuel Marino Address: 4545 S. Clyde Morris Blvd. City: Port Orange State: Florida Zip: 32129 Telephone: (386) 506-5870 E-mail: mmarino@port-orange.org	
9. Financial Reimbursement Contact: Name: Linda Truitt Title: Asst. Finance Director Telephone: (386) 506-5743 E-Mail: ltruitt@port-orange.org		10. Project Activity Contact: Name: Gregory Gaver Title: Sergeant Telephone: (386) 506-5840 E-Mail: ggaver@port-orange.org	
11. Payment Remittance Address: Name: City of Port Orange Address: 1000 City Center Circle. City: Port Orange State: Florida Zip: 32129			

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
2. Proposed Solution
3. Project Objectives
4. Evaluation

1. Statement of the Problem:

The city Port Orange is a city in Volusia County, Florida. The city's population was estimated at 64,842 in 2019 by the U.S. Census Bureau. Port Orange is part of the Deltona–Daytona Beach–Ormond Beach metropolitan area, and has a total area of 28.7 square miles with 217 miles of city-maintained public roadways. The city also consists of several county and state roadways, the larger being State Road (SR) 9 (Interstate 95), SR5 (US1), and SR421 (Dunlawton Ave). Additionally, SR421 connects the mainland to the beachside via State Road A1A and the Dunlawton Bridge. Since this is the only bridge to the beachside within a 5-mile radius, the traffic especially on the weekends is heavy through the main corridors. Located just south of Daytona Beach and north of New Smyrna Beach our city sees a huge increase in traffic during major special events. Most of those events are in Daytona Beach.

The Daytona International Speedway events such as the Rolex 24, Daytona 500, and Coke Zero 400 cause a significant increase in traffic for our city. Motorcycle-specific events such as Bike Week and Biketoberfest bring hundreds of thousands of motorcyclists to our area. Port Orange an already popular motorcycling destination is overwhelmed with the additional motorcycle traffic passing through our city. This increase in motorcycle traffic increases the risk of motorcycle-related crashes resulting in injuries and fatalities.

The data offered by the Fiscal Year (FY) 2025 Highway Safety Matrix ranking of Florida Counties, (population 200,001 and above) illustrates that motorcycle safety was a major contributor to traffic crashes and fatalities in Volusia County. Volusia County ranked 4 out of 26 counties of a similar size in the State of Florida. Additionally, out of 104 cities with a population of 15,000 to 74,999, the City of Port Orange ranked 10th highest for motorcyclist-related crashes and fatalities.

The motorcyclist often has some fault in the crash, i.e., improper braking, incorrect vehicle placement in the travel lane, following too closely, etc.

With motorcycle crashes continuing to be such a priority in the city of Port Orange and the State of Florida, there is a need for increased motorcycle safety education and enforcement to save lives and improve the safety of the city's roadways.

2. Proposed Solution:

The Port Orange Police Department (POPD) seeks funding to engage in a three-pronged, proactive approach to reduce the number of motorcycle-related serious injuries/fatality crashes in the City of Port Orange. The success of any traffic safety program is not solely hinged on either component of enforcement, education, or engineering. The Police Department seeks to engage in social media communication, educational efforts, and enforcement.

POPD will be implementing countermeasures from the National Highway Traffic Safety Administration's (NHTSA) "Countermeasures That Work: A Highway Safety Countermeasure Guide for State Highway Safety Offices, 11th Edition, 2023." These countermeasures will include Chapter 4 Speeding and Speed Management: High-Visibility Enforcement; Chapter 6 Motorcycle Safety: Alcohol-Impaired Motorcyclist Detection and Enforcement and Communication and Outreach

Social media: Communication and outreach by utilizing the Police Department's official social media accounts to increase motorcycle safety awareness. Notify the media of upcoming High Visibility Enforcement (HVE) details.

Educational efforts: Utilize electronic message boards along roadways to display motorcycle-related safety messages. Officers will educate all motorcyclists who are stopped for safety issues. Distribution of safety brochures during enforcement and education efforts.

Enforcement: Conduct motorcyclists-focused enforcement operations throughout the funding period to address motorcyclists for safety issues and violations of state statutes. Conduct traffic stops on other motor vehicle drivers for committing violations deemed dangerous to motorcyclists. Educate with warnings, educational materials, and enforcement through traffic citations. Officers will focus their attention on the roadways with the highest rate of motorcycle-related crashes (per sig4 crash data). Additionally, HVE operations will be increased during any Bike events occurring in the area.

The Traffic Unit consists of 7 Police Motorcycles that will be used for the enforcement. Marked patrol vehicles may also be used. Officers will show zero tolerance to any motorcycle operator or other vehicle operator who commits traffic violations that are deemed unsafe including, but not limited to: passing within occupied lanes, riding in bicycle lane, aggressive driving, stunting, excessive speed, failure to yield, driving under the influence (DUI), etc. Personal protective equipment violations, motorcycle equipment violations, and safety violations will also be addressed. All motorcyclists who are stopped will be checked for proper licensing, educated, and either warned or cited accordingly.

Funding will be utilized to pay overtime salaries for officers to conduct motorcyclist safety-focused enforcement operations.

3. Project Objectives:

- a. Start project activities within 60 days of subgrant award, unless otherwise approved by the FDOT State Safety Office.
- b. Conduct a minimum of 2 motorcyclist safety focused overtime enforcement operations each month.
- c. Conduct and/or participate in a minimum of 2 educational/community outreach events to increase motorcyclist safety awareness during the project period and provide event details
- d. Provide motorcyclist safety information and education to the public each month utilizing multimedia outlets (social media, message boards, printed materials, etc.).
- e. Strive to decrease motorcycle crashes and fatalities by 3% city wide, when compared to the 10/01 to 06/30 time period from the previous year.

4. Evaluation:

- a. Project activity start date.
- b. The number of motorcyclist safety focused enforcement operations conducted [monthly
- c. Detail all educational/community outreach events conducted or participated in to increase motorcyclist safety awareness during the project period.
- d. The number of instances that motorcyclist safety messaging information and education was provided to the public.
- e. Crash data will be collected and analyzed at the end of the project period to determine the increase or decrease of motorcyclist crashes when compared to the 10/01 to 06/30 time period from the previous year.

Part III: PROJECT DETAIL BUDGET

Project Title: Motorcycle Safety and Awareness High Visibility Enforcement Campaign
Project Number: MC-2025-00060
FDOT Contract Number: G3574

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	NARRATIVE	FEDERAL FUNDS	MATCH	TOTAL COST	INDIRECT ELIGIBLE
A. Personnel Services					
Overtime Salary and benefits	Overtime salary and benefits for law enforcement officers, benefits to include FICA (Social Security and Medicare), Workers Comp, and Retirement.	\$50,000	\$0	\$50,000	No
Subtotal:		\$50,000	\$0	\$50,000	
B. Contractual Services					
Subtotal:		\$0	\$0	\$0	
C. Expenses					
Subtotal:		\$0	\$0	\$0	
D. Equipment Costing \$10,000 or More					
Subtotal:		\$0	\$0	\$0	
E. Indirect Cost					
%		\$0		\$0	
Subtotal:		\$0		\$0	
Total Cost of Project:		\$50,000	\$0	\$50,000	

Part IV: PERFORMANCE REPORT

Project Title: Motorcycle Safety and Awareness High Visibility Enforcement Campaign
Project Number: MC-2025-00060
FDOT Contract Number: G3574

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 and other data (high motorcycle traffic areas) to determine focus areas for targeted motorcycle enforcement.
4. Conduct motorcyclist safety-focused enforcement operations.
5. Conduct motorcyclist safety outreach/educational activities.
6. Provide motorcyclist safety education/messaging through multiple media outlets.
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.

Part V: Acceptance and Agreement

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

FEDERAL REGULATIONS

1. **Access to Public Records and Monitoring.** The Florida Department of Transportation (FDOT or "Department"), 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 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 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 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 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 Agreement. By entering into this 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 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 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 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 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 §200.332 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 Office of Management and Budget (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 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);
 - 5. Withhold further Federal awards for the Project or program; and/or
 - 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, F. S., 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 submitting 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.

3. Offsets. If, after Agreement 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) as amended, 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) as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251-1389) as amended. 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, will maintain, and enforce 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.
- (a) The Subrecipient agrees to the following disclosures:
- The Subrecipient shall disclose any conflict of interest identified as soon as reasonably possible, making an immediate and full disclosure in writing to NHTSA. The disclosure shall include a description of the action which the Subrecipient has taken or proposes to take to avoid or mitigate such conflict.
 - NHTSA will review the disclosure and may require additional relevant information from the Subrecipient. If a conflict of interest is found to exist, NHTSA may (a) terminate the award, or (b) determine that it is otherwise in the best interest of NHTSA to continue the award and include appropriate provisions to mitigate or avoid such conflict.
 - Conflicts of interests that require disclosure must include all past, present, or currently planned organizational, financial, contractual, or other interest(s) with an organization regulated by NHTSA or with an organization whose interests may be substantially affected by NHTSA activities, and which are related to this award. The interest(s) that require disclosure include those of any subrecipient, affiliate, proposed consultant, proposed subcontractor, and key personnel of any of the above. Past interest shall be limited to within one year of the date of the award. Key personnel shall include any person owning more than 20 percent interest in a Subrecipient, and the officers, employees or agents of a Subrecipient who are responsible for making decision or taking an action under an award where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.
- 7. Conferences and Inspection of Work.** Conferences may be held at the request of any party to this 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 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 Agreement, will be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 and 1200 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 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
 - (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. 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), 49 CFR part 21, and 28 CFR 50.3;
 - (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. 100–259), (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) Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities through the Federal Government by ensuring that equity is advanced across the Federal Government;
 - (k) Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation by ensuring that sex discrimination includes discrimination on the grounds of gender identity or sexual orientation; and
 - (l) 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; and
- (e) To insert this clause, including paragraphs (a) through (e), in every subcontract and sub-agreement and 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 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 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, 200.310-200.316, herein incorporated by reference. This obligation continues as long as the property is retained by the Subrecipient notwithstanding the ending of this 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, 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; and
- 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 31 U.S.C 1352. 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.

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 §200.340 through 200.343.
- (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 this 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 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) calendar 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. 2000e 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 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 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;
 - 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; and
 - 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 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 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 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 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 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:

- (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 Agreement; 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 Agreement term.
- (c) Shall adhere to the requirements in Section 448.095, F.S.

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, F.S., 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. The Subrecipient shall 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. To the extent permitted by law and 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 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 Agreement specifically agree that no provision in this Agreement is intended to create in the public or any member thereof, a third-party beneficiary, 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.

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 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.
- "Material Interest" means direct or indirect ownership of more than 5% of the total assets or capital stock of any business entity.
 - 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.
 - 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.
- 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 this 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.

GRANT MANAGEMENT

53. Amendments. The Subrecipient shall obtain prior written approval from the FDOT State Safety Office for changes to this Agreement. Amendments to this Agreement will be approved if the modification(s) to be made will achieve or improve upon the outcome of this Agreement's scope of work, or where factors beyond the control of the Subrecipient require the change. Requested amendments to this Agreement shall be in the form of a written request signed by one of the original signatories of this Agreement, or successor in the same position. Specific delegation(s) for amendments must be provided in writing from the original signatory of the Subrecipient.

54. Disputes and Appeals. Any dispute, disagreement, or question of fact arising under this Agreement may be addressed to the Traffic Safety Administrator of the FDOT State Safety Office in writing within 6 months of the end of the subgrant period. 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 Agreement and in accordance with the Department's decision(s).

55. Equipment. Any equipment purchased under this 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 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 \$10,000 or More.** Equipment with a useful life of more than one year and an acquisition cost of \$10,000 or more per unit shall be subject to the following requirements:
 - i. Biannual certification of appropriate use and condition of equipment shall be provided to the FDOT State Safety Office.
 - ii. Dispositions must be requested and shall receive prior written approval from the FDOT State Safety Office.
- (c) **Disposition of Equipment Costing \$10,000 or More.** In the event the equipment is no longer needed for the originally authorized Agreement purpose(s) or has reached the end of its useful life, Subrecipients shall use the Equipment Disposition Request Form 500-065-26 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 \$10,000.** Equipment that does not meet the unit purchase price threshold of \$10,000 shall be disposed of in accordance with the agency's own procurement and disposition policies. Documentation of this disposition shall 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.
- (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 § 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 §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 §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.

- 56. 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.
- 57. 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 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.
- 58. How this Agreement is Affected by Provisions Being Held Invalid.** If any provision of this Agreement is held invalid, the remainder of this 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.
- 59. 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 provide required performance and final narrative reports in the required time frame;
 - (c) Failure to perform work described in Part II of this Agreement;
 - (d) Failure to provide reimbursement requests and performance reports in the required time frame;
 - (e) Providing fraudulent performance reports or reimbursement requests; or
 - (f) Misuse of equipment purchased with Federal highway safety funds.
- 60. Performance.** In the event of default, noncompliance, or violation of any provision of this 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 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.
- 61. Personnel Hired or Paid Under this Agreement.**
- (a) **Project Director.** Persons holding the position of Project Director for this Agreement shall not receive reimbursement for personnel hours nor receive any other benefit under this Agreement.
 - (b) **Employer Responsibility.** Any and all employees of the Subrecipient whose positions are funded, in whole or in part through this 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 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 Agreement 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 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. **Reserve Officer Hours.** Subgrant funds can be used to reimburse detail pay for reserve officers to perform traffic safety enforcement. An agency must have an active policy authorizing payment for reserve officer detail to receive reimbursement for reserve officer hours. A copy of the policy shall be maintained by the Subrecipient and made available for review if requested.
- iii. **Extra Duty Detail Pay.** Subgrant funds can be used to reimburse extra duty detail pay for officers to perform traffic safety enforcement. An agency must have an active policy authorizing payment for detail or extra duty pay outside of regular duties to receive reimbursement for officer hours. A copy of the policy shall be maintained by the Subrecipient and made available for review if requested.
- iv. **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.

62. 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 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 Agreement monitoring.

63. Term of this Agreement. This Agreement shall begin on the date the last party signs 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 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."

64. 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 Agreement 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 Agreement period.
- (c) **Prerequisite Approvals.** All Agreement travel that has billable costs 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 Agreement activities and is within the travel budget of the Project and relevant to the Project. Additional detail is required if the travel meets any of the following criteria:
 - i. Purchase of airfare;
 - ii. Travel to conference;
 - iii. Travel which includes a registration fee;
 - iv. Out-of-subgrant-specified work area travel; or
 - 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 the travel budget.

- (d) **Lodging Reimbursement Limit.** The FDOT State Safety Office shall not pay for overnight lodging/hotel room rates that exceed \$225.00 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 \$225.00 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 \$225.00 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 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.
- (f) **Rental Vehicles.** Some rental companies will offer electric vehicles (EV); however, these types of vehicles are not allowable under this subgrant. Any electric vehicle rentals and associated fees will not be reimbursed under this subgrant.

65. 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 Agreement shall be subject to repossession by the FDOT State Safety Office.

FINANCIAL/FISCAL

66. Allowable Costs. The allowability of costs incurred under this 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 Agreement shall be allowable.

67. Subcontract Agreements.

- (a) **Requirement for Pre-Approval.** All subcontract agreements must be submitted to the FDOT State Safety Office in draft form for review and written approval. Approval of this Agreement does not constitute approval of subcontract agreements.
- (b) **Minimum Mandatory Subcontract Language.** All subcontract agreements shall include at a minimum the following information:
 - i. Beginning and end dates of the subcontract agreement (not to exceed this 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; and
 - 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) or payment will be forfeited."
 - 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 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 of \$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)

68. Indirect Costs. Indirect costs included in this 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 Part 200 and the Subrecipients federally approved rate agreement. If the Subrecipient does not have a federally approved costs rate agreement, a maximum de minimis rate of 15% 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 written 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.

69. Obligation of Subgrant Funds. Subgrant funds shall not be obligated prior to the effective date or subsequent to the end date of this Agreement period. Only Project costs incurred on or after the effective date and on or prior to the end date of this Agreement are eligible for reimbursement. A cost is incurred when the Subrecipient's employee or approved contractor or consultant performs the service required or when goods are received by the Subrecipient, notwithstanding the date of order.

70. Procedures for Reimbursement.

- (a) **Overview.** The Department agrees to compensate the Subrecipient for services described in Part II (Project Plan and Supporting Data). The Schedule of Financial Assistance is included as Part III (Project Detail Budget).
- (b) **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 as established in Parts II (Project Plan and Supporting Data), III (Project Detail Budget), and IV (Performance Report). **ALL requests for reimbursement shall include FDOT Form 500-065-19 Performance Report for the period of reimbursement.** Deliverables must be received and accepted in writing by the Department's Project Manager prior to payments.
- (c) **Supporting Documentation.** Supporting documentation must establish that the deliverables were received and accepted in writing by the Subrecipient and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Parts II (Project Plan and Supporting Data), III (Project Detail Budget), and IV (Performance Report) was met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of charges. 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: http://www.fldfs.com/aadir/reference_guide.htm

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 can be submitted. If this document does not reflect the information needed, the Subrecipient shall submit additional pay documentation in a timely manner when requested.

- 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. Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.
 - 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 \$10,000 or More.** 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.
 - 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 the 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.
- (d) **Non-Aligned Purchases Pre-Approval Requirement:** Pre-approval is required if there are any purchases that cross subgrant years (October 1st – September 30th). A letter requesting pre-approval for purchases crossing into the next subgrant year must be submitted to the FDOT State Safety Office in draft form for review and approval. Only after the written approval from the FDOT State Safety Office is received, can a purchase be made.
 - (e) **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 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 Agreement period. Such a 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 Agreement period.
 - (f) **Travel Reimbursement.** Bills for travel expenses specifically authorized in this 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.
 - (g) **Equipment Reimbursement.** All requests for reimbursement of equipment having a unit cost of \$10,000 or more and a useful life of one year or more shall be accompanied by an Equipment Accountability Form (FDOT Form No. 500-065-09). Reimbursement of these equipment costs shall not be made before receipt of this form.

- (h) **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.
- (i) **Artificial Intelligence (AI) Reimbursement.** Artificial Intelligence (AI) software such as ChatGPT, Google AI, etc. are not an allowable expense under the subgrant. Any purchases of this software and associated fees will not be reimbursed under this subgrant.
- (j) **Signature Requirements.** All requests for reimbursement shall be signed by an Authorized Representative of the Subrecipient.
- (k) **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 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.
- (l) **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 Agreement non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or 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 Agreement term.
- (m) **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.
- (n) **Projects with Non-profit Entities.** Pursuant to Section 216.1366, F. S., the Subrecipient shall provide documentation to indicate the amount of state funds:
 - i. Allocated to be used during the full term of this Agreement for remuneration to any member of the board of directors or an officer of the Subrecipient.
 - ii. Allocated under each payment by the Department to be used for remuneration of any member of the board of directors or an officer of the Subrecipient. The documentation must indicate the amounts and recipients of the remuneration.

Such information will be posted by the Department to the Florida Accountability Contract Tracking System maintained pursuant to Section 215.985, F.S. and must additionally be posted to the Subrecipient's website, if the Subrecipient is a non-profit organization and maintains a website. The Subrecipient shall utilize FDOT Form No. 350-090-19, Compensation to Non-Profits Using State Funds, for purposes of documenting the compensation. The subject form is required for every contract for services executed, amended, or extended on or after July 2023, with non-profit organizations.

Pursuant to Section 216.1366, F.S., the term:

- iii. "Officer" means a chief executive officer, chief financial officer, chief operating officer, or any other position performing an equivalent function.

- iv. "Remuneration" means all compensation earned by or awarded to personnel, whether paid or accrued, regardless of contingency, including bonuses, accrued paid time off, severance payments, incentive payments, contributions to a retirement plan, or in-kind payments, reimbursements, or allowances for moving expenses, vehicles and other transportation, telephone services, medical services, housing, and meals.
- v. "State funds" means funds paid from the General Revenue Fund or any state trust fund, funds allocated by the Federal Government and distributed by the state, or funds appropriated by the state for distribution through any grant program. The term does not include funds used for the state Medicaid program.

- 71. 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 Agreement shall be maintained and made available upon request to the Department at all times during the period of this 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 on the Project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- 72. 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 Agreement award during the Agreement 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 Agreement award must be used to reduce the Federal award and Subrecipient contributions rather than to increase the funds committed to the Project.
- 73. Registration for Attendance.** No activities funded under this Agreement shall charge a registration fee for attendance.
- 74. 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 the 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

- 75. Child Safety Seats.** Any agency that receives child safety seats must have at least one staff member who is a current Certified Child Passenger Safety Technician.
- 76. 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 handheld 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) **Aircraft Enforcement.** Subgrant funding will not be utilized or reimbursed for enforcement from aircraft (airplane, helicopter, drone, etc.) without prior written approval from the FDOT State Safety Office.
 - (c) **Investigations and Court.** Subgrant funding will not be utilized or reimbursed for continuing priorly initiated investigations, court, or administrative hearings.
 - (d) **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 Agreement period.
 - (e) **High Visibility Enforcement.** All law enforcement agencies shall conduct High Visibility Enforcement while conducting enforcement under this 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.

- (f) **Hours Limit.** Each officer is limited to a maximum of eight (8) hours of reimbursable overtime in any single day (defined as 12:00 a.m. to 11:59 p.m.), unless there are extenuating circumstances at the end of a shift that causes the hours to exceed this limit. Extenuating circumstances must be documented in the activity report. There is no pay period limit on hours worked.
- (g) **Conforming Product List.** Any speed measuring device purchased with subgrant funding shall be in accordance with State approved Speed Measuring Devices listed in 15B-2.013 F.A.C.
- (h) **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 written 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; or
 - f. Be an active certified Drug Recognition Expert (DRE).
- (i) **Motorcycle Enforcement.** No subgrant funds will be used for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.
 - i. **Required Credentials for High Visibility 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. Officers not certified to use radar or laser speed detection system may work in a saturation/wolfpack/roving patrol with prior written approval by the FDOT State Safety Office.
- (j) **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.
- (k) **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 Slow Down.
 - i. **Required Credentials for High Visibility 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. Officers not certified to use radar or laser speed detection system may work in a saturation/wolfpack/roving patrol with prior written approval by the FDOT State Safety Office.
- (l) **Teen Safe Driving Enforcement.**

- i. **Hours of Emphasis.** Emphasis of enforcement operations should be during the hours of 11:00 pm to 6:00 am, aligning with the parameters of Florida's Graduated Driver Licensing (GDL) Laws. Expansion of enforcement operation hours can be adjusted based on supporting data and prior written approval by the FDOT State Safety Office. The agency will maintain detailed records of enforcement operations. The FDOT State Safety Office reserves the right to request a copy of any subgrant funded Computer Aided Report (CAD).
- ii. **Required Credentials for High Visibility 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. Officers not certified to use radar or laser speed detection system may work in a saturation/wolfpack/roving patrol with prior written approval by the FDOT State Safety Office.

77. 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; and
 - 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 Agreement or any of their traffic safety partners unless the item or service is regularly made available to the general public at no cost.

78. 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 written 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; and
- (f) Current inventory levels (if any) of the item.

The FDOT State Safety Office shall provide written approval for reimbursement if the items are appropriate for purchase under this 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 Agreement.

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

- (a) **Review and Publication.** During this Agreement period, but before publication or printing, the final draft of any report or reports required under this Agreement or pertaining to this Agreement shall be submitted to the FDOT State Safety Office for review and concurrence. After 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 prior written approval.
- (c) **Required Language.** Each publication or other printed report covered by Paragraph 79(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.

80. 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.

81. Special Conditions.

Part VI: Federal Financial Assistance (Single Audit Act)

Federal resources awarded pursuant to this Agreement 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)
- ☐ 20.205 - Highway Planning and Construction (FHWA Federal Aid Highway Program, Federal Lands Highway Program)

***Federal Funds Awarded:** \$50,000

Awarding Agency: Florida Department of Transportation

Indirect Cost Rate: 0%

****Award is for R&D:** No

*The federal award amount may change with supplemental agreements

**Research and Development as defined at 2 CFR §200.87

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

- (a) Federal Funding Accountability and Transparency Act (FFATA) Sub-award Reporting System (FSRS)
www.fsr.gov
- (b) Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58)
<https://www.congress.gov/117/bills/hr3684/BILLS-117hr3684enr.pdf>

<u>Federal Award Identification Number (FAIN):</u>	<u>FAIN Award Date:</u>
69A37522300004020FLO	05/16/2022

Project Title: Motorcycle Safety and Awareness High Visibility Enforcement Campaign
Project Number: MC-2025-00060
FDOT Contract Number: G3574

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.

(For FDOT Use Only)

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____
Authorized FDOT State Safety Office Representative

Date: _____
Date Signed

Reviewed for the Florida Department of Transportation:

By: _____
Authorized FDOT Attorney

Date: _____
Date Signed

SUBRECIPIENT

By: _____
Signature of Authorized Representative

Name: Scott Stiltner
Authorized Representative's Name Printed

Title: Mayor
Authorized Representative's Title Printed

Attest: _____
Robin L. Fenwick

Date: _____
Date Signed

IMPLEMENTING AGENCY

By: _____
Signature of Authorized Representative

Name: Scott Stiltner
Authorized Representative's Name Printed

Title: Mayor
Authorized Representative's Title Printed

Attest: _____
Robin L. Fenwick

Date: _____
Date Signed

NOTE: These signatures are the only recognized authorized representatives for this Agreement, unless delegation is granted in writing.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 12/3/2024

SUBJECT: (B12) Approval of the 2025 City Council Meeting Calendar

DEPARTMENT: Council

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Move to approve the 2025 City Council meeting schedule as presented.

SUMMARY: The normal meeting schedule for Council is to meet twice per month, the first and third Tuesdays, except during holidays, elections, and other events as determined by Council.

The proposed schedule for 2025 Regular City Council Meetings is as follows:

January 21*	July 15*
February 4, 18	August 5, 19
March 4, 18	September 2, 16
April 1, 15	October 7, 21
May 6, 20	November 4, 18
June 3, 17	December 9*

(* indicates a change in the normal schedule due to holidays (January, July, and December).

In addition, Council has reserved the 4th Tuesday of each month for Council workshops, with the exception of November and December, which typically do not have workshops scheduled due to the holidays. These workshops are scheduled on an as-needed basis.

This schedule does not contemplate the budget workshops that typically occur over the summer months. Those and other workshops, Executive Sessions, and any other necessary special meetings will be scheduled as needed and approved by the Council.

PRESENTER: Robin Fenwick

ATTACHMENTS:

Robin Fenwick	Created/Initiated - 11/13/2024
Robin Fenwick	Approved - 11/20/2024
Matthew Jones	Approved - 11/25/2024
Wayne Clark	Final Approval - 11/25/2024



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 12/3/2024

SUBJECT: (B13) Approval of the Cooperative Equipment Loan Agreement with the Florida Department of Agriculture and Consumer Services and Florida Forest Service for Two Light Medium Tactical Vehicles

DEPARTMENT: Fire/Rescue Services

GOAL: 1 - Public Safety

RECOMMENDED MOTION: Move to approve the Cooperative Equipment Loan Agreement with the Florida Department of Agriculture and Consumer Services, Florida Forest Service and authorize Mayor and City Clerk to execute all necessary documents.

SUMMARY: The Fire Department Staff seeks to acquire two Light Medium Tactical Vehicles through the State of Florida for high-water rescue operations. Recent natural disasters have underscored the need for these vehicles to assist our Fire Department in rescuing individuals from flooded areas. The Florida Department of Agriculture and Consumer Services ("FDACS") will provide the vehicles for the City at no cost and Fire Department staff will budget for the required maintenance and operation costs associated with the vehicles. Staff anticipates a cost of approximately \$60,000 to make necessary modifications to equip the vehicles for high-water risk. These funds will be requested through the Capital Outlay program for fiscal year 25/26. Once said vehicles are assigned, Exhibit A to the agreement will be completed by FDACS with specific details of each vehicle, including the Vehicle Identification Number (VIN).

The major components of the agreement with the Florida Department of Agriculture and Consumer Services and Florida Forest Service are the following:

1. Any equipment purchased by the Fire Department will remain the property of that department.
2. The City must adequately insure the vehicles.
3. The vehicles must be made available for inspection upon request.
4. The City is responsible for ensuring compliance with state or local vehicle safety inspections.
5. The equipment must be maintained to reasonable standards.
6. Depending on local conditions, the Fire Department will respond to mutual aid requests from the State within the home county.

PRESENTER: Joe Wulfig

ATTACHMENTS:

1.	Cooperative Equipment Loan Agreement	Cooperative Equipment Loan Agreement w D of Ag.pdf
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Joe Wulfing	Created/Initiated - 11/6/2024
Joe Wulfing	Approved - 11/6/2024
John McKinney	Approved - 11/7/2024
Matthew Jones	Approved - 11/25/2024
Wayne Clark	Final Approval - 11/25/2024



WILTON SIMPSON
COMMISSIONER

Florida Department of Agriculture and Consumer Services
Florida Forest Service

COOPERATIVE EQUIPMENT LOAN AGREEMENT

This Cooperative Equipment Loan Agreement (the "Agreement") by and between

CITY OF PORT ORANGE

Cooperator

1000 City Center Boulevard Port Orange, FL 32129

Cooperator's Address

hereinafter referred to as the COOPERATOR, and the State of Florida, Department of Agriculture and Consumer Services, Florida Forest Service, hereinafter referred to as the SERVICE,

WITNESSETH:

WHEREAS, The control of timber, grass, wildland fires in, and adjacent to, suburban areas is essential to an effective forest fire control program; and

WHEREAS, The COOPERATOR is actively engaged in the prevention and suppression of all fires in, and adjacent to, suburban areas; and

WHEREAS, The COOPERATOR can more adequately carry out this function if additional equipment is available; and

WHEREAS, The SERVICE, from time to time, has a limited number of units of fire fighting equipment that can be made available to other agencies involved in fire control work as authorized by Florida Statutes, the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483), and the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101); and

WHEREAS, it has been determined to be advantageous to the SERVICE in the proper discharge of its responsibilities as described and set forth in Chapter 590, Florida Statutes, to make certain equipment available to the COOPERATOR:

NOW, THEREFORE, The parties to this Agreement do hereby agree as follows:

A. The SERVICE Agrees:

- (1) To make available the equipment described on the attached equipment schedule (the "Equipment") while retaining title and/or accountability, according to the terms set forth in this Agreement.

- (2) That the title to all accessories, tools, equipment, sirens, etc., which are added to the Equipment by the COOPERATOR will remain with the COOPERATOR and the COOPERATOR may remove same, prior to returning the Equipment to the SERVICE, provided that COOPERATOR shall repair any damage caused by such removal.

B. The COOPERATOR Shall:

- (1) Maintain insurance of the types and in the amounts required by the SERVICE for the Equipment and shall provide proof of such insurance upon request of a representative of the SERVICE.
- (2) Make the Equipment available for inspection upon request of a representative of the SERVICE.
- (3) Return the Equipment to the SERVICE upon termination of this Agreement.
- (4) Be responsible for State or local vehicle safety inspection requirements.
- (5) Maintain the Equipment to reasonable standards of mechanical condition and appearance acceptable to the service.
- (6) Return the Equipment to a mutually agreeable location when COOPERATOR is no longer in need of the Equipment.
- (7) Furnish any additional items needed to prepare the Equipment for structural fire service, such as hose, nozzles, pike poles, etc.
- (8) Answer calls utilizing the Equipment anywhere in the home county upon request of the SERVICE, local conditions permitting.
- (9) To the extent permitted by Florida law, indemnify and hold the Department of Agriculture and Consumer Services and the SERVICE harmless from any and all claims, causes of action or damages whatsoever arising from or in connection with this Agreement or COOPERATOR'S use of the Equipment.

C. It is MUTUALLY Agreed:

- (1) The SERVICE license plates will continue to be used on the Equipment.
- (2) The Equipment will be marked in a manner that will indicate the cooperation between the COOPERATOR and the SERVICE.
- (3) The Equipment will be stored at the fire department and will be used only for fire related activities.
- (4) The Equipment will be modified only as approved by a representative of the SERVICE.
- (5) Personal use of the Equipment is prohibited, violates the law and this Agreement, and subjects violators to penalties and to immediate Equipment recall.
- (6) Both parties will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352, 42

U.S.C. 2000d) and, in accordance with Title VI of that Act, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this Agreement.

D. This Agreement will be effective from the date of execution by the Director, Florida Forest Service, Department of Agriculture and Consumer Services, and will continue in force from year to year unless terminated by either party by thirty (30) days written notice to the other, provided, however, that all of the provisions herein are complied with.

IN WITNESS WHEREOF, The parties by and through their duly qualified and acting officials have hereunto set their hands.

City of Port Orange

COOPERATOR

_____ WITNESS	BY: _____ Scott Stiltner Mayor
_____ WITNESS	_____ OFFICIAL TITLE Attest: _____ Robin L. Fenwick, MMC City Clerk

STATE OF FLORIDA DEPARTMENT OF
AGRICULTURE AND CONSUMER SERVICES
FLORIDA FOREST SERVICE

_____ WITNESS	BY: _____ DIRECTOR	_____ DATE
_____ WITNESS		

EXHIBIT A

EQUIPMENT SCHEDULE

Cooperative Equipment Loan Agreement Between

The Florida Department of Agriculture and Consumer Services,

Florida Forest Service

AND

Cooperator

Date Leased	S or F	ID Number	Property Description	Serial Number	Location	Date Deleted

SPECIAL REMARKS OR SPECIFICATIONS: This Equipment Schedule is considered to be a part of the loan agreement dated and referred to in the heading. Any changes to this Equipment Schedule must be by written request from the Cooperator, with a copy attached to this document, and the approval of the Director indicated below.

Approved: _____
Director, Florida Forest Service Date