



BOARD OF COUNTY COMMISSIONERS MEETING

October 16, 2023
Regular Meeting

Additional Items
For Consideration

County Attorney
1769 E. Moody Blvd Bldg 2
Bunnell, FL 32110



www.flaglercounty.gov
Phone: (386)313-4005
Fax: (386)313-4105

MEMORANDUM

To: Board of County Commissioners

Cc: Heidi Petito, County Administrator
Jorge Salinas, Deputy County Administrator
Amy Stroger, Project Manager
Tom Bexley, Clerk of the Circuit Court and Comptroller
Dana Macdonald, Director of Board and Official Records

From: Al Hadeed, County Attorney

Date: October 12, 2023

Re: Amending Use Agreement with the Florida Internal Improvement Trust Fund

Chair and Commissioners:

Attached is a memorandum from Amy Stroger concerning an amendment to an existing use agreement for beach work at Gamble Rogers State Park. I view the amendments as ministerial. They have no effect on the work we are doing in the southern section of the Modified Federal Project. However, they are required to be submitted by a hard deadline to the Army Corps of Engineers as part of a package wherein we certify that we have secured all the land interests to enable the project to go forward.

We cannot, therefore, wait to put this on a later regular meeting after October 16th and it certainly does not merit a special meeting given its minor effect.

Accordingly, with the authorization of the County Administrator, I will present this under County Attorney's Report and will ask the Board to move to add it for formal action.

Thank you and please do not hesitate to call should you have any questions about this whatsoever.

Andy Dance
District 1

Greg Hansen
District 2

David Sullivan
District 3

Leann Pennington
District 4

Donald O'Brien Jr.
District 5

Engineering
1769 E. Moody Blvd., Bldg 2
Bunnell, FL 32110



www.FlaglerCounty.gov
Phone: (386) 313-4006
Fax: (386) 313-4106

DATE: October 12, 2023
TO: Heidi Petito, Jorge Salinas
CC: Al Hadeed, Hamid Tabassian
FROM: Amy Stroger 
SUBJECT: Amendment No. 1 to Use Agreement for Gamble Rogers Memorial State Recreation Area for Beach/Dune Renourishment and Beach Access

The Subject Use Agreement was originally approved by the County Commission on 7/12/21 as consent agenda item 7g. The agreement allows for the placement of sand along the coast of Gamble Rogers State Park. The southern project termini will extend as a taper approximately 200' into Gamble Rogers State Park as depicted on the attached exhibit.

On 8/21/23, the BOCC approved a Memorandum Of Agreement with the Army Corps of Engineers to facilitate the inclusion of the non-federal beach renourishment with the federal project as a combined project, known as the "Modified Federal Project." As part of the Certification of Lands review and acceptance by the ACOE, it is necessary to include a couple of provisions within the Use Agreement to meet federal guidelines. These provisions are as follows:

1. Paragraph 8. of Use Agreement Number U-0471 is hereby revised, replaced and superseded as follows:

8. ASSIGNMENT: This use agreement shall not be assigned in whole or in part without the prior written consent of GRANTOR. Any assignment made either in whole or in part without the prior written consent of GRANTOR shall be void and without legal effect. Notwithstanding the requirements of this Paragraph 8, GRANTOR and GRANTEE recognize and agree that some or all of the activities permitted under this use agreement may be performed by GRANTEE or GRANTEE'S contractor under separate agreement with GRANTEE. Such performance by GRANTEE'S contractor does not create or impose any duty or responsibility between GRANTOR and GRANTEE, nor does it relieve GRANTEE of any duty, responsibility, or liability under this use agreement.

2. Paragraph 32. of Use Agreement Number U-0471 is hereby amended to add the following:

e. Any rights exercised by GRANTOR, or its duly authorized agent, pursuant to Paragraph 5 herein, shall be coordinated with GRANTEE prior to any inspection.

The "grantor" for the above amendments is the Board of Trustees of the Internal Improvement Trust Fund. The proposed amendments have no impact on our proposed work. However, this is a time critical item as a part of November 6th deadline for the County's Land Certification to the ACOE.

Please contact me at 313-4047 or astroger@flaglercounty.gov if you have any questions or anything additional is needed.

Attachments: Exhibit

Amendment 1 to U-0471 Land Use Agreement

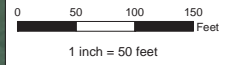
Andy Dance
District 1

Greg Hansen
District 2

David Sullivan
District 3

Leann Pennington
District 4

Donald O'Brien, Jr.
District 5



Legend

- Joint Coastal Permit Area
 - Use Agreement
 - TWAE (Staging)
 - TWAE (Construction)
 - FDOT Permit (Offloading Only)
 - Erosion Control Line
 - Coastal Range Marker
- Temporary Work Area Easement (TWAE)

Data Source:
This is a collection of hard copy photos.
For reference purposes only.
This is not a boundary survey.

Department of the Army South Atlantic Division Jacksonville District, Corps of Engineers	
REAL ESTATE 2023 Lands Request Exhibit Map Flagler County, Florida Coastal Storm Risk Management Project Non-Federal South Segment	
Mapper: D. DeVina Reviewer: C. Binkish Map Date: 5/31/2023	1:500 Feet
<small>Document Name: Flagler South CSRM 2023 Map Map Sheet - Sheet: 1 of 1</small>	

This Amendment was prepared by:
Karen Lee Reecy
Bureau of Public Land Administration
Division of State Lands
Department of Environmental Protection, MS 130
3900 Commonwealth Boulevard,
Tallahassee, Florida 32399-3000
Action No. 48170

ATU1
[+/- 4.1 acres]

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT
TRUST FUND OF THE STATE OF FLORIDA**

AMENDMENT ONE TO USE AGREEMENT NUMBER U-0471

THIS USE AGREEMENT AMENDMENT is entered into this ____ day of _____, 20____, by and between the **BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA**, hereinafter referred to as "GRANTOR", through its lawfully designated agent, the Division of State Lands, State of Florida Department of Environmental Protection to **FLAGLER COUNTY, FLORIDA, a political subdivision of the State of Florida**, hereinafter referred to as "GRANTEE".

W I T N E S S E T H

WHEREAS, GRANTOR, by virtue of Section 253.03, Florida Statutes, holds title to certain lands and property for the use and benefit of the State of Florida; and

WHEREAS, on July 20, 2021, GRANTOR and GRANTEE entered into Use Agreement Number U-0471; and

WHEREAS, GRANTOR and GRANTEE desire to amend certain provisions of Use Agreement Number U-0471 to better reflect their agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. Paragraph 8. of Use Agreement Number U-0471 is hereby revised, replaced and superseded as follows:

8. **ASSIGNMENT**: This use agreement shall not be assigned in whole or in part without the prior written consent of GRANTOR. Any assignment made either in whole or in part without the prior written consent of GRANTOR shall be void and without legal effect. Notwithstanding the requirements of this Paragraph 8, GRANTOR and GRANTEE recognize and agree that some or all of the activities permitted under this use agreement may be performed by GRANTEE or GRANTEE'S contractor under separate agreement with GRANTEE. Such performance by GRANTEE'S contractor does not create or impose any duty or responsibility between GRANTOR and GRANTEE, nor does it relieve GRANTEE of any duty, responsibility, or liability under this use agreement.

2. Paragraph 32. of Use Agreement Number U-0471 is hereby amended to add the following:
 - e. Any rights exercised by GRANTOR, or its duly authorized agent, pursuant to Paragraph 5 herein, shall be coordinated with GRANTEE prior to any inspection.
3. It is understood and agreed by GRANTOR and GRANTEE that in each and every respect the terms of Use Agreement Number U-0471, except as amended, shall remain unchanged and in full force and effect and the same are hereby ratified, approved and confirmed by GRANTOR and GRANTEE as of the date of this amendment.
4. It is understood and agreed by GRANTOR and GRANTEE that this Amendment Number One to Use Agreement Number U-0471 is hereby binding upon the parties hereto and their successors and assigns.

[Remainder of page intentionally left blank; Signature page follows]

IN WITNESS WHEREOF, the parties have caused this use agreement to be executed on the day and year first above written.

WITNESSES:

**BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE STATE
OF FLORIDA**

(SEAL)

Original Signature

BY: _____

Print/Type Name of Witness

Brad Richardson, Chief, Bureau of Public Land Administration,
Division of State Lands, State of Florida Department of
Environmental Protection, as agent for and on behalf of the
Board of Trustees of the Internal Improvement Trust Fund
of the State of Florida

Original Signature

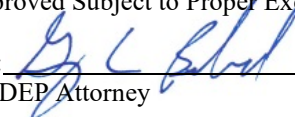
Print/Type Name of Witness

"GRANTOR"

**STATE OF FLORIDA
COUNTY OF LEON**

The foregoing instrument was acknowledged before me, by ___ physical presence or ___ online notarization this day of _____, 20____, by Brad Richardson, Chief, Bureau of Public Land Administration, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. He is personally known to me.

Approved Subject to Proper Execution:

BY:  10-10-2023
 DEP Attorney Date

Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires: _____

Commission/Serial No. _____

WITNESSES:

**FLAGLER COUNTY, FLORIDA,
a political subdivision of the State of Florida
By its Board of County Commissioners**

(SEAL)

Original Signature

BY: _____

Print/Type Name of Witness

Original Signature of Executing Authority

Original Signature

Greg Hansen, Chair

Print/Type Name of Executing Authority and Title

Print/Type Name of Witness

“GRANTEE”

**STATE OF _____
COUNTY OF _____**

The foregoing instrument was acknowledged before me by means of __ physical presence or __ online notarization this _____ day of _____, 20____, by Greg Hansen, as Chair of the Board of County Commissioners, for and on behalf of Flagler County, Florida, a political subdivision of the State of Florida. He is personally known to me or who has produced _____, as identification.

Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires: _____

Commission/Serial No. _____

Additional Item #2 for Consideration

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS CONSENT/ AGENDA ITEM

SUBJECT: Consideration of an Agreement with Lutheran Services of Florida to Provide Community Paramedic Services in Support of a State Funded Addiction Stabilization Program.

DATE OF MEETING: October 16, 2023

OVERVIEW/SUMMARY: On October 17, 2022, the Flagler County Board of County Commissioners (BOCC) entered into a sub-agreement with Flagler Cares. Inc. to provide community paramedic services in support of an addiction stabilization program for residents of Flagler County suffering from addiction to opioids. At the time of that agreement, Flagler Cares was chosen as the entity to administer the program under the direction of the Florida Department of Health in Flagler County (FDOH). FDOH also utilized Lutheran Service Florida (LSF) to serve as the entity responsible for administering the purchase of medications for the program. Flagler County BOCC also entered into an agreement (effective 1/23/2023) with LSF to reimburse FCFR for the purchase of medications to be used by FCFR community paramedics as part of the program. Beginning with the State's fiscal year on July 1, 2023, the addiction stabilization program has transitioned to the Department of Children and Families (DCF). As a result of this transition, DCF has selected Lutheran Services Florida (LSF) to serve as the program administrator for both community paramedic services and medications. LSF desires to continue the utilization of FCFR community paramedics to support the addiction stabilization.

As part of the proposed agreement between LSF and Flagler County, LSF has agreed to provide up to \$99,740 in funding to support FCFR's services relative to the addiction stabilization program. Ongoing funding for this program beyond the State of Florida's fiscal year ending June 30, 2024 has not been established and the agreement presented by LSF will end on that date. FCFR community paramedic services will not be committed beyond that time unless a new agreement is requested by LSF and agreed upon by the Flagler County BOCC.

STRATEGIC PLAN:

Public Health and Safety

- Goal 4 – Expand Behavioral Health and Substance Abuse Programs
 - Objective PHS 4.3 - Implement an addiction stabilization center in the county that will help to reduce or prevent overdoses and deaths.

FUNDING INFORMATION: Funding for this initiative is being provided through the agreement with LSF and is not being funded through the County's ad valorem taxes. Staff will return to the board to appropriate grant funding for this agreement.

DEPARTMENT CONTACT: Michael Tucker, Fire Chief, 386-313-4255

RECOMMENDATIONS: Authorize the County Administrator to execute the agreement with Lutheran Services Florida for funding of Flagler County Fire Rescue's Community Paramedic services to support a drug addiction stabilization program.

ATTACHMENTS:

1. Amendment 102 Purchase Order with Lutheran Service Florida
2. Purchase Order Agreement with Lutheran Service Florida (January 1, 2023)

**Flagler County Board of County Commissioners d/b/a Flagler County Fire Rescue
Amendment 102**

This amendment (the "Amendment") is made and entered into by and between Lutheran Services Florida, Inc. d/b/a LSF Health Systems ("LSF") and Flagler County Board of County Commissioners d/b/a Flagler County Fire Rescue ("Contractor") to be effective October 1, 2023. Contractor and LSF may be referred to herein individually as a "party" or collectively as "the parties."

Whereas, LSF wishes to amend the agreement entered into between said parties on January 1, 2023, the purpose of this amendment is to replace the Purchase Order Agreement.

NOW THEREFORE, in consideration of the mutual covenants, and the mutual promises contained hereinafter, and in exchange for good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, as independent contractors, the parties agree as follows:

1. Capitalized terms herein shall be ascribed the meaning given by the Purchase Order Agreement. In the event of conflict between this Amendment and the Purchase Order Agreement, this Amendment shall control.
2. Amendment 101, Paragraph 2, "**Whereas**" is amended to: "**Whereas**, LSF wishes to amend the contract entered into between said parties on January 1, 2023, the purpose of this amendment is to modify contract language" and is otherwise unchanged.
3. Purchase Order Agreement is replaced in its entirety with the Purchase Order Agreement revised October 1, 2023, incorporated herein. All prior purchase order agreements with reference to the same content are deleted.

The parties' authorized representatives have executed this Amendment with its purchase order agreement to be effective the 1st day of October 2023.

**Flagler County Board of County Commissioners
d/b/a Flagler County Fire Rescue**

**Lutheran Services Florida, Inc. d/b/a LSF Health
Systems**

Signature Date

Signature Date

Heidi Petito, County Administrator

Printed Name Title

Dr. Christine Cauffield CEO

Printed Name Title

PURCHASE ORDER AGREEMENT

This Agreement is entered into between Lutheran Services Florida, Inc., d/b/a LSF Health Systems (a Florida non-profit corporation), hereinafter referred to as the "LSF" and/or the "Managing Entity" and Flagler County Board of County Commissioners d/b/a Flagler County Fire Rescue herein after referred to as the "Contractor." The Contractor and LSF may be referred to herein individually as a "party" or collectively as "the parties." LSF and the Contractor agrees as follows:

Effective and Ending Dates. The terms of this Agreement shall be effective October 1, 2023 and shall continue through June 30, 2024.

This document provides direction and guidance for administration, implementation, and management of **Florida's Coordinated Opioid Recovery (CORE) Network of Addiction Care** in Flagler County.

Services to be Provided. This scope of work is for the Contractor to implement an Addiction Stabilization Program by ensuring participants have access to Opioid Use Disorder (OUD) treatment through a coordinated entry system that includes community paramedics as the initial participant touchpoint by providing medication assisted treatment (MAT) and peer support services. The Contractor will work with existing project partners and collaborate with LSF if project partners need to be replaced or added.

Section 1. Financial Consideration

1.1. Award Amount

Flagler County Board of County Commissioners d/b/a Flagler County Fire Rescue has been awarded an amount not to exceed the **LSF approved Exhibit C and D - Projected Operating and Capital Budget** for costs associated with administration of the services at its agency. Funding will be provided through OCA MSOCR - ME Opioid TF Coord Opioid Recovery Care and/or OCA MSOTR - ME Opioid TF Treatment and Recovery. This award is subject to the availability of funds from the Department of Children and Families (DCF).

1.2. Budget

- 1.2.1 The Contractor shall submit a detailed, line-item budget to LSF identifying for each line the allowable items for the program, the projected or budgeted amount for each line item and narrative supporting the reasonableness and necessity of any unusual items.
- 1.2.2 All budgets and revisions thereto are subject to approval by LSF.
- 1.2.3 The Contractor may revise a budget by submitting same to the assigned Network Manager via electronic mail for approval.
- 1.2.4 Approved budgets shall be maintained in the official agreement file.
- 1.2.5 Modifications to the approved budget may not be effective retroactively.

1.3. Payment

This award shall be paid using a fixed rate methodology, subject to the availability of funds. The Contractor shall comply with the terms of such methodology, including quarterly fiscal reconciliation reports data reporting, as outlined below.

1.3.1 The total monthly payment amount shall be one-ninth of the fixed rate portion of the contract and shall be included as a line item in the Contractor's Invoice with the following documentation provided as support.

1.3.1.1 The Contractor shall submit a quarterly **Exhibit O - Expenditure Reconciliation Report** using the form designated by LSF Health Systems which will outline expenses incurred by the Contractor. This report shall be submitted on or before the 8th of the month following the end of each quarter. The Managing Entity reserves the right to request monthly **Exhibit O - Expenditure Reconciliation reports** after the third quarter depending on the Contractor's rate of spending.

1.3.1.2 All funds paid under the fixed rate methodology must be accounted for through this reconciliation process and any funding not accounted for is subject to repayment to LSF Health Systems.

1.3.1.3 LSF Health Systems reserves the right to request substantiating documentation to support the line items submitted by the Contractor in the **Exhibit O - Expenditure Reconciliation Report**.

1.3.1.4 All reports as required in Section 2.4 Required Reporting.

1.3.2 Reimbursement shall be made for actual, allowable expenditures within the limits of the latest version of the approved budget at the time that the invoice is processed.

1.3.3 The Contractor agrees that it will account for all payments from LSF according to generally accepted standard accounting principles.

Section 2. Program Administration

2.1. CORE will be administered according to DCF Guidance 41, which can be found at following link using the applicable fiscal year: <https://www.myflfamilies.com/services/substance-abuse-and-mental-health/samh-providers/managing-entities>.

2.2. CORE program requirements are as follows:

2.2.1 Provide a 24/7 access point where an individual can access medication assisted treatment (MAT), including weekends.

2.2.2 Ensure a clinic provider is available to receive individuals in need of services from the 24/7 access point, and that first responders can provide MAT until the individual can be seen in the clinic.

2.2.3 Provide treatment for co-morbid alcohol and benzodiazepine use disorders.

- 2.2.4 Approach to dosing MAT that considers the specific circumstances and use pattern of the individual.
- 2.2.5 Network Service Providers, Emergency Medical Providers, and Hospital Emergency Departments shall use the established clinic intake process.
- 2.2.6 Network Service Providers, Emergency Medical Providers, and Hospital Emergency Departments shall use the established protocol for induction on buprenorphine.
- 2.2.7 Naloxone kits shall be available to individuals without specific conditional requirements.
- 2.2.8 Procedures to address phases of treatment.
- 2.2.9 Ability to provide care to pregnant and parenting women.
- 2.2.10 Consistent monitoring of outcome measures and data including the use of the Brief Addiction Monitoring (BAM) tool and reporting as outlined in the DCF Guidance 41.
- 2.3. Service Tasks: Contractor will perform the following tasks in the time and manner specified:
 - 2.3.1 Respond to suspected overdose calls, as appropriate, to provide treatment options to individuals and family.
 - 2.3.2 Follow-up to overdose calls within 24 to 48 hours to offer treatment options.
 - 2.3.3 Enroll individuals into the program, collecting participant information, baseline data and consent.
 - 2.3.4 Conduct appropriate assessments and provide medication to enrolled individuals. Staff will establish a schedule for up to seven days of medication administration.
 - 2.3.5 Provide a warm handoff to MAT providers within seven days of enrollment.
 - 2.3.6 Participate in care team staffings and collaborate on necessary support services.
 - 2.3.7 Participate in CORE team trainings and stakeholder meetings.
 - 2.3.8 Participate in outreach and community education activities in collaboration with project partners.
 - 2.3.9 Provide a monthly status report by the 5th of the following month to Flagler Cares, Inc. including:
 - 2.3.9.1 Report on the system of care development, outcomes, and outputs as required by DCF.
 - 2.3.9.2 The number of patients served experiencing SUD through services.
 - 2.3.9.3 Patients served by race, gender, sex, insurance status and zip code.
 - 2.3.9.4 Other data elements to be determined as required by DCF.
 - 2.3.10 Collaborate with LSF on the establishment off processes for evaluation, measurement and reporting of qualitative and quantitative metrics for CORE partners as required by DCF.

- 2.3.11 Facilitate the execution of a Memorandum of Understanding (MOU) with the appropriate Federally Qualified Health Center (FQHC), County Health Department (CHD), publicly funded medical clinic, or tax-assisted hospital.

2.4. Required Reporting

- 2.4.1 **Expenditure Reconciliation Report:** This report shall be submitted on or before the 8th of the month following the end of each quarter. However, the Managing Entity reserves the right to request monthly after the third quarter depending on the Contractor 's rate of spending.
- 2.4.2 **Monthly Status Report:** This report shall be submitted on or before the 5th of the month following the month of service as outlined in Section 2.3 Service Tasks.
- 2.4.3 The Contractor shall submit service data to LSF as required by LSF and DCF and shall submit the data electronically by the 8th of each month for the previous month's services, as specified by LSF and DCF and in accordance with the DCF Data System Guidelines.
- 2.4.4 Ad Hoc and additional reporting, at any frequency, may be required as determined necessary by LSF Health Systems or the Department of Children and Families.

Section 3. Documentation

3.1. Cost

- 3.1.1 Professional Services Rendered: Invoices for professional services must include a general statement of the services provided, the time period covered by the invoice, the hourly rate, the number of hours worked, and the total payment required. Evidence of payment of the invoice must also be included.
- 3.1.2 Postage and Reproduction Expenses: Outside Contractor's purchases must include invoices with evidence of payments made or receipts with itemization. In-house postage and reproduction must be supported by usage logs or similar reports.
- 3.1.3 Travel: Travel reimbursements shall be made in accordance with the Department's CFOP 40-1, § 287.058(1)(b), Fla. Stat. and §112.061, Fla. Stat. Receipts for direct expenses (e.g., airfare, car rental, parking, tolls) shall be provided in support of such expenses. For mileage reimbursements, submissions shall include date(s) of travel, amount of mileage (support of mileage may include either map routes or odometer readings), purpose of travel, origin and destination.
- 3.1.4 General Expenses not otherwise specified: Receipts or invoices with evidence of payment should be provided.

3.2. Services Rendered

- 3.2.1. Appropriate documentation shall be maintained in accordance with the applicable parameters established by statute, regulation, and code. Audit documentation shall be in accordance with 65E-14.021, F.A.C. The Contractor shall make such information available to LSF upon request and during monitoring of the program administration.

- 3.2.2. The Contractor shall notify the Managing Entity's Network Manager, in writing, at least ten (10) calendar days prior to any changes in services and/or locations where services are being provided. Changes must continue to meet the service needs of consumers without excessive time and travel requirements.

Section 4. Miscellaneous

4.1. Employment Screening

- 4.1.1. The Contractor shall ensure that all staff utilized by the Contractor and its subcontractors are of good moral character and meet the Level 2 Employment screening standards specified in § 394.4572, 397.451, 408.809, 435.04, 110.1127 and §39.001(2), Fla. Stat., as a condition of initial and continued employment that shall include, but not be limited to:

- i. Employment history check,
- ii. Fingerprinting for all criminal record checks,
- iii. Statewide criminal and juvenile delinquency records checks through the Florida Department of Law Enforcement (FDLE),
- iv. Federal criminal records check from the Federal Bureau of Investigations via the FDLE, and
- v. Security background investigation, which may include local criminal records checks through local law enforcement agencies.
- vi. Attestation by each employee, subject to penalty, to meeting the requirements for qualifying for employment pursuant to chapter 435 and agreeing to inform the employer immediately if arrested for any of the disqualifying offenses while employed by the employer.

The Contractor shall sign the Florida Department of Children and Families Employment Screening Affidavit each State fiscal year (no two such affidavits shall be signed more than 13 months apart) for the term of the Contract stating that all required staff have been screened or the Contractor is awaiting the results of the screening.

Additional guidance regarding background screening is incorporated herein by reference and may be located at: www.dcf.state.fl.us/programs/backgroundscreening/.

4.2. Representations

- 4.2.1. The Contractor shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement and all work performed pursuant to this Agreement shall be done in a professional manner.
- 4.2.2. The Contractor hereby represents to LSF, with full knowledge that LSF is relying upon these representations when entering into this Agreement that Contractors have the professional expertise, experience, and manpower, as well as holds the necessary certifications and licenses

required to perform the services to be provided by the Contractor pursuant to the terms of this Agreement.

- 4.2.3. Prior to commencing to provide any services pursuant to this Agreement, Contractor shall provide copies of any and all business or professional licenses and certifications held by Contractor to LSF related to the performance of the services required by this Agreement, and they shall be incorporated and made a specific part of this Agreement, whether or not attached hereto. Upon renewal of such licenses or certifications during the term of this Agreement, Contractor shall provide evidence of such renewal or re-issuance to LSF.

4.3. Terms and Conditions

- 4.3.1. Any changes to dates and fees must be submitted and approved by LSF. If circumstances arise that will require additional services and time, the Contractor will notify LSF and obtain written agreement prior to undertaking such activities. The Contractor shall perform all services, tasks and provide deliverables, including the quarterly reconciliation, and reports, as specified in this agreement.

4.4. Business Associates

- 4.4.1. Portability and Accountability Act of 1996, and Standards for the Privacy and Security of Individually Identifiable Health Information, found at 45 C.F.R. Parts 160, 162 and 164, 42 C.F.R. and as amended by the Health Information Technology for Economic and Clinical Health Act, (collectively, "HIPAA"), LSF is required to protect certain individually identifiable health or other information ("Protected Health Information" or "PHI" including, but not limited to, PHI in an electronic form). Should LSF request that the Contractor share or disclose Client PHI with any of the other LSF designated business associates, LSF shall provide the Contractor with written direction indicating the name of the entity, confirmation that such entity is a business associate with a written business associate agreement with LSF and the specific information and/or data LSF desires the Contractor to disclose to or share with such other business associate and the Parties agree to execute any such additional agreements as necessary to complete such activities. For purposes of this Agreement, "Client" shall mean: any individual that is eligible to receive behavioral health services in accordance with DCF eligibility policies in the Service Area.

4.5. Insurance

- 4.5.1. The Contractor shall maintain continuous adequate liability insurance coverage during the existence of this Contract and any renewal(s) and extension(s) thereof. With the exception of a State agency or subdivision as defined by subsection 768.28(2), F.S., by execution of this Contract, the Contractor accepts full responsibility for identifying and determining the type(s) and extent of liability insurance necessary to provide reasonable financial protections for the Contractor and the persons served to be served under this Contract. The Managing Entity and its Network Service Contractors at all tiers are not covered by the State of Florida Risk Management Trust Fund for liability created by s. 284.30, F.S.
- 4.5.2. The Contractor acknowledges that, as an independent contractor, the Contractor, and its subcontractors, at all tiers are not covered by the State of Florida Risk Management Trust Fund for liability created by s. 284.30, F.S.
- 4.5.3. Upon the execution of this Contract, the Contractor shall furnish the Managing Entity written verification supporting both the determination and existence of such insurance coverage and shall

furnish verification of renewal or replacement thereof prior to the expiration or cancellation. The Managing Entity reserves the right to require additional insurance as specified in this Contract.

- 4.5.4. The Contractor shall notify the Managing Entity within 30 calendar days if there is a modification to the terms of insurance including but not limited to, cancellation or modification to policy limits.
- 4.5.5. The Contractor shall obtain and provide proof to the Managing Entity and the Department of Comprehensive General Liability Insurance (broad form coverage), specifically including premises, fire and legal liability to cover the Contractor and all its employees. The limits of the Contractor's coverage shall be no less than \$300,000 per occurrence with a minimal annual aggregate of no less than \$1,000,000.
- 4.5.6. If in the course of the performance of its duties under this Contract any officer, employee, or agent of the Contractor operates a motor vehicle, the Managing Entity shall cause the Contractor, at all tiers, to obtain and provide proof to the ME and the Department of comprehensive automobile liability insurance coverage with limits no less than \$300,000 per occurrence with a minimal annual aggregate of no less than \$1,000,000.
- 4.5.7. If in the course of the performance of the duties of any Contractor, at all tiers, any officer, employee, or agent of the Contractor, provides any professional services or provides or administers any prescription drug or medication or controlled substance, the ME shall cause the Contractor, at all tiers, to obtain and provide proof to the ME and the Department of professional liability insurance coverage, including medical malpractice liability and errors and omissions coverage, to cover all employees and shall not exclude claims resulting from physical and sexual abuse. The limits of the coverage shall be no less than \$300,000 per occurrence with a minimal annual aggregate of no less than \$1,000,000.
- 4.5.8. The Managing Entity and the Department of Children and Families shall be exempt from, and in no way liable for, any sums of money that may represent a deductible or self-insured retention under any such insurance. The payment of any deductible on any policy shall be the sole responsibility of the Contractor purchasing the insurance.
- 4.5.9. All insurance policies, at all tiers, shall be provided by insurers licensed or eligible to do and that are doing business in the State of Florida. Each insurer must have a minimum rating of "A" by A. M. Best or an equivalent rating by a similar insurance rating firm and shall name the Managing Entity and the Department as an additional insured under the policy or policies. The ME reserves the right to require additional insurance. The limits of coverage under each policy maintained by the Contractor do not limit the Contractor's liability and obligations under this contract. Upon the ME's request, the Contractor shall furnish the ME with written verification supporting the existence of such insurance coverage.
- 4.5.10. All such insurance proposed by the Contractor shall be submitted to and confirmed by the assigned Primary Point of Contact no later than execution initially and thereafter, updates shall be provided annually which reflect no lapse in insurance coverage.

4.6. Indemnification

- 4.6.1. The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend and hold harmless LSF, State of Florida and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorney's fees, arising from or relating to any alleged act or omission by the Contractor, its agents, employees, partners, or subcontractors, provided, however, that the

Contractor shall not indemnify for that portion of any loss or damages caused by the negligence act or omission of LSF.

- 4.6.2. The Contractor shall fully indemnify, defend and hold harmless LSF, the State, from any suits, actions, damages, and costs of every name and description, including attorney's fees, arising from or relating to violation of infringement of a trademark, copyright, patent, trade secret or intellectual property rights, provided, however, that the foregoing obligation shall not apply to LSF's misuse or modification of Contractor's products or LSF's operation or use of Contractor's products in a manner not contemplated by the contract or the purchase order. If any product is the subject of an infringement suit or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for LSF the right to continue using the product or modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure LSF the use, LSF shall not be liable for any royalties. The Contractor's indemnification for violation or infringement of a trademark, copyright, patent, trade secret or intellectual property rights shall encompass all such items used or accessed by the Contractor, its officers, agents or subcontractors in the performance of this agreement or delivered to LSF for the use of LSF, its employees, agents or contractors.
- 4.6.3. The Contractor shall protect, defend, and indemnify, including attorney's fees and costs, LSF for any and all claims and litigation (including litigation initiated by LSF) arising from or relating to Contractor's claim that a document contains proprietary or trade secret information that is exempt from disclosure or the scope of the Contractor's redaction.
- 4.6.4. LSF shall not be liable for any costs, expense, or compromise incurred or made by the Contractor in any legal action. The Contractor's inability to evaluate liability or its evaluation of liability shall not excuse its duty to defend and indemnify after receipt of notice. Only an adjudication or judgment after the highest appeal is exhausted finding LSF negligent shall excuse the Contractor of performance under this provision, in which case LSF shall have no obligation to reimburse the Contractor for costs of its defense. If the Contractor is an agency or subdivision of the State, its obligations in Section 4.6 to indemnify, defend and hold harmless LSF shall be to the extent permitted by section 768.28, F.S., and without waiving the limits of sovereign immunity.

4.7. Governing Law and Compliance

4.7.1. Governing Law

- 4.7.1.1. The validity, enforceability, and interpretation of this Agreement shall be determined and governed by the laws of the State of Florida, as well as applicable federal laws. The Parties agree that jurisdiction for any dispute, action, claim or alternative dispute resolution proceeding regarding this Agreement shall reside in Duval County, Florida.

4.7.2. Florida Regulatory Governance

- 4.7.2.1. This Agreement, the attachments, and the performance thereof, are subject to the requirements and regulations promulgated by and specific verbiage required by DCF.

4.7.3. Corporate Compliance

- 4.7.3.1. During the term of this Agreement, each Party shall: (i) ensure that it is duly organized, validly existing and in good standing under the laws of Florida; (ii) maintain all requisite federal, state and local authority, permits and licenses necessary or appropriate to operate and to carry out its obligations under this Agreement; (iii) monitor its

performance of administrative functions on an ongoing basis to ensure compliance with applicable DCF performance standards and guidelines; and (iv) notwithstanding any term or provision in this Agreement to the contrary, remain ultimately responsible for assuring that it is operating in accordance with all applicable federal, state and local laws, rules, regulations and ordinances.

4.7.4. General Provisions

4.7.4.1. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that each Party is subject to the Florida Public Records Act under the Florida Contract and under Chapter 119, Florida Statutes. Nonetheless, in the event that a Party becomes legally compelled to disclose any of the Confidential Proprietary Information (the "Compelled Party"), the Compelled Party will provide the other Party with prompt notice thereof so that the other Party may seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained by the other Party, the Compelled Party will furnish or cause to be furnished only that minimum portion of the Confidential Proprietary Information which the Compelled Party is legally required to furnish.

4.7.4.2. Severability

The illegality, unenforceability, or ineffectiveness of any provision of this Agreement shall not affect the legality, enforceability or effectiveness of any other provision of this Agreement. If any provision of this Agreement, or the application thereof shall, for any reason and to any extent, be deemed invalid or unenforceable, neither the remainder of this Agreement, nor the application of the provision to other persons, entities, or circumstances, nor any other instrument referred to in this Agreement shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

4.9.5 Authority to Bind

By signature below, each signatory represents and warrants that such person is duly authorized to enter into this Agreement on the respective Party's behalf and is duly authorized to bind such Party to the terms applicable to each.

4.9.6 Typewritten or Handwritten Provisions

Typewritten or handwritten provisions that are inserted in this Agreement or attached to this Agreement as addenda or riders shall not be valid unless such provisions are initialed by both signatories to this Agreement.

4.9.7 Counterparts: Facsimile Execution and Captions

This Agreement may be executed and delivered: (a) in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument; and/or (b) by facsimile, in which case the instruments so executed and delivered shall be binding and effective for all purposes; and/or (c) by email communication to the parties identified in the Notice section. The captions in this Agreement are for reference purposes only and shall not affect the meaning of terms and provisions herein.

4.9.8 Entire Agreement

This Agreement, including any documents incorporated by reference hereto, contains all the terms and conditions agreed upon by the parties regarding the subject matter of this Agreement. Any prior agreements, promises, negotiations or representations of or between the Parties, either oral or written, relating to the subject matter of this Agreement, which are not expressly set forth in this Agreement are null and void and of no further force or effect.

4.9.9 Cancellation of Agreement

This Agreement may be terminated by either party at any time, regardless of reason, with thirty (30) days written notice. No termination shall prejudice the Contractor’s rights to payments for services properly completed prior to the effective date of termination. LSF reserves the right to unilaterally cancel this Agreement immediately upon discovery of fraud or misuse of public funds.

The parties’ authorized representatives have executed this eleven-page Agreement to be effective this 1st day of October 2023.

**Flagler County Board of County Commissioners
d/b/a Flagler County Fire Rescue**

**Lutheran Services Florida, Inc. d/b/a LSF Health
Systems**

Signature Date

Signature Date

Printed Name Title

Dr. Christine Cauffield CEO

Printed Name Title

The parties agree that any future amendment(s) replacing this page will not affect the above execution.

Federal Tax ID # (or SSN): 59-6000392

Contractor FY Ending Date: 06/30

PURCHASE ORDER AGREEMENT

This Agreement is entered into between Lutheran Services Florida, Inc., d/b/a LSF Health Systems (a Florida non-profit corporation), hereinafter referred to as the "LSF" and Flagler County Board of County Commissioners d/b/a Flagler County Fire Rescue herein after referred to as the "Vendor." The Vendor and LSF may be referred to herein individually as a "party" or collectively as "the parties." LSF and the Vendor agree as follows:

Statement of Need. The Coordinated Opioid Recovery County (CORE) program aims to provide readily available treatment through 24-7 Access to Care, create warm hand offs or end-to-end coordination amongst different partners, provide competent evidence-based medicine guiding systems approach and outcome measures, and provide lifelong care with population health principles.

Effective and Ending Dates. The terms of this Agreement shall be effective January 1, 2023 and shall continue through June 30, 2023.

Services to be Provided. The Vendor will purchase medication approved by the Food and Drug Administration (FDA) to treat Opioid Use Disorder (OUD) as a medication-assisted treatment (MAT).

Section 1. Financial Consideration

1.1. Award Amount

Flagler County Board of County Commissioners d/b/a Flagler County Fire Rescue has been awarded an amount not to exceed **\$3,375.00** for costs associated with administration of the services at its agency. Funding will be provided through OCA MS925-A – ME McKinsey Settlement – SA Services – Adult. This award is subject to availability of funds from the Department of Children and Families.

1.2. Budget

- 1.2.1 The Vendor shall submit a detailed, line-item budget to LSF identifying for each line the allowable items for the program, the projected or budgeted amount for each line item and narrative supporting the reasonableness and necessity of any unusual items.
- 1.2.2 All budgets and revisions thereto are subject to approval by LSF.
- 1.2.3 The Vendor may revise a budget by submitting same to the assigned Network Manager via electronic mail for approval.
- 1.2.4 Approved budgets shall be maintained in the official agreement file.
- 1.2.5 Modifications to the approved budget may not be effective retroactively.

1.3. Payment

This award shall be paid using a cost reimbursement methodology, subject to the availability of funds. The Vendor shall comply with the terms of such methodology, including documentation and data reporting, as outlined in the body of this Agreement. A fixed rate for actual expenditures incurred may be billed to LSF pursuant to the procedures outlined in this Agreement.

- 1.3.1 The total monthly payment amount shall be the exact amount of expenses incurred and shall be included as a line item in the Vendor's Invoice with the following documentation provided as support.
 - 1.3.1.1 The Vendor shall submit a monthly Cost Reimbursement Report, using the forms designated by LSF, and receipts for purchases, which will outline expenses incurred for services in Marion County. This report shall be submitted on or before the 10th of the month following the end of each month.
 - 1.3.1.2 All costs incurred must be substantiated by receipts and any receipts not accounted for is not subject to payment to Vendor.
 - 1.3.1.3 LSF reserves the right to request substantiating documentation to support the line items submitted by the Vendor in the Cost Reimbursement Report.
 - 1.3.1.4 LSF will audit substantiating documentation outlined on the Cost Reimbursement Report as part of its monitoring and oversight process.
- 1.3.2 Reimbursement shall be made for actual, allowable expenditures within the limits of the latest version of the approved budget at the time that the invoice is processed.

Section 2. Program Administration

2.1. Performance Goals

- 2.1.1 The goal of this program is to facilitate coordinated response to opioid use disorder including the access to FDA approved medication at the earliest possible point of intervention and to increase the number of individuals offered MAT by Emergency Medical Technicians (EMT) responders. Year one will be a baseline year.

2.1.1.1 Number of individuals offered MAT services: **75**

- 2.1.2 Timely submission of the Monthly Activity Report as detailed in Paragraph 2.2.1 in this Agreement.

2.2. Required Reporting

- 2.2.1 **Monthly Activity Report:** The Vendor will submit a monthly activity report reflecting the number of medication doses administered, by the 10th of each month.
- 2.2.2 Ad Hoc and additional reporting may be required as determined necessary by LSF Health Systems or the Department of Children and Families.

Table 1. Reporting Schedule		
Report Title	Report Due Date(s)	Report Recipient(s)
Monthly Activity Report:	10 th of each month following the month of service provision	LSF Health Systems Network Manager

Section 3. Documentation

3.1. Cost

- 3.1.1 Professional Services Rendered: Invoices for professional services must include a general statement of the services provided, the time period covered by the invoice, the hourly rate, the number of hours worked and the total payment required. Evidence of payment of the invoice must also be included.
- 3.1.2 Postage and Reproduction Expenses: Outside vendors purchases must include invoices with evidence of payments made or receipts with itemization. In-house postage and reproduction must be supported by usage logs or similar reports.
- 3.1.3 Travel: Travel reimbursements shall be made in accordance with the Department's CFOP 40-1, § 287.058(1)(b), Fla. Stat. and §112.061, Fla. Stat. Receipts for direct expenses (e.g., airfare, car rental, parking, tolls) shall be provided in support of such expenses. For mileage reimbursements, submissions shall include date(s) of travel, amount of mileage (support of mileage may include either map routes or odometer readings), purpose of travel, origin and destination.
- 3.1.4 General Expenses not otherwise specified: Receipts or invoices with evidence of payment should be provided.

3.2. Services Rendered

- 3.2.1. Appropriate documentation shall be maintained in accordance with the applicable parameters established by statute, regulation and code. Audit documentation shall be in accordance with 65E-14.021, F.A.C. The Vendor shall make such information available to LSF upon request and during monitoring of the program administration.

Section 4. Miscellaneous

- 4.1. This Agreement is pursuant to the authority under § 287.058, Fla. Stat. Under this Agreement, the Vendor shall implement the services described herein.
- 4.2. Renewal of the provisions of this Agreement and the program it governs are contingent on performance under the terms and subject to availability of funding from the Department. Renewals may not exceed three years or the term of the original Agreement, whichever is longer.
- 4.3. The provisions of this Agreement are subject to revision and amendment by LSF.

Flagler County Board of County Commissioners
d/b/a Flagler County Fire Rescue

PO016

- 4.4. Any ambiguity in this Agreement shall be interpreted to permit compliance with laws, regulations and codes in effect within the State of Florida.
- 4.5. The State of Florida - PUR 1000 - General Contract Conditions document is incorporated into this Agreement by reference.

The parties' authorized representatives have executed this four-page Agreement to be effective this 1st day of January 2023.

**Flagler County Board of County Commissioners
d/b/a Flagler County Fire Rescue**

**Lutheran Services Florida, Inc. d/b/a LSF Health
Systems**

Heidi Petito Digitally signed by Heidi Petito
Date: 2023.02.13 14:12:01 -05'00'

Signature Date

DocuSigned by:
Dr. Christine Cauffield 2/28/2023

Signature Date

Heidi Petito County Administrator
Printed Name Title

Dr. Christine Cauffield CEO
Printed Name Title

M E M O R A N D U M

DATE: October 16, 2023

TO: Board of County Commissioners

THRU: Heidi Petito, County Administrator
Jorge Salinas, Deputy County Administrator
Al Hadeed, County Attorney
Sean Moylan, Deputy County Attorney
Chuck Merenda, Assistant Growth Management Director

FROM: Adam Mengel, Growth Management Director

RE: AGENT'S REQUEST TO INDEFINITELY DELAY PUBLIC HEARINGS
APPLICATION #S: 3348, 3349, 3350, AND 3351

Following the Planning and Development Board's consideration of the above-captioned applications at its September 12, 2023 regular meeting, Vincent Sullivan, the agent for the owner, Star Car Wash, LLC, requested that the applications not be placed on the Board of County Commissioners' agenda at this time. However, as part of the public notice for the Planning and Development Board meeting, staff completed notice for the Board's October 16, 2023 regular meeting. Mr. Sullivan requested the delay "to review a few things before we go to the board." (see attached email string). After being advised by staff of the completed public notice, Mr. Sullivan responded that: "We need additional time to address the comp plan issue."

Each of the four applications have been provided as complete items for the Board's consideration, and each of the four application requests have been appropriately noticed for public hearing at today's Board meeting. Land Development Code (LDC) Section 3.07.05.F does not allow rezoning (referred to in the LDC as "land use amendment") applications to be withdrawn after the Planning and Development Board has taken action on them:

"Withdrawal of application. Any petition for a land use amendment [rezoning] may be withdrawn prior to action thereon by the planning board or commission at the discretion of the applicant upon written notice to the planning and zoning director." (LDC Sec. 3.07.05.F.).

As it also relates to the frequency of rezoning requests, the next section in the LDC (LDC Sec. 3.07.05.G.) states:

“Frequency of application. A property owner shall not initiate action for a land use amendment [rezoning] affecting the same parcel of land more often than once every six (6) months.” (LDC Sec. 3.07.05.G.).

Staff therefore recommends the Board take some action on each of the applications, and is obligated – since the rezoning requests (Application #3349 and #3351) were not withdrawn prior to the September 12, 2023 Planning and Development Board meeting – to take an action to approve, deny, or continue each of the rezoning requests. The Board may opt to open and continue indefinitely (not to a time and date certain) each of the public hearings, requiring that public notice be provided for any future public hearings. The Board could also consider each of the applications and approve or deny them. Ultimately since public notice has been provided and the Planning Board has considered each of these requests (and provided its recommendation on each), the next step in the process is Board review and decision.

Regardless of which track the Board takes regarding consideration of the applications, the Board should receive public comments related to each of these requests.

Please contact me with any questions.

Adam Mengel, AICP, LEED AP BD+C

From: Vincent Sullivan <vsullivan@legalteamforlife.com>
Sent: Monday, September 18, 2023 10:37 AM
To: Adam Mengel, AICP, LEED AP BD+C
Cc: Michael Chiumento III; Caroline McNeil; Gina Lemon; Sean S. Moylan
Subject: RE: Applications 3348, 3349, 3350, and 3351

Good morning Adam,

Short answer is I don't think that gives us enough time to square the issue away. We will need additional time to address the comp plan issue.

Vincent L. Sullivan

Partner



Email: VSullivan@LegalTeamForLife.com

Website: LegalTeamForLife.com

Facebook: [/legalteamforlife](https://www.facebook.com/legalteamforlife)

145 City Place, Suite 301, Palm Coast, FL 32164

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T: 386.445-8900

57 W. Granada Blvd., Ormond Beach, FL 32174

T: 386.238.9288



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From: Adam Mengel, AICP, LEED AP BD+C <amengel@flaglercounty.gov>
Sent: Monday, September 18, 2023 9:31 AM
To: Vincent Sullivan <vsullivan@legalteamforlife.com>
Cc: Michael Chiumento III <michael3@legalteamforlife.com>; Caroline McNeil <cmcneil@legalteamforlife.com>; Gina Lemon <glemon@flaglercounty.gov>; Sean S. Moylan <smoylan@flaglercounty.gov>
Subject: RE: Applications 3348, 3349, 3350, and 3351

Hi Vincent:

We have completed public notice for these applications for the October 16, 2023 regular meeting of the Board of County Commissioners. The deadline for staff to complete these agenda items will be Monday, October 2, 2023. Would this give you enough time to work things out? I'm concerned this will be confusing to the public since notice has been completed.

Please see what you think.

Thanks,

Adam

Adam Mengel, AICP, LEED AP BD+C
Growth Management Director

E: amengel@flaglercounty.gov | V: 386-313-4065 | W: www.flaglercounty.gov



Flagler County Board of County Commissioners
1769 E. Moody Blvd., Bldg 2
Bunnell, FL 32110



The mission of Flagler County is to provide high-quality services through a responsive workforce committed to excellence, integrity, in collaboration with the cities and to act as a fiscally responsible steward.

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From: Vincent Sullivan <vsullivan@legalteamforlife.com>

Sent: Wednesday, September 13, 2023 3:39 PM

To: Adam Mengel, AICP, LEED AP BD+C <amengel@flaglercounty.gov>; Gina Lemon <glemon@flaglercounty.gov>

Cc: Michael Chimento III <michael3@legalteamforlife.com>; Caroline McNeil <cmcneil@legalteamforlife.com>

Subject: Applications 3348, 3349, 3350, and 3351

Good afternoon Adam,

After discussing these applications today, we are asking that they not be placed on the BOCC agenda at this time. We would like to review a few things internally before we go before the board.

Please let us know if that is ok,

Vincent

Vincent L. Sullivan

Partner



CHIUMENTO LAW
LEGAL TEAM FOR LIFE

Email: VSullivan@LegalTeamForLife.com

Website: LegalTeamForLife.com

Facebook: [/legalteamforlife](https://www.facebook.com/legalteamforlife)

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M E M O R A N D U M

DATE: October 16, 2023

TO: Board of County Commissioners

THRU: Heidi Petito, County Administrator
Jorge Salinas, Deputy County Administrator
Al Hadeed, County Attorney
Sean Moylan, Deputy County Attorney
Chuck Merenda, Assistant Growth Management Director

FROM: Adam Mengel, Growth Management Director

RE: CITY OF ORMOND BEACH NOTICE OF NONCOMPLIANCE
FOR HUNTER'S RIDGE DRI

On September 18, 2023, the City of Ormond Beach issued a Notice of Noncompliance for the Hunter's Ridge Development of Regional Impact (DRI). On its face, the City's Notice serves to halt development within the Flagler County portion of Hunter's Ridge since Flagler's development is dependent upon the provision of water and sewer by the City through Interlocal Agreement.

While County staff is reviewing the City's Notice, development project reviews – like the Preliminary Plat for Woodside at Ormond Station requested through Application #3387 – continue to be submitted to the County. County staff acknowledges receipt of the City's Notice, but also desires to honor the property rights of the owners within Hunter's Ridge.

County staff will separately address the City's Notice through a subsequent agenda item for the Board's review should Board action be needed. In the meantime, County staff will continue to process development project reviews.

Please contact me with any questions.



CITY OF ORMOND BEACH

Planning • 22 S. Beach Street • Ormond Beach • Florida • 32174 • (386) 676-3311 • Fax (386) 676-3361

September 18, 2023

U.S. Capital Alliance, LLC
111 Coleman Boulevard, Suite 400
Mount Pleasant, SC 29464

U.S. Capital Alliance, LLC
880 Airport Road, Suite 113
Ormond Beach, FL 32174

Kim Booker, Registered Agent for U.S. Capital Alliance, LLC
Booker & Associates, P.A.
1019 Town Center Drive, Suite 201
Orange City, FL 32763

Certified Copy, Return Receipt Requested

Re: Notice of Noncompliance; Ormond Beach Hunter's Ridge DRI

Please find attached a Notice of Noncompliance regarding the failure by U.S. Capital Alliance, LLC ("developer") to correct violations of the Ormond Beach Hunter's Ridge Development of Regional Impact. Notwithstanding numerous efforts by city staff over the past three years, the developer has neither corrected the violations nor presented a good faith plan to come into compliance with the Ormond Beach Hunter's Ridge DRI.

Please be advised that the issue of the developer's noncompliance will be heard before the Ormond Beach city commission at a public meeting to be held at 7:00 p.m., on October 4, 2023.

Sincerely,

Steven Spraker
Planning Director

Enclosure: Notice of Noncompliance

C: Michael Chimento, Esquire (Certified Copy, Return Receipt Requested)
Kim Buck, P.E. (Certified Copy, Return Receipt Requested)
Joyce Shanahan, Ormond Beach City Manager
Randy Hayes, Ormond Beach City Attorney
Shawn Finley, Ormond Beach Public Works Director

NOTICE OF NONCOMPLIANCE PURSUANT TO FLORIDA STATUTE 380.06

Jurisdiction and authority

The State of Florida Land and Water Adjudicatory Commission approved an Amended Final Order authorizing a development of regional impact (“DRI”) for lands in the City of Ormond Beach to be developed as Hunter’s Ridge subdivision (“Ormond Beach Hunter’s Ridge DRI”). The Amended Final Order is recorded at Book 3696, Pages 1640 et. seq. of the Volusia County Public Records and includes Special Conditions (at Page 1673), a Joint Stipulation (at Page 1735), and a Development Phasing Map (at Page 1743). The Development Phasing Map is attached as Exhibit 1. The Amended Final Order determined the city of Ormond Beach to be the local government having jurisdiction over Hunter’s Ridge DRI lands within the City and determined that when developed subject to the conditions imposed by the Amended Final Order, the Hunter’s Ridge development would be consistent with the Ormond Beach Comprehensive Land Use Plan and the city’s land development regulations (Book 3696, Pages 1655 and 1659). The Amended Final Order requires the Hunter's Ridge development to be consistent with the Ormond Beach Comprehensive Land Use Plan and the city's land development regulations. The Amended Final Order constitutes a land development regulation applicable to the Ormond Beach Hunter’s Ridge DRI land and the conditions therein are covenants that run, in perpetuity, with the land (Book 3696, Pages 1640, 1668). The Hunter’s Ridge development must conform with the Amended Final Order that was approved by the State of Florida Land and Water Adjudicatory Commission.

Description of violations by Developer

1. Failure to convey Parcel B of the conservation lands to the City, by fee simple Warranty Deed. The conservation lands are shown on the development phasing map as Parcel B.

2. Conveying a sixty-foot (60') wide public road easement to Flagler County through conservation lands located within the city, that are required to be conveyed to the City in fee simple.
3. Authorizing Flagler County and the Developer to develop and construct a sixty-foot wide public road through conservation lands located in the City of Ormond Beach.
4. Failing to prepare a hydroperiod restoration plan for Parcel B of the conservation lands that is acceptable to, and approved by, the City, SJRWMD, and Flagler County.
5. Failing to complete hydroperiod restoration activities in accordance with a hydroperiod restoration plan for Parcel B of the conservation lands that is acceptable to, and has been approved by, the City, SJRWMD, and Flagler County.

Conveyance of conservation lands

The Amended Final Order Special Condition 3.5 and the Joint Stipulation require the developer to convey conservation lands, that are located within the City, to Ormond Beach and the St. Johns River Water Management District (SJRWMD) (Book 3696, Pages 1681, 1736). The conservation lands are required to be conveyed by fee simple warranty deed and include land commonly known as the Forty Grade. The conservation lands are shown on the Development Phasing Map, attached as Exhibit 1, as Parcel A and Parcel B. The conservation lands have been incorporated in, and are subject to, the Ormond Beach Comprehensive Land Use Plan and have been given a land use designation of open space/conservation consistent with the Amended Final Order that prohibits development, including the development of roads. The City's Comprehensive Land Use Map showing Parcel B is attached as Exhibit 2. The Joint Stipulation and Special Condition 3.5 of the Ormond Beach DRI, as well as the City's Comprehensive Land Use Plan,

remove from development, the conservation lands that are to be conveyed to the City and SJRWMD (Book 3696, Pages 1681, 1736). These publicly recorded covenants prohibit the developer from conveying any interest in the conservation lands to any other person or entity, and prohibit the developer from engaging in or authorizing uses of the conservation lands by others that are prohibited by the Amended Final Order, and the City's Comprehensive Land Use Plan and land development regulations. Although the City, SJRWMD, and the developer have agreed to the form of a deed for the conveyance of the conservation lands, the Developer has failed to convey Parcel B of the conservation lands to the City of Ormond Beach in fee simple.

The Developer has conveyed Parcel A of the conservation lands to Ormond Beach as required by the Amended Final Order of the Florida Land and Water Adjudicatory Commission, but has failed to substantially comply with the Ormond Beach DRI by failing to convey Parcel B. The Developer's obligation to convey Parcel B of the conservation lands to the City, in fee simple, is absolute and without condition. The city manager, city attorney and city staff have met with the Developer and its representatives seeking compliance, but to no avail. The developer has not presented to the City a good faith effort or plan to comply with the Amended Final Order for the Ormond Beach DRI.

In violation of the State of Florida Land and Water Adjudicatory Commission's Amended Final Order, the developer has conveyed to Flagler County a sixty-foot (60') wide public road easement in Parcel B. The land is located exclusively within the City and outside the legislative jurisdiction of Flagler County. A copy of the public road easement given to Flagler County that is located within Volusia County and the City of Ormond Beach is attached as Exhibit 3. The stated purpose of the easement authorizes the developer and Flagler County to develop, construct,

maintain, repair and use a sixty-foot (60') wide public road from State Road 40 (Granada Boulevard) in Ormond Beach northward through the conservation lands and to connect to Strickland/Durrance Lanes in Flagler County. The conveyance of the sixty-foot (60') wide public road easement to Flagler County purports to change the developer's obligation under the Ormond Beach DRI in violation of the Amended Final Order, the publicly recorded covenants, the City's Comprehensive Land Use Plan and land development regulations, and Chapter 380, Florida Statutes. The effect of the developer's conveyance of the sixty-foot (60') wide public road easement to Flagler County constitutes a substantial violation of, and a deviation from, the Amended Final Order that would result in additional, and substantial regional, impacts within the City of Ormond Beach and Volusia County in violation of the Amended Final Order, the City's Comprehensive Land Use Plan and land development regulations, and Chapter 380, Florida Statutes (Book 3696, Page 1668).

The unlawful conveyance by the developer of the public road easement to Flagler County within the conservation area, and the stated uses of the public road easement, conflict with the Ormond Beach Hunter's Ridge DRI, the Ormond Beach Comprehensive Land Use Plan, and Ormond Beach's land development regulations. In addition, the Forty Grade public road easement prevents the developer from conveying to Ormond Beach and SJRWMD fee simple ownership of the conservation lands as required by the Ormond Beach DRI.

Parcel B is identified as a conservation area in the Ormond Beach Comprehensive Land Use Plan and the use of conservation land for a road is strictly prohibited. Section 163.3194, Florida Statutes, prohibits development that is not in compliance with the Comprehensive Land Use Plan.

Hydroperiod Restoration Plan and completion of restoration work

Special Condition 3.5 and the Joint Stipulation of the Florida Land and Water Adjudicatory Commission's Amended Final Order require the conservation lands to be used and managed exclusively for the maintenance, preservation, and restoration of native upland and wetland ecosystems that are historically existent on the conservation lands and used for compatible environmental purposes. Any development activities other than limited excavation and filling necessary to restore the natural hydroperiod of the area and limited construction of environmental educational facilities and nature trails are strictly prohibited (Book 3696, Page 1681, 1736).

Special Condition 3.5 and the Joint Stipulation of the Florida Land and Water Adjudicatory Commission's Amended Final Order require the Developer of the Hunter's Ridge DRI to prepare a hydroperiod restoration plan that is acceptable to the SJRWMD, the City, and Flagler County for the hydroperiod restoration of the conservation lands, and to complete the hydroperiod restoration work in accordance with the approved plan (Book 3696, Pages 1683, 1738). Specifically, the hydroperiod restoration plan must: (a) provide for the plugging, or installation of water control structures in the Hull Cypress Swamp ditch to restore the hydroperiod of the Hull Cypress Swamp; (b) provide for gaps in the fill berm along the Hull Cypress Swamp ditch to reflood the wetland strand that exists parallel to the ditch, and divert flow of the ditch through the wetland area in the strand adjacent to the ditch; and (c) plug, or install water control structures in all other manmade canals or ditches on the property as may be necessary to restore the historical hydroperiod (Book 3696, Pages 1683, 1738).

The Developer has failed to provide a hydroperiod restoration plan for Parcel B of the conservation area that has been accepted, and approved, by the SJRWMD, the City, and Flagler

County as required by the Amended Final Order. The Amended Final Order provides that a delay in the completion of the hydroperiod restoration work does not relieve the developer of the obligation to complete the restoration work that is required by the Amended Final Order (Book 3696, Pages 1684, 1738 - 1739).

Required corrective action

All development, including developments of regional impact, must be consistent with the comprehensive land use plans and land development regulations of the local government that has jurisdiction over and approves the development, as provided in Chapters 163 and 380, Florida Statutes. The Hunter's Ridge development must comply with the comprehensive land use plans, land development regulations, and DRI orders of the respective county and city having jurisdiction over such lands. A local government must enforce DRI orders to ensure that the development is consistent with their respective comprehensive land use plans and land development regulations, and is prohibited by section 380.115, Florida Statutes, from issuing permits or approvals or providing any extension of services if a developer fails to act in substantial compliance with the development order. The City is required by law to enforce the conditions of the Florida Land and Water Adjudicatory Commission's Amended Final Order for the Ormond Beach Hunter's Ridge DRI. The Developer's good faith compliance with the Amended Final Order is required. The Developer shall come into compliance with the Amended Final Development Order by:

1. Within sixty (60) calendar days from the date of the determination of non-compliance by the Ormond Beach City Commission, causing Flagler County to release any and all interest it claims to have in and to the Easement, including the unencumbered reconveyance by Flagler County of the Forty Grade easement to the Developer.

2. Release/subordinate liens and encumbrances.
3. Prepare a hydroperiod restoration plan for Parcel B in the conservation area that is acceptable to, and approved by SJRWMD and the City.
4. Complete the hydroperiod restoration work in accordance with an approved hydroperiod restoration plan as soon as practicable.
5. Convey to the City and SJRWMD, in fee simple or an easement to SJRWMD if it prefers, Parcel B of the conservation lands within 60 days.











The City is required by section 380.115, Florida Statutes to enforce the terms and conditions of the Florida Land and Water Adjudicatory Commission's Amended Final Order, including the City's Comprehensive Land Use Plan and development regulations. The City is prohibited from issuing any permits or approvals or providing any extensions of service if the Developer fails to act in substantial compliance with the Amended Final Order.

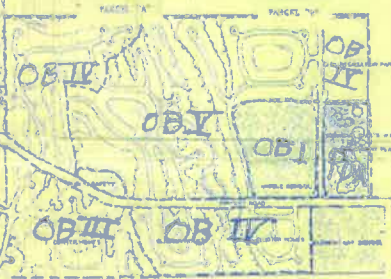
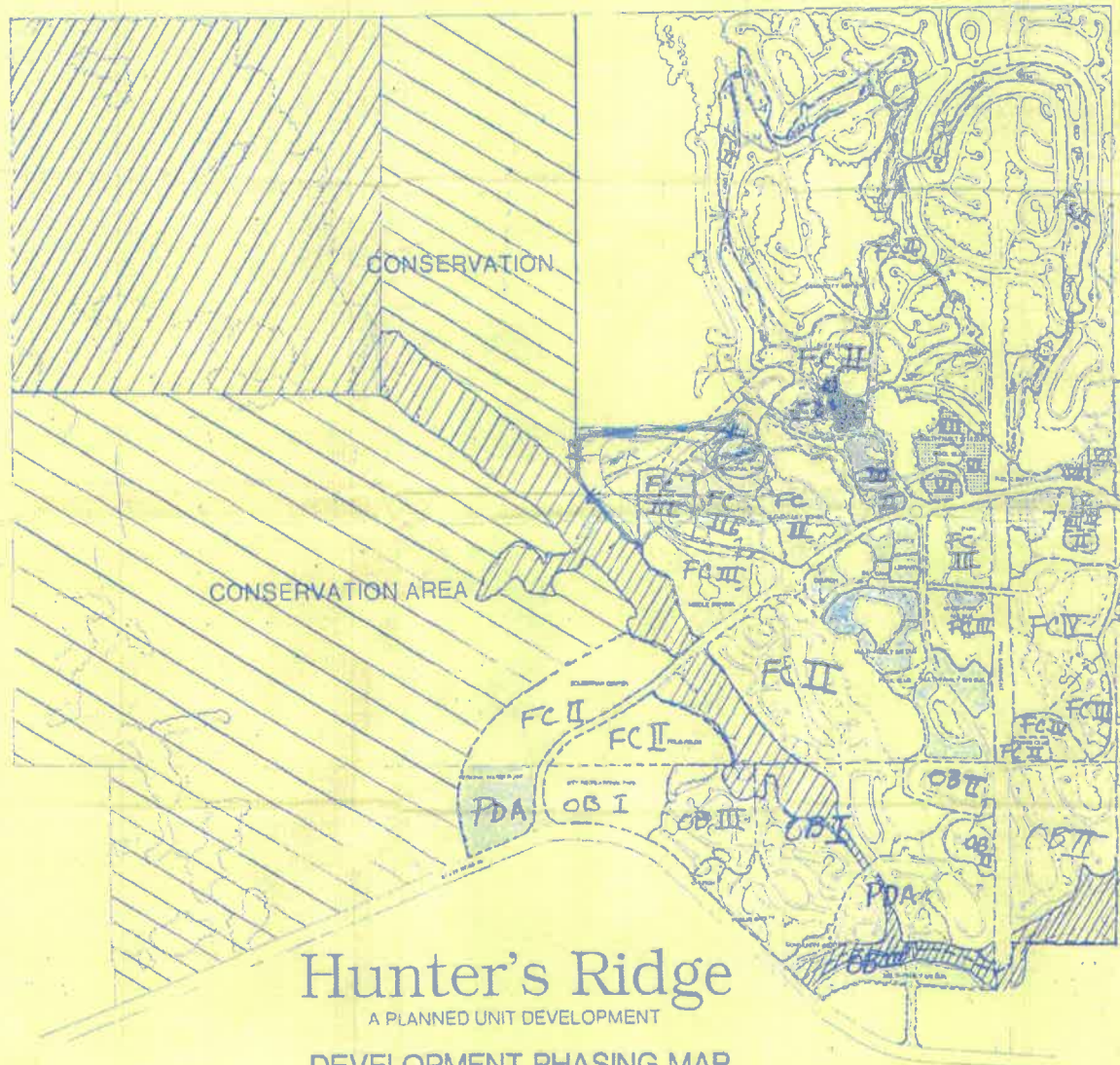
EXHIBIT 1

EXHIBIT "A"

DATE: 10/16/23
 BY: [Signature]

LEGEND

-  VILLAGE RETAIL OFFICE
-  VILLAGE OFFICE
-  PARK OF COMMERCE (LT. INDUST.)
-  RECREATIONAL FACILITIES
-  PARKS & SCHOOLS
-  VILLAGE SERVICES
-  WETLAND CONSERVATION
-  SINGLE FAMILY RESIDENTIAL (7,500 S.F. - 1 ACRE)
-  MULTI-FAMILY RESIDENTIAL (5 - 8 UNITS/ACRE)
-  MULTI-FAMILY RESIDENTIAL (9 - 18 UNITS/ACRE)

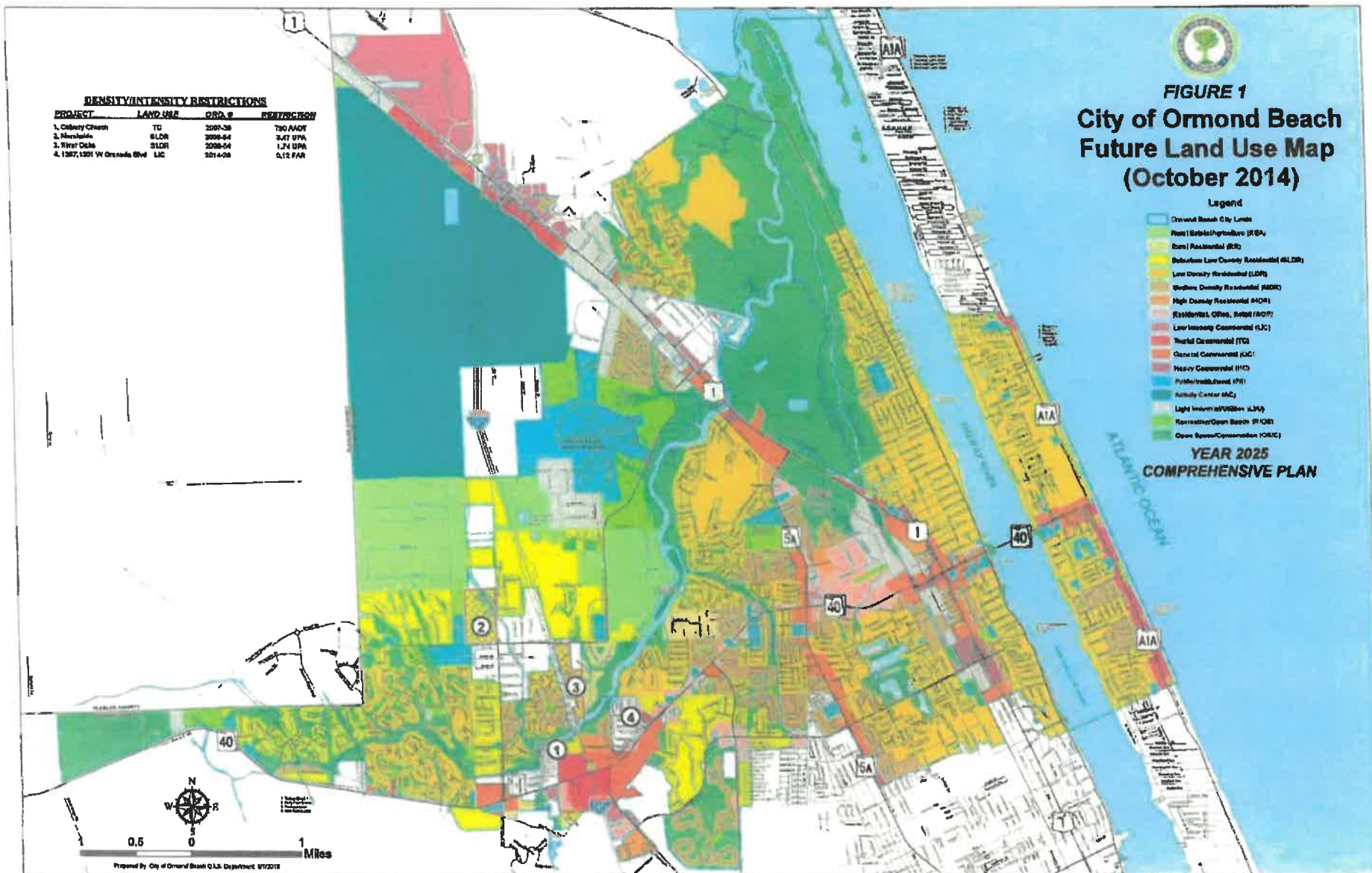


NOTES TO BE OBSERVED ON EXHIBIT "A"

1. Basis of EXHIBIT "A" is one acre to north 880 feet.
2. Eastern Boundary of Parcel "B" Conservation Area in Sections 18 and 21 is located 2450 feet west of the eastern line of sections 18 and 21.
3. Parcel "A" includes all of Section 17, and all of Hill Cypress Swamp. Wetland/Stream along through sections 18, 21, 22, and 27, and the flood-latt of the lateral Tomoka River in Section 27. The limits of the coverage in the area which are within and adjacent to the area to be developed are controlled by conditions nos. 8 and 9 of the East Central Florida and Northwest Florida Regional Planning Council.
4. Parcel "B" of the Conservation Area to be developed includes 4000 feet of frontage on State Road 67.

Hunter's Ridge
 A PLANNED UNIT DEVELOPMENT
 DEVELOPMENT PHASING MAP

EXHIBIT 2





LOCATION MAP

Hunters Ridge parcel
Open Space/Conservation



EXHIBIT 3

40 GRADE
GRANT OF EASEMENT

THIS INDENTURE, made this 24 day of April, 2017, by and between U.S. Capital Alliance, LLC, a Florida limited liability company, whose address is 880 Airport Road, Suite 113, Ormond Beach, Florida 32174 (hereinafter referred to as "Grantor") and FLAGLER COUNTY, FLORIDA a political subdivision of the State of Florida (hereinafter referred to as "Grantee").

WHEREAS, the Grantor is seized in fee simple and in possession of lands across the Westerly 60 feet of Sections 16 and 21, Township 14 South, Range 31 East, Flagler County, Florida, and the Westerly 60 feet of Section 28, Township 14 South, Range 31 East, Volusia County, Florida lying North of State Road 40 and that particular portion of it described below; and

WHEREAS, the Grantee is seized in fee simple of a parcel of land contiguous to the land of Grantor; and

WHEREAS, Grantee desires to acquire a certain easement ("Easement") over a portion of Grantor's property, which is also subject to other third party easements; and

WHEREAS, Grantor has agreed for the sum of \$10.00 and other good and valuable consideration to convey to Grantee and all other persons claiming by, through or under Grantee, or any of them, their predecessors in title or their heirs, assigns, or legal representatives, an easement or right of way over the land described below, for the purposes and in the manner expressed below; and

WHEREAS, Grantor is obligated to convey to Grantee said Easement pursuant to the Hunter's Ridge DRI Development Order as approved by Grantee on November 15, 2010 (the "DRI Development Order").

NOW, THEREFORE, the Grantor grants unto the Grantee, its heirs and assigns, a perpetual 60 foot wide easement over the existing roadway commonly known as "40 Grade", from State Road 40, northward to its terminus at Strickland Road/Durrance Lane, with full and free right and liberty for them and their tenants, servants, visitors and licensees, at all times hereafter, for all purposes connected with the use and enjoyment of the land of the Grantee for whatever purpose the land from time to time lawfully may be used and enjoyed, to pass and repass along the provided roadway or roadways, to improve and maintain the roadway and install associated improvements, and to install utilities lines on or under the Easement.

This Grant of Easement shall be subject to the following conditions:

1. The parties acknowledge that the current location of 40 Grade meanders within the area more particularly described as: the Westerly 60 feet of Section 28, Township 14 South, Range 31 East, Volusia County, Florida, and the Westerly 60 feet of Sections 16 and 21, Township 14 South, Range 31 East, Flagler County, Florida, all lying North of State Road 40. The parties agree the existing location of the 40 Grade roadway may be moved,

altered, shifted or otherwise modified by Grantee from time to time, within the Easement, in the sole discretion of Grantee, providing that the width of the 40 Grade roadway easement area does not exceed 60 feet. Grantee may cause a survey of 40 Grade to be performed and a legal description to be prepared, and the parties agree that upon completion, Grantee may record an amendment to this Agreement in order to more particularly describe the 40 Grade Easement.

2. Grantee shall maintain the Easement together with any improvements constructed or installed thereon by Grantee or associated with Grantee's use of the Easement. The operation and maintenance of such improvements and of the Easement shall be at Grantee's sole cost and expense.
3. Grantor hereby reserves the right to make any modifications to the roadway located within the Easement, at its sole cost and expense, pursuant to the terms and conditions of the Conceptual Permit issued by the St. Johns River Water Management District (the "SJRWMD") and consistent with conservation easements between Grantor and the SJRWMD; provided, however, that such modifications do not interfere with Grantee's rights provided for herein.
4. Through the date of conveyance, Grantor shall pay any and all taxes, charges or use fee(s) levied by any governmental agency against Grantor's interest in the Easement, or against any of Grantor's real property subject to the Easement.
5. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligation herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect except in a subsequent modification in writing, signed by the parties hereto.
6. This instrument shall be binding and inure to the benefit of the respective successors and assigns of the parties hereto and the benefits and burdens herein shall run with the land.

TO HAVE AND TO HOLD the Easement or right of way hereby granted unto Grantee, its heirs and assigns, as appurtenant to the land of the Grantee.

IT IS FURTHER UNDERSTOOD that the Grantor, its heirs, assigns and tenants in no way will be bound to improve, maintain or construct a roadway, or to keep it in repair, nor does the Grantor, its heirs and assigns, assume any liability or responsibility to Grantee, its heirs and assigns, or any person using the land by invitation, express or implied, or by reason of any business conducted with Grantee, its heirs or assigns, or otherwise.

In Witness Whereof, Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of:

U.S. CAPITAL ALLIANCE, LLC, a Florida limited liability company

Witnesses:

Witness signatures and names: Iraj Saidnia, Anthony Cupo

By: Allan Feker, Manager

STATE OF FLORIDA COUNTY OF _____


The foregoing instrument was sworn to and subscribed before me this ___ day of _____, 2017, by ALLAN FEKER, who is personally known to me or who has produced _____ as identification.

Notary Public, State of Florida Commission No. My Commission Expires:

SEE ATTACHED CERTIFICATE DATE 4-24-17 NOTARY INITIALS BC

In Witness Whereof, Grantee has hereunto set Grantee's hand and seal the day and year first above written.

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS



Nate McLaughlin, Chairman

ATTEST:

Execution of this Agreement was authorized by the Board of County Commissioners at its public meeting held on December 5, 2016.


Tom Bexley, Comptroller and Clerk to the Board

APPROVED AS TO FORM:


Special Counsel to Flagler County

Unofficial Document

CALIFORNIA JURAT CERTIFICATE

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

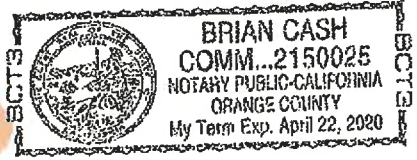
State of California
County of Orange

Subscribed and sworn to (or affirmed) before me on this

24 day of April, 2017

by Allan Feker,
proved to me on the basis of satisfactory evidence to be the person(s) who
appeared before me.

Signature Brian Cash



ADDITIONAL INFORMATION (OPTIONAL)

DESCRIPTION OF THE ATTACHED DOCUMENT

40 Grade Grant of
(Title or description of attached document)

Easement
(Title or description of attached document continued)

Number of pages 4 Document Date 4-24-17

(Additional information)

NOTARY PUBLIC CONTACT INFORMATION

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