



Interoffice Memorandum

AGENDA ITEM

November 25, 2019

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

FROM: Kurt N. Petersen, Manager, Office of Management & Budget *K.N.P.*

SUBJECT: Consent Agenda Item for December 17, 2019
Amended and Restated Driver Safety and Education Agreement

On April 26, 2011, the Board approved an interlocal agreement with The Florida Virtual School (FLVS) to utilize proceeds under the Dori Slosberg Driver Education Safety Act, Florida Statute 318.1215. Under the terms of the Act, the Board authorized a \$3 fine on each civil traffic penalty (excluding parking fines) for the purpose of providing enhancements to school driver education safety programs for students residing within Orange County.

Orange County and FLVS have prepared an Amended and Restated Agreement, which has been updated to include changes in insurance, public records, and other procedural language, which do not impact the driver safety program.

The Amended and Restated Agreement has been reviewed and approved by the County Attorney's Office.

ACTION REQUESTED: Approval and execution of Amended and Restated Interlocal Agreement between Orange County, Florida and The Florida Virtual School providing for disbursement of proceeds of the Dori Slosberg Driver Education Safety Act.

KP/JW/vh

Attachment

c: Randy Singh, Deputy County Administrator

AMENDED AND RESTATED INTERLOCAL AGREEMENT

Between

ORANGE COUNTY, FLORIDA

And

THE FLORIDA VIRTUAL SCHOOL

providing for disbursement of proceeds of

THE DORI SLOSBERG DRIVER EDUCATION SAFETY ACT

THIS AMENDED AND RESTATED INTERLOCAL AGREEMENT (“Agreement”) is entered into by and between Orange County, a charter county and political subdivision of the State of Florida, hereinafter (“County”), and Florida Virtual School, a public agency and corporate body politic of the State of Florida (“FLVS”). County and FLVS may each be individually identified as a “party” or collectively as “parties.”

RECITALS

WHEREAS, on or about April 26, 2011, the County and FLVS entered into that certain Interlocal Agreement providing for the disbursement of proceeds of the Driver Education Safety Act (“Original Agreement”) pursuant to which the County agreed to disburse those funds collected in accordance with Section 318.1215, Florida Statutes (the “Dori Slosberg Driver Education Safety Act” or “Act”) for the funding of traffic education programs in public and nonpublic schools in Orange County; and

WHEREAS, the County and FLVS now desire to amend the Original Agreement, as set forth herein, to accurately reflect the terms and conditions of their mutual agreement regarding the disbursement and use of funds collected under the Act (collectively referred to as “Funds”).

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein and for other good and valuable consideration, each to the other, receipt of which is hereby acknowledged by both parties, the parties hereby agree as follows:

Section 1. Preamble Incorporated. The foregoing recitals are true and correct and are incorporated herein by reference as a material part of this Agreement.

Section 2. Authority. This Agreement is entered into by the parties pursuant to the Florida Interlocal Cooperation Act of 1969, as set forth in Section 163.01, Florida Statutes.

Section 3. County Obligations. The Orange County Board of County Commissioners (“Board”) shall continue to collect from the Clerk of the Courts (“Clerk”) the additional \$3.00 fee for each civil traffic penalty, excluding parking violations, in accordance with the Act and Section 14.10 of the Orange County Code. All such Funds shall be deposited into a separate account and shall be used solely to fund driver’s education safety programs in accordance with the terms of this Agreement.

Section 4. Florida Virtual School Obligations. FLVS shall use the Funds provided for under this Agreement for the sole purpose of paying direct educational expenses for eligible students in its driver education / traffic safety program, as more specifically described in Exhibit “A” (“Program”), attached hereto and incorporated herein by reference. FLVS shall ensure that all Program services provided under this Agreement are consistent with the Act and applicable state law. FLVS is strictly prohibited from using the Funds for Program administrative costs or to replace or supplant any existing driver education program funding or any future driver education program funding that would be otherwise anticipated. Notwithstanding the foregoing, the parties acknowledge and agree that FLVS will enter into a separate contract with a state certified driver training company (“Subcontractor”) to provide the behind-the-wheel training portion of the driver education course. FLVS shall be responsible for providing payment to the Subcontractor using a portion of the Funds provided under this Agreement. FLVS Subcontractor rates for the behind-the-wheel portion of the driver education course shall be approved by the County. The expenditure of any other funds beyond the behind-the-wheel training that are compliant with Act shall be contingent upon prior written approval of the County’s Office of Management and Budget. FLVS shall require compliance by the Subcontractor with the terms and conditions set forth in this Agreement, the Orange County Code, the Act, and all applicable Florida Statutes. FLVS shall make available a copy of applicable subcontracts to the County, upon reasonable request.

Section 5. Student Eligibility. The funds paid to the FLVS shall be used exclusively to provide Program services for driver education students who are enrolled in the Orange County Public School System or an accredited non-public school located within Orange County and who successfully complete the FLVS Driver Education/Traffic Safety Classroom course, which shall include a behind-the-wheel training program, as more specifically described in Exhibit “A.” Funds may also be used for duly registered home schooled students within Orange County who have successfully completed the FLVS classroom instruction course, provided, however that it does not conflict with Section 318.1215, Florida Statutes. No student who successfully completes the FLVS classroom instruction course is required to enroll in the behind-the-wheel training program contemplated under this Agreement.

Section 6. Term and Termination. The term of this Agreement shall be for a period of one year with automatic one-year renewals thereafter unless otherwise terminated by either party. This Agreement may be terminated by either party, with or without cause, upon no less than sixty (60) days written notice to the other party. Such notice shall be made in accordance with Section 20 of this Agreement.

Section 7. Progress Reports and Disbursement of Funds.

a. **Progress Reports.** As a recipient of County funds, FLVS shall be required to submit annual Program progress reports (“Progress Reports”) to the County. Progress Reports shall demonstrate compliance with the requirements of this Agreement and applicable Florida

Statutes and Orange County Code provisions, as more specifically described in Exhibit "A." Progress Reports shall be submitted to the County on an annual basis within sixty (60) days of the FLVS Fiscal Year End. Failure by FLVS to provide the Progress Reports, as required herein, shall constitute grounds for termination of this Agreement and may result in the ineligibility of FLVS to receive future contributions from the County. Compliance with the reporting requirements is a prerequisite to receipt of any payment under this Agreement.

b. *Disbursement of Funds.* Disbursement of Funds from the County to FLVS shall be in the form of a single annual payment of accumulated Funds, which shall be paid within sixty (60) days after receipt, review, and approval by the County of the FLVS Progress Reports, as required herein. At no time during the term of this Agreement will the Funds available for this Program be more than the County receives under Section 14.10, of the Orange County Code. In the event FLVS, or its Subcontractor, fails to utilize the Funds as directed under the Act or this Agreement, the County, in its sole discretion, reserves the right to demand the partial or full reimbursement of disbursed Funds.

Section 8. Independent Contractor. The parties agree that the relationship between the County and FLVS that is established by this Agreement is that of independent contractors. Nothing in this Agreement shall be construed to create any agency or employment relationship between the County or any of its employees and FLVS or any of its employees. Neither party shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, express or implied, on behalf of the other.

Section 9. Right to Inspect and Audit Books. FLVS shall utilize such accounting procedures and practices in maintenance of the records of receipts and disbursements of the Funds contributed by the County as will be in accordance with generally accepted accounting principles. FLVS agrees to provide sufficient records to document that the funding received from the County is being used in accordance with the terms and conditions of this Agreement. Such records should include, but not be limited to, a comparison of the growth rate of driver's education funding with the funding of other similar programs, and a description of what separate resources were provided from the funding under this Agreement. All FLVS records kept pursuant to this Agreement shall be open to inspection by County staff and the County Comptroller and Comptroller staff during normal working hours, provided that reasonable notice is given to FLVS prior to any such inspection. Any costs incurred by FLVS as a result of a County audit shall be the sole responsibility of and shall be borne by FLVS. In addition, should FLVS provide any or all of the County's funds to contractors, FLVS shall include in all written agreements with such contractors a requirement that records of the contractor be open to inspection and audit by the County or the County's designee. For a period ending five (5) years after the expiration or termination of this Agreement, FLVS shall make all records and documents relating to this Agreement available for inspection and copying by the County or any agent designated by the County.

Section 10. Capital Assets. While not specifically required by this Agreement, if capital assets (tangible property having a useful life expectancy of more than one (1) year and a value/cost of \$1,000.00 or more) are acquired by FLVS as a result of this Agreement, such assets shall be turned over to the County when this Agreement terminates.

Section 11. Assignment. FLVS shall not assign its rights hereunder without the prior written consent of the County, in its sole discretion. Failure to comply with this provision may result in immediate termination of this Agreement.

Section 12. Indemnification. To the fullest extent permitted by law, each party agrees to defend, indemnify, and hold harmless the other party, its official and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorneys' fees) attributable to its negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this Agreement. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability for the acts, omissions and/or negligence of the other party.

Section 13. Insurance. Without waiving its right to sovereign immunity, as provided in Section 768.28, Florida Statutes, FLVS acknowledges to be self-insured for General Liability and Automobile Liability with coverage limits as set forth in Section 768.228.

FLVS agrees to maintain commercial insurance or to be self-insured for Workers' Compensation & Employers' Liability in accordance with Chapter 440, Florida Statutes. Upon request FLVS shall provide an affidavit or Certificate of Insurance evidencing self-insurance up to sovereign immunity limits, which the County agrees to find acceptable for the coverage mentioned above.

The County's failure to request proof of insurance or to identify any deficiency in coverage or compliance with the foregoing requirements shall not relieve FLVS of its liability and obligations under this Agreement.

FLVS shall require the Subcontractor providing the behind-the-wheel training, included as part of the Program services contemplated under this Agreement, procure and maintain, for the duration of their involvement in the providing of such Program related services, insurance coverage in such types and with limits sufficient to protect the interest of the County and FLVS.

Section 14. Amendments. This Agreement may be amended only through a written document executed by both parties.

Section 15. Severability. In the event that any section, paragraph, sentence, clause or provision hereof is held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining portions of this Agreement shall nevertheless continue in full force without being impaired or invalidated in any way.

Section 16. Waiver. Performance of this Agreement by either party, after notice of default of any of the terms, covenants or conditions, shall not be deemed a waiver of any right to terminate this Agreement for any subsequent default, and no waiver of such default shall be construed or act as a waiver of any subsequent default.

Section 17. Remedies. No remedy conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute

or otherwise. No single or partial exercise by any party of any rights, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 18. No Third-Party Beneficiaries. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person or entity other than the parties to this Agreement.

Section 19. Governing Law. This Agreement, and any and all actions directly or indirectly associated herewith, shall be governed by and construed in accordance with the laws of the State of Florida.

Section 20. Notices. All notices permitted or required by this Agreement shall be given by hand delivery or sent by certified mail, return receipt requested, addressed as follows:

To Orange County: Kurt Petersen
Manager, Office of Management & Budget
Orange County Government
P.O. Box 1393
Orlando, FL 32802-1393

To Florida Virtual School: Nathaniel Askew
Manager, Solicitations
Florida Virtual School
2145 Metrocenter Blvd, Suite 100
Orlando, FL 32835

Section 21. Signatory. Each signatory below represents and warrants that he or she has full power and is duly authorized by their respective party to enter into and perform this Agreement. Such signatory also represents that he or she has fully reviewed and understands the above conditions and intends to fully abide by the conditions and terms of this Agreement as stated.

Section 22. Conflicts. The terms of this Agreement shall control over any conflicting terms in any referenced agreement or document.

Section 23. Compliance with Laws. It shall be each party's responsibility to be aware of federal, state, and local laws relevant to this Agreement. Each party shall comply in all respects with all legal requirements governing the duties, obligation, and business practices of that party and shall obtain any permits or licenses necessary for its operations. Neither party shall take any action in violation of any applicable legal requirement that could result in liability being imposed on the other party.

Section 24. Public Records. Both FLVS and County are subject to Chapter 119, Florida Statutes. Both parties shall comply with Florida's Public Records Law including: (a) keeping and maintaining public records that ordinarily and necessarily would be required in order to perform the service; (b) providing the public with access to public records on the same terms and conditions that both parties would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensuring that public records that are exempt or that are confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meeting all requirements for retaining public

records and transfer to both parties, at no cost, all public records in possession of both parties upon termination of the Agreement and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to both parties in a format that is compatible with the information technology systems of both parties. The parties agree that if either party fails to comply with a public records request, then the other party must enforce the contract provisions in accordance with the contract and as required by Section 119.0701, Florida Statutes.

IF EITHER PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THEIR DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, EACH PARTY SHALL CONTACT THEIR RESPECTIVE CUSTODIANS OF PUBLIC RECORDS. FOR FLVS, EMAIL CustodianofRecords@flvs.net , OR BY PHONE 407-513-3325, OR BY MAIL TO: 2145 METROCENTER BLVD., SUITE 100, ORLANDO, FL 32835 AND FOR COUNTY, EMAIL KURT.PETERSEN@OCFL.NET, OR BY PHONE 407-836-7390, OR BY MAIL TO: OFFICE OF MANAGEMENT AND BUDGET, 201 SOUTH ROSALIND AVENUE, 3RD FLOOR, ORLANDO, FL 32802.

Section 25. Venue. For any legal proceeding arising out of or relating to this Agreement, each party hereby submits to the exclusive jurisdiction of, and waives any venue or other objection against, the Ninth Circuit Court in and for Orange County, Florida. Should any federal claims arising for which the courts of the State of Florida lack jurisdiction, venue for those actions will be in the Orlando Division of the U.S. Middle District of Florida.

Section 26. Jury Waiver. Each party hereto hereby irrevocably waives, to the fully extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement.

Section 27. Attorneys' Fees and Costs. The parties shall each bear their own costs, expert fees, attorneys' fees, and other fees incurred in connection with this Agreement and any litigation that arising either directly, or indirectly, herefrom.

Section 28. No Representations. Each party represents that they have had the opportunity to consult with an attorney, and have carefully read and understand the scope of the effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.

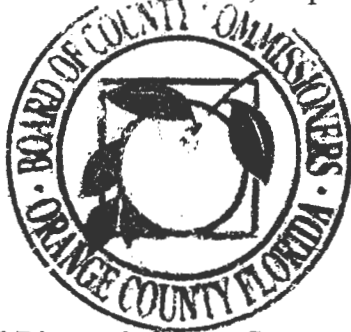
Section 29. Counterparts and Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement. Any counterpart may be delivered by any party by transmission of signature pages to the other parties at the addresses set forth herein, and delivery shall be effective and complete upon completion of such transmission; manually signed copies of signature pages shall nonetheless be delivered promptly after any such facsimile delivery.

Section 30. Headings. The headings or captions of articles, sections, or subsections used in this Agreement are for convenience of reference only and are not intended to define or

limit their contents, nor are they to affect the construction or to be taken into consideration in interpreting this Agreement.

Section 31. Entire Agreement. This Agreement, and any documents incorporated herein, sets forth and constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof. This Agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, County Comptroller
As Clerk of the Board of County Commissioners

By: *Craig A. Stopyna*
for Deputy Clerk

Date: DEC 17 2019

FLORIDA VIRTUAL SCHOOL

By: *[Signature]*
Louis Algaze, Ph.D.

Title: FLVS CEO

Date: 11/21/2019

ATTEST:

By: _____
Signature

Printed Name: _____

Date: _____

Approved as to Form:
[Signature]
FLVS General Counsel
Date: 11/21/19

**DRIVER EDUCATION / TRAFFIC SAFETY PROGRAM
EXHIBIT "A"**

Program

FLVS currently provides, as a part of its curriculum, a safety and driver education course entitled "Driver Education/Traffic Safety – Classroom." The purpose of this classroom course is to introduce students to the highway transportation system and to teach strategies that will develop driving knowledge related to today and tomorrow's motorized society. It also provides an in-depth study of the scope and nature of accident problems and their solutions. Under the terms of the Agreement, FLVS will continue to provide the classroom program to eligible students within Orange County.

Under the terms of the Agreement, Orange County will also provide, as an enhancement to the FLVS programs, funds for students who successfully complete the classroom instruction, to receive behind-the-wheel training equal to a minimum of 30% of the student's time in the program. FLVS shall contract with a state certified driver training company for all behind-the-wheel training.

FLVS will ensure compliance with Orange County Code, and with all Florida Statutes and Florida administrative regulations, as modified and amended during the term of this agreement. Florida Statutes include, but are not limited to Florida Statute 318.1215, which requires:

1. Funds shall be used for enhancement, and not replacement, of driver education program funds.
2. The funds shall be used for direct educational expenses and shall not be used for administration.
3. The driver education program receiving funds shall require that a minimum of 30 percent of a student's time in the program be behind-the-wheel training.

Program Measurements

FLVS will document compliance with Orange County Code, and with all Florida Statutes and Administrative Regulations, as modified and amended during the term of this agreement. Annually, FLVS shall report to Orange County Government designee. At a minimum, the FLVS documentation will include, but not be limited to:

1. The report will provide a detailed list of revenues and expenditures for that portion of the driver education program that relates to Orange County students for each fiscal period in comparison to the previous fiscal period. Orange

County data may be presented as an estimated percentage of the total in cases where costs cannot be reasonably traced to a single county.

2. The report will provide sufficient distinction between administrative and direct educational program costs for all driver education programs, and for that portion of the program that relates to Orange County and Orange County students. The report will document the number of Orange County students that successfully complete classroom instruction, and the number of Orange County students successfully completing behind-the-wheel training.
3. The report will document the number of hours spent in behind-the-wheel training.
4. The report will document the rate and approved expenses paid under this agreement.
5. The report will indicate such other data as needed to evaluate the effectiveness and efficiency of the Program.