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MEMORANDUM

TO: Board of County Commissioners

FROM: Al DiCalvo, Senior Assistant County Attorney /s/ Al DiCalvo

DATE: May 3, 2022

RE: **Agenda Item No. 43 on the May 10, 2022, Agenda (Deferred from Agenda Item No. 3, April 26, 2022, Agenda); Revised general guidelines document, standard form Revocable License Agreement (RLA), and exhibits to the RLA; Questions regarding Florida Department of Transportation ("FDOT") handling of similar requests on State Road right-of-way, and the extent to which images and data collected can be obtained through a subpoena or public records request**

The Traffic Engineering Division ("TED") has revised Agenda Item No. 43 to inform the Board that the item's exhibits have been revised to incorporate Commissioner Ryan's amendments distributed in connection with the April 26, 2022, meeting. Exhibit 5 shows in tracked change format the changes that have been made to the other exhibits.

During the discussion of the item at the April 26, 2022, Board meeting, a question came up as to how FDOT handles requests from cities and/or law enforcement agencies to install law enforcement surveillance cameras within State Road right-of-way. In response to an inquiry by TED staff, FDOT stated it has not and will not issue a permit for the installation of law enforcement surveillance cameras within State Road right-of-way.

Also during the discussion of the item at the April 26, 2022, Board meeting, several questions came up as to the extent that images and data collected in the use of the law enforcement surveillance cameras can be obtained through subpoena or public records request. The remainder of this memorandum addresses that question.

Under Section 316.0777(2), Florida Statutes, "[i]mages and data containing or providing personal identifying information obtained through the use of an automated license plate recognition system," and "[p]ersonal identifying information of an individual in data generated or resulting from images obtained through the use of an automated license plate recognition system" are confidential and exempt from disclosure. The statute defines an "automated license plate recognition system" as "a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert

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images of license plates into computer-readable data." Section 316.0777(1)(c), Florida Statutes.

Section 316.0777(3) further provides that such information may be disclosed as follows:

- (a) Any such information may be disclosed by or to a criminal justice agency in the performance of the criminal justice agency's official duties.
- (b) Any such information relating to a license plate registered to an individual may be disclosed to the individual, unless such information constitutes active criminal intelligence information or active criminal investigative information.

Florida courts have found that as a statute enacted for the public benefit, the Public Records Law and the rights to public access and records are liberally construed to give effect to its public purpose, while exemptions from disclosure are narrowly construed and limited to their designated purpose. As a result, the public records exemption provided by Section 316.0777 would be, in our opinion, limited solely to the images and data (including the personal identifying information of an individual in data generated or resulting from images) obtained through the use of an automated license plate recognition system. This exemption would not seem to apply to video camera images that are unrelated to license plate data or collected by a surveillance system that does not involve a license plate recognition system. Thus, the images referenced in the preceding sentence would likely be subject to disclosure in response to a public records request.

Even with regard to the license plate recognition-related images and data that is confidential and exempt under Section 316.0777, while such images and data would not constitute public records, such images and data could be sought and likely obtained pursuant to a subpoena or court order.

The RLA imposes the requirement to comply with public records requests on the city and/or law enforcement agency ("City") entering into the agreement. Additionally, if the County is sued in connection with any intentional, reckless, or negligent act or omission of the City arising from, relating to, or in connection with the RLA, the RLA requires the City to indemnify, hold harmless, and defend the County.

Please do not hesitate to contact the County Attorney or me with any questions or concerns regarding this item.

AAD/jl

- c: Monica Cepero, County Administrator
Bob Melton, County Auditor
Scott Brunner, Director, Traffic Engineering Division
Andrew J. Meyers, County Attorney