

# City of South Daytona

## Office of the City Manager

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3014



### MEMORANDUM

To: James L. Gillis Jr., City Manager

From: Becky Witte, Deputy City Clerk

Re: Consideration of approving a Restrictive Covenants and Grants-in-Aid Agreement with ECHO for a grant award of \$600,000 for the Reed Canal Park Prehistoric Playground Expansion.

Date: September 27, 2024

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The Reed Canal Park Prehistoric Playground Expansion project involves the replacement of the existing playground equipment with prehistoric themed play structures, swing sets, benches, signage and custom statues of dinosaurs and a giant sloth. The expected cost of the project is expected to be approximately \$1.2 million. To help offset the cost, we applied for ECHO funding from Volusia County. After presenting before the board, our project was the highest ranked. On November 19, 2024, the Volusia County Council is set to approve the City's ECHO Grant Award for \$600,000 for this project. The ECHO Advisory Board recommended the County Council approve the application at the September 25, 2024, meeting.

City staff, along with Vice-Mayor Sander and Mayor Hall put an enormous amount of effort into the application and subsequent presentations, knowing how important it was to revitalize this park. The proposed playground expansion will highlight the sloth skeleton found inside the park along with QR codes directing visitors to see the skeleton inside the Museum of Arts and Sciences (MOAS). Staff has worked with MOAS to be a partner with us on this project.

Under ECHO guidelines, the current Reed Canal Park playground equipment which was purchased with ECHO funding must be repurposed. To achieve this goal, we will relocate the playground to Ned Wagner Park which is currently underutilized. The addition of the relocated, still valuable playground equipment will enhance the Oak Lea neighborhood.

In order to receive the anticipated ECHO funding, Volusia County is asking that we have a Restrictive Covenants document signed as well as a Grants-in-Aid agreement, both of which are attached for your review.

If the ECHO grant is awarded, we will utilize a portion of the proceeds from the sale of the cell tower to fund the City's required match of \$600,000. We feel this is a perfect opportunity to partner again with Volusia County to improve Reed Canal Park for all of our residents. Therefore, staff recommends approval of the Restrictive Covenants and Grant-in-Aid agreement with Volusia County.

## County of Volusia ECHO Grants-in-Aid Agreement

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WHEREAS, the voters of Volusia County overwhelmingly approved the Volusia ECHO ballot initiative, as outlined in Resolution 2020-79, and affirmed their desire to have a long-term development program that funds projects that enhance the quality of life in Volusia County by ensuring the availability of environmental, cultural, historical and outdoor recreational opportunities, and

WHEREAS, Resolution 2020-79 sets forth objectives, criteria, and procedures for implementation of the Volusia ECHO Program, and

WHEREAS, the County of Volusia Resource Stewardship Division has budgeted funds for eligible ECHO projects, and

WHEREAS, the County of Volusia has determined that Project No. 24-25, a project of the City of South Daytona, is eligible for Volusia ECHO funding.

### AGREEMENT

The County of Volusia, 123 West Indiana Avenue, DeLand, Florida (hereinafter referred to as the "County"), and City of South Daytona in the County of Volusia (hereinafter referred to as "Grantee"), agree as follows:

1. Within the 2024 grant cycle, the County of Volusia shall designate funds not to exceed \$600,000.00, to be held for the Grantee, for the performance of items approved for funding which are described and attached hereto as "Exhibit A", (Grantee's application), and any other requirement made a part of this agreement.
2. The funds will be made available to the Grantee on a 1:1 match basis as detailed in "Exhibit A" and expenditures reimbursed on a quarterly basis, unless otherwise agreed upon by the County, only if the Grantee has maintained all grant requirements and upon Grantee providing:
  - a. A Quarterly Project Report and a Reimbursement Request Form with backup documentation (Volusia ECHO Program Guide) – explaining encumbrances and expenditures and project status report).
  - b. Not for Profit Organizations shall provide Release of Liens.
3. Ten (10) percent of the grant funds will be withheld until the total project and final reports are completed as described in the Volusia ECHO Program Guide.
4. It is understood between the parties that the amount of funds designated in paragraph one (1), above, is the maximum amount the County will provide and the County shall only pay eligible expended costs, as they are concurrently matched 1:1 by the applicant, unless otherwise approved by the County.
5. The expiration date of this grant will be exactly 730 days after the execution of this agreement unless the County grants an extension as provided for in the Volusia ECHO Program Guide. The ECHO funds and all cash match must be encumbered within the initial 365 days following the execution of this grant agreement but final payments for services and completion of the project construction may be extended up to another 365-

day period. Extensions beyond the 730-day period may restrict the Grantee or any other organization from applying for additional ECHO grants for this project or phase of this project until this current grant agreement is concluded. To be considered for an extension, a written request must be sent to the Resource Stewardship ECHO Program Manager prior to sixty days of the grant agreement expiration date and must state the reasons for the request and provide a new completion date. The County will notify the Grantee in writing within thirty (30) days of receipt of the request for extension approving or denying said request.

6. The Grantee agrees to conduct the project according to the plans and specifications provided in "Exhibit A." All major deviations and/or major changes to the scope or venue must receive prior written approval of the County Council and may result in the revocation of this grant. Minor changes may be approved through the ECHO Program Manager. Such approval shall not be unreasonably withheld.
7. Understand that this is an annual grant of money only and that this agreement does not obligate the County to provide additional funds for the project or to be responsible for the completion of the project or the operation and maintenance of the project before or after the project is completed.
8. Grantee fully understands its obligation to maintain the facility in clean working order and maintain and/or replace equipment, furnishings, and items described in the grant and/or purchased as part of this grant project for the public use as described in the application. This project shall remain open and in operation as set forth in "Exhibit A" for a period of 20 years.
9. The Grantee fully understands that there will be no reimbursement for obligations or expenditures made prior to the execution of this agreement or after the agreement has ended unless the project is a Historic Reimbursement Grant.
10. The Grantee shall provide all additional monies necessary to complete the project according to "Exhibit A" which shall include competent evidence, prior to the signing of the agreement, of its ability to complete the project. The Grantee shall have all matching funds on deposit in its account or valid contracts for grants from other entities prior to proceeding with the ECHO project. Grantee shall furnish the County with evidence of the matching funds in order to receive a Notice To Proceed. Grantee shall not encumber any ECHO project funds without a Notice to Proceed.
11. To the extent allowed by law, the Grantee agrees to hold the County harmless from any and all claims, liabilities, rights, and obligations arising out of the development and operation of this project as described in "Exhibit A".
12. Signage showing the County of Volusia involvement is required:
  - a. Within 90 days of award, one (1) 32 sq. ft. exterior sign shall be placed in a prominent public location. See the Volusia ECHO Program Guide for design and wording.
  - b. Upon completion of the project, one (1) permanent 8 sq. ft. sign shall be placed on site in a prominent public location. See the Volusia ECHO Program Guide for design and wording.

Note: Alternative signage and/or appropriate material may be considered when the need or reasonableness for the alternative sign is proven. A written request with a drawing to scale of the proposed changes must be sent to the ECHO Program Manager

for approval. The ECHO Program Manager will respond in writing within 14 days after receipt of the Grantee's written request.

13. The Grantee shall provide a program report annually over the agreement period in a format directed by the County.
14. The Grantee agrees to be bound to special conditions to the grant attached hereto and made a part of this agreement, the Restrictive Covenants.
15. The Grantee agrees to provide a payment and performance bond, naming the County of Volusia as co-obligee, for all contracted work prior to expenditure of ECHO funds. All work performed prior to receiving proof of the bond may be determined by the County as ineligible for reimbursement.
16. The Grantee agrees to be responsible for and comply with all local, State and Federal permits and laws.
17. The Grantee agrees that failure to comply with this agreement, and all attached documents which are part of this agreement, may result in the Grantee repaying the grant funds, in part or whole, to the County. In addition, the Grantee agrees that failure to comply with all requirements may result in its being denied future grant funds for other projects under the ECHO grant program.
18. Trails and projects on public lands not owned by the applicant: In lieu of the Restrictive Covenants and unrestricted ownership, for trails projects that are part of the County's Trails Master Plan approved by the County Council or projects on State and Federal lands, the public right of continuing access and undisturbed use shall be provided by a Use Permit, Land Management Agreement or Project Management Agreement to which the applicant is party. If the Agreement is dissolved prior to the end of the time period stated in the Agreement that is included as part of the ECHO Grant Agreement or project is deconstructed or no longer available for public use for the time period required, the grantee shall repay the County in the manner set forth in the Restrictive Covenants.

By their hands and seals, the duly authorized officers or representatives of these respective parties execute this document this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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**WITNESSES**

**COUNTY COUNCIL**

**COUNTY OF VOLUSIA, FLORIDA**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
County Chair – Jeffrey S. Brower

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Attest County Manager – George Recktenwald

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**GRANTEE SIGNATURES**

**WITNESSES (2):**

**GRANTEE:**

\_\_\_\_\_  
Signature Witness

\_\_\_\_\_  
Name of Organization

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_  
Signature Authorized Official

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Printed Name of Authorized Official

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_  
Title of Authorized Official

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_ who is [\_\_\_\_\_] personally known to me, or [\_\_\_\_\_] who has produced a \_\_\_\_\_ driver's license as identification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

## Restrictive Covenants

THESE COVENANTS are entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the City of South Daytona. *Hereinafter referred to as "the Owner"* and City of South Daytona, *hereinafter referred to as "the Grantee/Lessee"* and shall be effective for a period of 20 years from the date of recordation by the Clerk of the Circuit Court of Volusia County, Florida.

WHEREAS, the Owner is the fee simple title holder of the Property located at 919 Reed Canal Rd., South Daytona, FL, 32119, in the County of Volusia, Florida, as described as Exhibit A (legal description), attached to and made a part hereof, and

WHEREAS, the Grantee/Lessee is to receive ECHO Grant Program funds administered by the County of Volusia, Florida, 123 W. Indiana Avenue, DeLand, Florida 32720, *hereinafter referred to as "the County"*, in the amount of \$600,000.00, to be used for the construction of the facility for public use specifically described in the ECHO Grant Agreement and its attached documents, situated on the property as described as Exhibit A, and

Now THEREFORE, as part of the consideration for the County grant, the Owner and the Grantee/Lessee hereby make and declare the following restrictive covenants which shall run with the title to said Property and be binding on the Owner and its successors in interest, if any, for the period stated in the preamble above:

1. The Owner and the Grantee/Lessee agree to maintain the property so that it continues to be used for as an ECHO facility as defined in the ECHO application definition and described in the grantee's application No. 24-25. This includes the requirement to maintain public access for the project for a period of twenty (20) years from the date of recording this restrictive covenant.
2. The Owner and the Grantee/Lessee agree that the County of Volusia, its agents and its designees shall have the right to inspect the Property at all reasonable times in order to ascertain whether the conditions of the Grant Award Agreement and these covenants are being observed.
3. The Owner and the Grantee/Lessee agree that these restrictions shall encumber the property for a period of 20 years from the date of recordation, and that if the restrictions are violated within the 20 year period, the County of Volusia shall be entitled to liquidated damages pursuant to the following schedule:
  - a. If the violation occurs within the first half of the effective time period of these covenants, the County shall be entitled to return of the entire grant amount.
  - b. If the violation occurs after the first half of the effective time period, the County shall be entitled to the return of the entire grant amount, less the quotient of two (2) divided by the number of years in the time period times each year past the mid period of the effective time period times the grant amount. For instance, if the violation occurs after the thirteenth (13<sup>th</sup>) anniversary of the effective date of these covenants but prior to the fourteenth (14<sup>th</sup>) anniversary, the County shall be entitled to return of 50% of the original grant amount.
4. The Owner and Grantee/Lessee are liable to the County of Volusia for the amount of the grant if the Owner or Grantee/Lessee breach these Restrictive Covenants and/or the Grant Award Agreement dated \_\_\_\_\_. To insure the ability to repay the grant, the Owner and Grantee/Lessee

have agreed that they will maintain unencumbered equitable value in the property of at least the amount, and for at least the period of time provided in paragraph three (3) above. The Owner and Grantee/Lessee will not secure with a mortgage or otherwise hypothecate that equitable value in the property.

5. The Owner agrees to file these covenants with the Clerk of the Circuit Court of Volusia County, Florida, and shall pay any and all expenses associated with their filings and recording.
6. The Owner and Grantee/Lessee agree that the County of Volusia shall incur no tax liability as a result of these restrictive covenants.

IN WITNESS WHEREOF, the Owner and Grant Recipient have read these Restrictive Covenants and have hereto affixed their signatures.

**OWNER:**

**GRANTEE:**

\_\_\_\_\_  
Sign

\_\_\_\_\_  
Sign

Witness: \_\_\_\_\_  
Sign

\_\_\_\_\_  
Print

Witness: \_\_\_\_\_  
Sign

\_\_\_\_\_  
Print

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_ who is [\_\_\_\_\_] personally known to me, or [\_\_\_\_\_] who has produced a \_\_\_\_\_ driver's license as identification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Notary Public, State of Florida

Commission No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_