

TAB 4



City of Palmetto Agenda Item

Meeting Date

7/16/2012

Presenter: Chief Wells

Department: Police Department

Title:

The Palmetto Police Department regularly utilizes information from the Florida Division of Highway Safety and Motor Vehicle in the course of criminal and crash investigations. This information is provided, free of charge, by DHSMV. The Florida DHSMV is asking the Palmetto Police Department to renew the annual MOU that governs this data, the security of the data, and what it may be used for.

This MOU is unchanged from last year's and was previously reviewed by City legal staff.

Budgeted Amount: \$0 **Budget Page No(s):** **Available Amount:** **Expenditure Amount:**

Additional Budgetary Information:

Funding Source(s): **Sufficient Funds Available:** Yes No **Budget Amendment Required:** Yes No **Source:**

City Attorney Reviewed: Yes No N/A **Advisory Board Recommendation:** For Against N/A **Consistent With:** Yes No N/A

Potential Motion/Direction Requested: Authorize the Chief of Police to enter into this MOU with the Florida Division of Highway Safety and Motor Vehicle.

Staff Contact:

Attachments: MOU



**MEMORANDUM OF UNDERSTANDING
DRIVERS LICENSE AND/OR MOTOR VEHICLE RECORD DATA EXCHANGE
Contract Number _____**

This Memorandum of Understanding (MOU) is made and entered into by and between Palmetto Police Department hereinafter referred to as the Requesting Party and the Department of Highway Safety and Motor Vehicles hereinafter referred to as the Providing Agency.

I. Purpose of the Data Exchange

The purpose of this MOU is to establish conditions under which the Providing Agency agrees to provide electronic access to driver license and motor vehicle data to the Requesting Party as follows:

Type of Data Requested	Statutory Fees (subject to change by the Legislature)
<input type="checkbox"/> DL/DMV transaction data	<input checked="" type="checkbox"/> No Charge
<input type="checkbox"/> Driver license status	<input type="checkbox"/> \$0.50/record, per s. 320.05
<input type="checkbox"/> Motor vehicle status	<input type="checkbox"/> \$0.50/record, per s. 320.05, F.S.
<input type="checkbox"/> Driver license transcript (3-year)	<input type="checkbox"/> \$8.00/record, per s. 322.20, F.S.
<input type="checkbox"/> Driver license transcript (7-year or complete)	<input type="checkbox"/> \$10.00/record, per s. 322.20, F.S.
<input type="checkbox"/> Cost recovery fee for TML, Inc.*	<input type="checkbox"/> \$0.02/record (rounded to nearest \$0.01 daily prior to electronic funds transfer. TML will determine fee on an annual basis)
<input type="checkbox"/> Motor vehicle list	<input type="checkbox"/> \$0.01/record, per s. 320.05, F.S.
<input type="checkbox"/> Driver license list	<input type="checkbox"/> \$0.01/record, per s. 322.20, F.S.
<input type="checkbox"/> Driver record search	<input type="checkbox"/> \$0.01/record or \$2.00/record if no record is found, per s. 322.20, F.S.
<input type="checkbox"/> Motor vehicle record	<input type="checkbox"/> \$0.50/record, per s. 320.05, F.S.
<input type="checkbox"/> Residency verification	<input type="checkbox"/> \$0.01/record, per s. 322.20, F.S.
<input checked="" type="checkbox"/> DAVID (criminal justice use only)	N/A
<input type="checkbox"/> DAVE (government agencies only) <input type="checkbox"/> with Photos/Signatures	N/A
<input type="checkbox"/> Motor Vehicle Insurance Data Exchange/Verification	N/A

* TML Information Services, Inc. owns and operates the computer hardware and software that allows remote interactive access to the databases of the Providing Agency for the Requesting Party. For each single transaction received by the system, one type driver license history will be returned.

The Requesting Party is not requesting personal information and/or is not qualified to obtain personal information pursuant to the Driver's Privacy Protection Act.

The Requesting Party is requesting personal information and declares that it is qualified to obtain personal information under the following exception numbers, as listed in Attachment 1, authorized by the Driver Privacy Protection Act: 2. Personal information will be used as follows:

Law enforcement purposes

The Requesting Party is authorized to receive a 9-digit social security number a 4-digit social security number, pursuant to Chapter 119, F.S., or other applicable laws.

The Requesting Party is authorized to receive insurance data on a per record basis for the purposes, pursuant to section 713.78(4)(b), F.S., or other applicable laws. The Requesting Party may only re-release this information to parties authorized to receive it under section 713.78(4)(b), F.S.

Received by (Initial/Date) _____

II. Definitions

- A. "Driver's Privacy Protection Act" (DPPA) – 18 United States Code section 2721 et seq.
- B. "Providing Agency" – The Department of Highway Safety and Motor Vehicles. The agency responsible for granting access to driver license and/or motor vehicle data to the Requesting Party.
- C. "Requesting Party" – Any entity type that is expressly authorized by section 119.0712(2), Florida Statutes and DPPA to receive personal information and highly restricted personal information that requests information contained in a driver license, motor vehicle, or traffic crash record.
- D. "Parties" – The Providing Agency and the Requesting Party.
- E. "Third Party" – Any individual, association, organization, or corporate entity who receives driver license and/or motor vehicle data maintained and released by the Providing Agency or Requesting Party.
- F. "Government Entity" – Any federal, state, county, county officer, or city government, including any court or law enforcement agency.
- G. "Network Provider" – A Requesting Party whose access is provided by remote electronic means through the System to request specific types of data at a minimum of 5,000 transactions per month. A six (6) month startup period will be allowed for new Network Providers, during which time, less than 5,000 transactions per month will be accepted.
- H. "Personal Information" – Information found in the motor vehicle or driver record which includes, but is not limited to, the subject's driver identification number, name, address, telephone number, and medical or disability information. Personal information does not include information related to vehicular crashes, driving violations, and driver's status.
- I. "Vendor Number" – A unique number assigned to the Requesting Party by the Providing Agency that identifies the type of record authorized for release and its associated fees. Misuse of a vendor number to obtain information is strictly prohibited and shall be grounds for termination in accordance with Section IX.
- J. "Driver license information" – driver license and identification card data collected and maintained by the Providing Agency.
- K. "Motor vehicle information" – title and registration data collected and maintained by the Providing Agency for vehicles, and mobile homes.

III. Legal Authority

The Providing Agency maintains computer databases containing information pertaining to driver licenses and motor vehicles pursuant to Chapters 319, 320, and 322, Florida Statutes; and

The driver license and motor vehicle data contained in the Providing Agency databases is defined as public record pursuant to Chapter 119, Florida Statutes; and

The Providing Agency as custodian of the foregoing records may provide access by remote electronic means and charge a fee for the direct and indirect costs of providing such access, pursuant to sections 119.0712(2), 320.05, 321.23, and 322.20, Florida Statutes, and other applicable rules and policies; and

The Requesting Party might obtain via remote electronic means blocked personal information exempt from public disclosure as provided pursuant to section 119.0712(2), Florida Statutes, the Requesting Party shall maintain the confidential and exempt status of such data. Anyone accessing records obtained per this agreement must ensure that the end users of the records are complying with section 119.0712(2), Florida Statutes and DPPA.

The Parties, in consideration of the promised and mutual covenants hereinafter contained, do hereby enter into this MOU.

IV. Statement of Work

A. The Providing Agency agrees to:

1. Provide the Requesting Party with the technical specifications required to access driver license and/or motor vehicle information in accordance with the access method being requested.
2. Allow the Requesting Party/Network Provider to electronically access driver license and/or motor vehicle data.
3. Accept the Requesting Party/Network Provider's electronic requests and respond with appropriate data. At a minimum, 90% of the responses to electronic requests from Network Providers will occur within 15 seconds of receiving the transaction.
4. Collect all fees, pursuant to applicable Florida Statutes, rules and policies for providing the electronically requested data. The fee shall include all direct and indirect costs of providing remote electronic access, according to section 119.07(2)(c), Florida Statutes.
5. Collect all fees due for electronic requests through the Automated Clearing House account of the banking institution which has been designated by the treasurer of the State of Florida for such purposes.
6. Discontinue access of the Requesting Party for non-payment of required fees. The Providing Agency shall not be responsible for the failure, refusal, or inability of the Requesting Party/Network Provider to make the required payments, or interest on late payments for periods of delay attributable to the action or inaction of Network Providers.
7. Not indemnify or be liable to the Requesting Party/Network Provider for any driver license or motor vehicle information, programs, job streams, or similar items delayed, lost, damaged, or destroyed as a result of the electronic exchange of data pursuant to this MOU, except as provided in section 768.28, Florida Statutes.
8. Notify the Requesting Party/Network Provider thirty (30) days prior to changing any fee schedules when it is reasonable and necessary to do so, as determined by the Providing Agency. All fees are established by Florida law. Any changes in fees shall be effective on the effective date of the corresponding law change. The Requesting Party/Network Provider may continue with this MOU as modified or it may terminate the MOU in accordance with Section IX., subject to the payment of all fees incurred prior to termination.
9. Perform all obligations to provide access under this MOU contingent upon an annual appropriation by the Legislature.
10. Provide electronic access for Network Providers to driver license and/or motor vehicle information 24 hours a day, 7 days per week other than scheduled maintenance or other uncontrollable disruptions. Scheduled maintenance normally occurs Sunday mornings between the hours of 6:00AM and 10:00AM.
11. Provide an agency contact person for assistance with the implementation of this MOU.

B. The Requesting Party agrees to:

1. For the Requesting Party, driver license and/or motor vehicle, information may only be used for the express purposes described herein. Information obtained from the Providing Agency by the Requesting Party shall not be retained by the Requesting Party, unless obtained for a law enforcement purpose or resold to any Third Party.
2. Be responsible for interfacing with any and all Third Party end users. The Providing Agency will not interact directly with any Third Party end users. Requesting Party shall not give Third Party end users the name, E-mail address, and/or telephone number of any Providing Agency employee without the express written consent of the Providing Agency. *[This does not apply to Government Entities.]*

3. Maintain a help desk for its Third Party end users. Personnel assigned to this help desk shall be fully trained on all aspects of the electronic access and shall be prepared to answer all Third Party end user questions. In cases where the Requesting Party/Network Provider help desk personnel are unable to answer a question from a Third Party end user and that question must be answered by Providing Agency personnel; the Requesting Party shall obtain the answer from the Providing Agency and then relay the answer to the Third Party end user. *[This does not apply to Government Entities.]*
4. Ensure that its employees and agents comply with Section V. Safeguarding Information procedures of this MOU.
5. Not assign, sub-contract, or otherwise transfer its rights, duties, or obligations under this MOU without the express written consent and approval of the Providing Agency.
6. Use the information received from the Providing Agency only for the purposes authorized by this agreement.
7. Protect and maintain the confidentiality and security of driver license and/or motor vehicle information received from the Providing Agency in accordance with this MOU and applicable state and federal law.
8. To the extent allowed by law, the Requesting Party shall defend, hold harmless and indemnify the Providing Agency and its employees or agents from any and all claims, actions, damages, or losses which may be brought or alleged against its employees or agents for the Requesting Party's negligent, improper, or unauthorized use or dissemination of information provided by the Providing Agency.
9. Update user access permissions upon termination or reassignment of users within 5 working days and immediately update user access permissions upon discovery of negligent, improper, or unauthorized use or dissemination of information. Conduct quarterly quality control reviews to ensure all current users are appropriately authorized.
10. For all records containing personal information released to a Third Party, maintain for a period of 5 years, records identifying each person or entity that receives the personal information and the permitted purpose for which it will be used. The Requesting Party shall make these records available for inspection upon request by the Providing Agency. *[This does not apply to Government Entities.]*
11. Pay all costs associated with electronic access of the Providing Agency's driver license and/or motor vehicle information; such costs shall include all one time, recurring, and usage charges for all hardware, software, and services required to connect to and use the electronic access. Payment must be in advance of receiving any information or using electronic means as follows:
 - Complete and sign the appropriate document(s) to allow the Providing Agency's designated banking institution to debit the Requesting Party's designated account.
 - Maintain an account with a banking institution as required by the Providing Agency.
 - Pay all fees due the Providing Agency by way of the Automated Clearing House account of the Providing Agency's designated banking institution. Collection of transaction fees from eligible and authorized Third Party end users is the responsibility of the Requesting Party.
12. Minimum Transaction Level – In order to qualify for direct connection to a port, the Network Provider must agree to submit a minimum of 5,000 transactions per month for driver transcripts or 2,500 transactions for public records access program for motor vehicle/driver license status checks. A six-month startup period will be allowed, during which time less than the minimum will be acceptable. In the event the Network Provider does not maintain the minimum transaction per month beginning with the first day of the seventh month and every month thereafter, the Network Provider's direct connection to a port will be terminated.

V. Safeguarding Information

The Parties shall access, use and maintain the confidentiality of all information received under this agreement in accordance with Chapter 119, Florida Statutes, and DPPA. Information obtained under this agreement shall only be disclosed to persons to whom disclosure is authorized under Florida law and federal law. Any person who willfully and knowingly violates any of the provisions of this section is guilty of a misdemeanor of the first degree punishable as provided in sections 119.10 and 775.083, Florida Statutes. In addition, any person who knowingly discloses any information in violation of DPPA may be subject to criminal sanctions and civil liability.

The Parties mutually agree to the following:

- A. Information exchanged will not be used for any purposes not specifically authorized by this agreement. Unauthorized use includes, but is not limited to, queries not related to a legitimate business purpose, personal use, and the dissemination, sharing, copying or passing of this information to unauthorized persons.
- B. Information exchanged by electronic means will be stored in a place physically secure from access by unauthorized persons.
- C. Access to the information exchanged will be protected in such a way that unauthorized persons cannot review or retrieve the information.
- D. All personnel with access to the information exchanged under the terms of this agreement will be instructed of, and acknowledge their understanding of, the confidential nature of the information. These acknowledgements must be maintained in a current status by the Requesting Party.
- E. All personnel with access to the information will be instructed of, and acknowledge their understanding of, the criminal sanctions specified in state law for unauthorized use of the data. These acknowledgements must be maintained in a current status by the Requesting Party.
- F. All access to the information must be monitored on an on-going basis by the Requesting Party. In addition, the Requesting Party must complete an annual audit to ensure proper and authorized use and dissemination.
- G. By signing the MOU, the representatives of the Providing Agency and Requesting Party, on behalf of the respective Parties attest that their respective agency procedures will ensure the confidentiality of the information exchanged will be maintained.

VI. Compliance and Control Measures

- A. **Internal Control Attestation** - This MOU is contingent upon the Requesting Party having appropriate internal controls over personal data sold or used by the Requesting Party to protect the personal data from unauthorized access, distribution, use, modification, or disclosure. Upon request from the Providing Agency, the Requesting Party must submit an attestation from a currently licensed Certified Public Accountant performed in accordance with American Institute of Certified Public Accountants (AICPA) "Statements on Standards for Attestation Engagement." In lieu of submitting the attestation from a currently licensed Certified Public Accountant, Requesting Party may submit an alternate certification with pre-approval from the Department. In the event the Requesting Party is a governmental entity, the attestation may be provided by the entity's internal auditor or inspector general. The attestation must indicate that the internal controls over personal data have been evaluated and are adequate to protect the personal data from unauthorized access, distribution, use, modification, or disclosure. The attestation must be received by the Providing Agency within 180 days of the written request. The Providing Agency may extend the time to submit the attestation upon written request and for good cause shown by the Requesting Agency.

- B. **Misuse of Personal Information** – The Requesting Party must immediately notify the Providing Agency and the affected individual following the determination that personal information has been compromised by any unauthorized access, distribution, use, modification, or disclosure. The statement to the Providing Agency must provide the date and the number of records affected by any unauthorized access, distribution, use, modification, or disclosure of personal information. Further, as provided in section 817.5681, Florida Statutes, the document must provide a statement advising if individuals whose personal information has been compromised have been notified and, if not, when they will be notified. The statement must include the corrective actions and the date these actions are completed by the Requesting Party.
- C. The Providing Agency shall receive an annual affirmation from the Requesting Party indicating compliance with the requirements of this agreement no later than 45 days after the anniversary date of this agreement.

VII. Period of Performance

This MOU shall be effective upon the last signature of the Parties to this agreement and will remain in effect for three years from the date of execution, as provided on the next page. Once executed, this MOU supersedes all previous agreements for these conditions of services defined in Section I.

VIII. Amendments

- A. This MOU incorporates all prior negotiations, interpretations, and understandings between the Parties, and is the full expression of their agreement.
- B. This MOU may be subsequently amended by written agreement between the Parties. Any change, alteration, deletion, or addition to the terms set forth in this MOU and its numbered addendums must be by written agreement executed by both Parties.
- C. All provisions not in conflict with the amendment(s) shall remain in effect and are to be performed as specified in this MOU.

IX. Termination

- A. This agreement may be terminated for cause by either party upon finding that the terms and conditions contained herein are not being followed. No written notice or notifying period will be required.
- B. This agreement is subject to unilateral cancellation by the Providing Agency without notice for failure of the Requesting Party to comply with any of the requirements of the MOU and applicable Florida Statutes, including section 119.0712(2), Florida Statutes.
- C. The Contract may be terminated upon thirty (30) days notice in writing to the Contract Manager without penalty to either party. All obligations of either party under the contract will remain in force during the thirty (30) day notice period.

IN WITNESS HERETO, the PARTIES have executed this Agreement by their duly authorized officials.

Requesting Party:

Palmetto Police Department

Company / Agency Name

1115 10th Street West

Street Address

Suite

Palmetto, FL 34221

City, State Zip Code

Providing Agency:

Florida Department of Highway Safety
and Motor Vehicles

2900 Apalachee Parkway
Tallahassee, Florida 32399

By: Charles R. Wells

CHARLES R. WELLS

Printed/Typed Name

CHIEF

Title

6-15-12

Date

cwells@PALMETTOPOLICE.COM

E-Mail Address

941-721-2000 EXT 6104

Phone Number

941-723-4587

Fax Number

By: _____

Jonathan Kosberg

Printed/Typed Name

Chief of Purchasing & Contracts

Title

Date

Technical Contact for FTP, Program Access

Printed/Typed Name

E-Mail Address

Phone Number

Point of contact for Web Application Access

Printed/typed Name

E-Mail Address

Phone Number

ATTACHMENT 1

DRIVER PRIVACY PROTECTION ACT EXCEPTIONS

1. For use in connection with matters of motor vehicle or driver safety theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers, to carry out the purposes of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act, the Clean Air Act, and chapters 301, 305, and 321-331 of title 49 U.S.C.
2. For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions.
3. For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.
4. For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:
 - (a) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
 - (b) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.
5. For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or agency or before any self-regulatory body for:
 - (a) Service of process by any certified process server, special process server, or other person authorized to serve process in this state.
 - (b) Investigation in anticipation of litigation; however, the information may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.
 - (c) Investigation by any person in connection with any filed proceeding; however, the information may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.
 - (d) Execution or enforcement of judgments and orders.
 - (e) Compliance with an order of any court.
6. For use in research activities and for use in producing statistical reports, so long as the personal information is not published, re-disclosed, or used to contact individuals.
7. For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting.
8. For use in providing notice to the owners of towed or impounded vehicles.
9. For use by any licensed private investigative agency or licensed security service for any purpose permitted under this paragraph
10. For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under 49 U.S.C. ss. 31301 et seq.
11. For use in connection with the operation of private toll transportation facilities.
12. For bulk distribution of surveys, marketing, or solicitations when the department has obtained the express consent of the person to whom such personal information pertains.
13. For any use if the requesting person demonstrates that he or she has obtained the written consent of the person who is the subject of the motor vehicle record.
14. For any other use specifically authorized by state law, if such use is related to the operation of a motor vehicle or public safety.
15. For any other use if the person to whom the information pertains has given express consent on a form prescribed by the department. Such consent shall remain in effect until it is revoked by the person on a form prescribed by the department.

CRASH REPORT EXCEPTIONS

- 1 I am a party involved in the crash.
- 2 I am a legal representative to a party involved in the crash or an immediate relative.
- 3 I am a licensed insurance agent to a party involved in the crash, their insurer or insurers to which they applied for insurance coverage.
- 4 I am a person under contract to provide claims or underwriting information to a qualifying insurance company.
- 5 I am a prosecuting attorney.
- 6 I represent a radio or television station licensed by the FCC or newspaper qualified to publish legal notices or a free newspaper of general circulation, which qualifies under statute.
- 7 I represent a local, state, or federal agency that is authorized by law to have access to these reports.
- 8 I represent a Victim Service Program, as defined in Section 316.003(85), Florida Statutes.