

## LICENSE AGREEMENT

**THIS AGREEMENT**, made and entered into this day of \_\_\_\_\_, 2022, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the “DEPARTMENT” and the CITY OF OCALA, a Florida Municipal Corporation (hereinafter referred to as the “CITY.”)

**WHEREAS**, the State of Florida Legislature has approved and mandated the DEPARTMENT to complete the various projects included in the DEPARTMENT’s Work Program; and

**WHEREAS**, included in the DEPARTMENT’s Work Program is Intelligent Transportation Systems (ITS) Operational Support – Marion County CMGC Contract, Financial Project ID 436361-1-52-01 Federal: Funds #D521-028-B and #D521-058-B (hereinafter referred to as the Project). The purpose of the Project is to allow Marion County to improve arterial traffic management monitoring from the Marion County Traffic Management Center (TMC) and network redundancy along arterial corridors in the County; and

**WHEREAS**, the Marion County TMC is located within the geographical boundaries of the CITY and it will be necessary to install some portions of the transportation fiber optic cable and pull boxes within CITY right of way in order to reach the Marion County TMC facility. A High-level map of the transportation fiber path within CITY right of way is provided in Exhibit “A” attached hereto; and

**WHEREAS**, the DEPARTMENT and CITY will collaborate on the design of the systems to be constructed within CITY right-of-way; and

**WHEREAS**, the Parties hereto agree that it in the best interest of the DEPARTMENT and of CITY for the DEPARTMENT to complete all aspects of the Project not on the State Highway System, including, but not necessarily limited to (1) constructing the Project through its completion, and (2) providing Construction Engineering Inspection (CEI) as necessary for the Project;

**WHEREAS**, the parties hereto mutually recognize the need for entering into a written Agreement designating and setting forth the responsibilities of each party; and

**WHEREAS**, the CITY, by Resolution No. \_\_\_\_\_, dated \_\_\_\_\_, 2022 and attached hereto as Exhibit “C”, has authorized its officers to execute this Agreement on its behalf.

**NOW THEREFORE**, for and in consideration of the mutual benefits to be derived from this Agreement, the parties covenant and agree as follows:

1. The Parties agree that the DEPARTMENT shall undertake and complete the Project and all other tasks associated with or arising out of the Project. CITY shall fully cooperate with and shall support the DEPARTMENT's work efforts in these regards. CITY hereby grants to the DEPARTMENT, its Contractors, representatives, employees, and agents the right to temporarily enter onto CITY property to accomplish the tasks required by the Project. The DEPARTMENT shall have final decision-making authority with respect to the construction maintenance of the Project but shall seek reasonable input from CITY.
2. CITY by virtue of the formal resolution approving this agreement consents to and authorizes the DEPARTMENT to act on behalf of, for the benefit of, and in the name of CITY, to further do all acts necessary, specifically the construction of improvements in the name of the DEPARTMENT for the benefit of the CITY, including securing all environmental and regulatory permits, if any, necessary for the Project. CITY, by granting the consents contained herein, agrees that the DEPARTMENT may use existing CITY property for the Project without compensation or the need for the DEPARTMENT to acquire any such property from CITY.
3. The Project is currently in Design Phase and the DEPARTMENT will collaborate with the CITY to establish the location of the Project elements. Any changes to the location of the Project shall require additional approval from CITY, which approval should not be unreasonably withheld.
4. To the extent necessary, the CITY hereby appoints the DEPARTMENT as its agent for purposes of construction, reconstruction, and relocation of utilities under Sections 337.403 and 337.404, Florida Statutes. The Project does not contemplate the need to relocate any utilities; however, in the event it becomes necessary, CITY agrees to fully cooperate with the DEPARTMENT in the construction, reconstruction, and relocation of utilities that may be located within the existing right of way or CITY may elect to provide an alternative route for the Project. The Parties agree to meet on a periodic basis, as determined to be necessary by the DEPARTMENT, during the planning, design, construction, and post-construction phase to identify, plan, and to relocate utilities. The responsibility for the costs associated with the relocation of utilities shall be based on Florida law. The Parties acknowledge and agree that the DEPARTMENT may be utilizing federal highway interstate funds and as such, the cost of utility relocation may be considered a part of the cost of the Project to be paid by the DEPARTMENT.
5. The DEPARTMENT will continue to consult with CITY on any modifications for the planning, construction or engineering, as well as the implementation of the Project set forth in this Agreement.
6. The DEPARTMENT and CITY shall mutually agree upon all decisions relating to, and including the need for, change orders, and supplemental agreements associated with the

construction contract for the Project, including those portions of the Project that are located within the jurisdictional limits of CITY'S property.

7. The DEPARTMENT or its contractor shall submit for utility permit with the CITY for the fiber optic transportations purposes. CITY agrees to cooperate and to support the DEPARTMENT'S efforts to secure permits necessary for and associated with the Project.
8. Upon completion of the Project, the DEPARTMENT shall issue a Notice of Final Completion to the contractor with a copy of said notice being provided to the CITY. Upon issuance of the Notice of Final Completion, CITY agrees that the DEPARTMENT shall transfer all permits, if any, for those portions of the Project that are located within the jurisdictional limits of the CITY'S property to Marion County. The CITY agrees to accept said transfer and for Marion County to become fully responsible to comply with all conditions of the permits to the extent that they are applicable to any portion of the Project remaining in place after it is completed. Operations and maintenance responsibilities between the DEPARTMENT and Marion County for the Project are outlined in the Maintenance and Operations Agreement provided in Exhibit "B" attached hereto.
9. This Agreement shall become effective as of the date both Parties hereto have executed the Agreement and shall continue in full force and effect until the Project is completed by the DEPARTMENT and the improvements have been turned over to Marion County by the DEPARTMENT by formal notice from the DEPARTMENT. The DEPARTMENT reserves the right to unilaterally cancel its performance hereunder if it determines that it is in the best interest of the public to do so. This discretion shall include, but shall not be limited to budgetary and bid cost considerations. In the event the DEPARTMENT does not complete the scope of the Project within the timeframe set forth in this Agreement and elects to unilaterally cancel its future performance of the Project, the DEPARTMENT agrees to return any renovated portion of CITY'S Property to the state it was prior to commencement of the Project.
10. Pursuant to Section 287.058, Florida Statutes, the DEPARTMENT may unilaterally cancel this Agreement for refusal by CITY to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes and made or received by CITY in conjunction with this Agreement..
11. If any election, referendum, approval or permit, notice or other proceeding or authorization is required to be undertaken by CITY to enter into this Agreement or to undertake the Project, CITY will expeditiously initiate and consummate, as provided by law, all actions necessary with respect to any such matters with time being of the essence.
12. It is understood that the DEPARTMENT's participation in said Project is subject to:
  - a.) Legislative approval of the DEPARTMENT's appropriation request in the work program year that the Project is scheduled;
  - b.) Availability of funds based on the following limitations:
    - i.) The DEPARTMENT's performance and obligations to pay under this Agreement is contingent upon an annual appropriation by the

Florida Legislature. If the DEPARTMENT's funding for this Project is in multiple years, funds approved from the DEPARTMENT's Comptroller must be received every year prior to costs being incurred.

- ii.) In the event this Agreement is in excess of \$25,000.00 and has a term of a period of more than one year, the provisions of §339.135(6)(a), Florida Statutes, are hereby incorporated. The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the DEPARTMENT that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executor only for the value of the services to be rendered or agreed to be paid in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT, which are for an amount in excess of \$25,000.00 and which have term for a period of more than one (1) year."

- 13. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.
- 14. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery or express mail and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. Each party hereto shall have the continuing obligation to notify each other of the appropriate persons for notices to be sent to pursuant to the terms of this Agreement. Unless otherwise notified in writing, notices shall be sent to the following:

To the CITY:  
City of Ocala  
Sean Lanier, P.E., City Engineer  
1805 NE 30<sup>th</sup> Avenue, Building 600  
Ocala, Florida 34470

To the DEPARTMENT:  
State of Florida, Department of Transportation  
Charles M. Heffinger, Jr., P.E., Director of Transportation Operations  
719 South Woodland Boulevard  
DeLand, Florida 32720-6834

15. No modification of this Agreement shall be binding on the Parties unless reduced to writing and signed by a duly authorized representative of the Parties.
16. In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.
17. The individual identified as the person to receive notice hereunder shall have the authority to act on behalf of and to bind the CITY and the DEPARTMENT, respectively, as to all determinations required to be made under the terms of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the dates exhibited, by the signatures below.

\_\_\_\_\_

**STATE OF FLORIDA  
DEPARTMENT OF  
TRANSPORTATION**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Charles M. Heffinger, Jr., P.E.  
Director of Transportation Operations

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
By:

Attest: \_\_\_\_\_  
Executive Secretary

Legal Review:

Department Legal Review:

\_\_\_\_\_  
By:  
Attorney

\_\_\_\_\_

## Exhibit “A”

Financial Project ID 436361-1-52-01  
Map of Proposed Fiber Optic Infrastructure



Project includes installation of fiber optic cable from the Marion County Office of the County Engineer to the Land Fill Tower in the Marion County Solid Waste Facility. The cable will run south down SE 25<sup>th</sup> from the Marion County Office of the County Engineer, east along SR 464, south down SR 35, then west along Laurel Rd to the Land Fill Tower in the Marion County Solid Waste Facility.

## Exhibit “B”

### Project Maintenance and Operations Agreement between the DEPARTMENT and Marion County



Exhibit “C”

Resolution