

CONSTRUCTION, MAINTENANCE AND OPERATIONS AGREEMENT

THIS MAINTENANCE AGREEMENT (“Agreement”), made and entered into this 17th day of February, 2022, by and between the **STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION**, hereinafter called the “DEPARTMENT” and **MARION COUNTY**, a political subdivision of the State of Florida (hereinafter referred to as the “COUNTY”).

WITNESSETH

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

WHEREAS, included in the DEPARTMENT’s Work Program is Project Number FM # 436361-1-XX-XX (Operational Support – Marion County CMGC Contract) Federal Funds #D521-028-B and #D521-058-B, (herein collectively “Project”). The Project is to install and to construct fiber optic cable, switches, poles, relays, and other associated devices to assist the COUNTY in improving the COUNTY’s arterial traffic management monitoring from the Marion County Traffic Management Center and to establish network redundancy along arterial corridors in Marion County, some, or all of which, are not on the State Highway System; and

WHEREAS, the DEPARTMENT and the COUNTY have collaborated in the development of the Request for Proposal for the procurement process to provide for the Project’s needs. The DEPARTMENT and the COUNTY will collaborate on the design of the system to be constructed by the DEPARTMENT in Marion County; and

WHEREAS, the DEPARTMENT acknowledges and agrees to the COUNTY’s request to install and construct transportation fiber optic cable, fiber pull boxes, wireless access points, concrete poles, cabinets, and network switches on and off system as a part of the Project. A high-level map of the on and off-system transportation fiber and a table of devices for arterial traffic management is provided in Exhibit “A” attached hereto; and

WHEREAS, the parties agree that it is in the best interest of the DEPARTMENT and of the COUNTY for the DEPARTMENT to act on behalf of the COUNTY in completing all aspects of all portions 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. The Parties hereto agree that it is in the best interest of the COUNTY and the DEPARTMENT for the COUNTY to assume ownership of the transportation fiber optic infrastructure and off-system ITS devices at the completion of construction of the Project and for the COUNTY to operate and to maintain the Project for the life of 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 COUNTY, by Resolution No. 22-R-050, dated February 17, 2022, and attached hereto as Exhibit "B," 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 design and construction of the Project. The Project consists of approximately 6.7 miles of transportation fiber infrastructure, 92 wireless access points, 2 concrete poles, 2 cabinets, and 53 network switches, both on and off system. The Project location and the areas and roadways that are included in the Project are reflected on the map and table shown in Exhibit "A" hereto. The Project consists of installing and constructing those devices and equipment and all other necessary tasks associated with or arising out of the design, construction, and CEI of the Project. The COUNTY shall fully cooperate with and shall support the DEPARTMENT's work efforts in these regards. Subject to access limitations due to operational necessities of COUNTY facilities, including but not limited to hours of operation, COUNTY hereby grants to the DEPARTMENT, its Contractors, representatives, employees, and agents the right to temporarily enter onto COUNTY right of way and property to accomplish the tasks required by the Project. The

DEPARTMENT shall have final decision-making authority with respect to the construction of the Project but shall seek reasonable input from the COUNTY. The rights granted to the DEPARTMENT herein by the COUNTY shall continue until the Project is completed.

2. The COUNTY 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 the COUNTY, to further do all acts necessary, specifically the construction of improvements for the benefit of the COUNTY, including securing all environmental and regulatory permits, if any, necessary for the Project. The COUNTY, by granting the consents contained herein, agrees that the DEPARTMENT may use existing COUNTY right of way and property for the Project without compensation or the need for the DEPARTMENT to acquire any such property interests from the COUNTY. Any changes to the location of the Project shall require additional approval from the County Engineer or his or her designee, which approval should not be unreasonably withheld.
3. To the extent necessary, the COUNTY 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, the COUNTY 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 the COUNTY 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.
4. The DEPARTMENT will continue to consult with the COUNTY on any modifications for the planning, construction, or engineering, as well as the implementation of the

Project set forth in this Agreement.

5. All payment and performance bonds shall be issued in favor of the DEPARTMENT and the COUNTY, with the DEPARTMENT retaining first priority to enforce the warranties. All warranties, if any, for improvements made within those portions of the Project that are located within the jurisdictional limits of the COUNTY'S Road shall be made in favor of the COUNTY.
6. 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 COUNTY.
7. The COUNTY agrees to maintain any portion of the Project constructed under this Agreement for its useful life. Maintenance includes the Project's transportation infrastructure elements installed within City of Ocala right of way, ITS devices installed within COUNTY right of way and Department owned State Highway System right of way that is within the City of Ocala municipal limits.
8. The COUNTY shall be responsible for the payment of electricity and electrical charges incurred in connection with the operation of any portion of the Project not located on the State Highway System and shall undertake the maintenance and continuous operation of said devices upon final acceptance of the installation by the DEPARTMENT. Repair or replacement and other responsibilities of the installation contractor and the DEPARTMENT, during the burn-in period between conditional and final acceptance, are contained in the most recent DEPARTMENT's Standard Specifications for Road and Bridge Construction.
9. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
10. The term of this Agreement commences upon execution.
11. This writing embodies the entire Agreement and understanding between the parties hereto and there are no other Agreements and understanding, oral or written, with

reference to the subject matter hereof that are not merged herein and superseded hereby.

12. This Agreement may not be assigned or transferred by the COUNTY in whole or part without the consent of the DEPARTMENT.
13. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
14. In the event this Agreement is in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:


“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 executory only for the value of the services to be rendered or agreed to be paid for 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 a term for a period of more than one (1) year.”

15. Either party may unilaterally cancel this Agreement for refusal by the other party 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 such party in conjunction with this Agreement.
16. To the extent permitted by law, DEPARTMENT shall indemnify, defend, and hold harmless, release, and forever discharge COUNTY and its officers, board members, employees, agents, and instrumentalities, from and against any and all fines, suits, claims, demands, penalties, liabilities, costs or expenses, losses settlements, judgments and awards and action of whatever kind or nature arising out of, relating to, or resulting from the performance of the Agreement, including a reasonable attorney’s fees and costs (and a reasonable attorney’s fee and costs on appeal) and damages (including, but not limited to, actual and consequential damages) arising from any negligent, willful or wrongful misconduct, knowing misrepresentation or breach of the Agreement by DEPARTMENT,

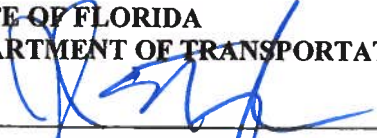
its employees, agents, or subcontractors, to the extent that any such claim, damages, loss, or expenses is caused by any acts or omissions of DEPARTMENT or anyone directly or indirectly employed by DEPARTMENT. This Section shall not be construed in any way to alter the DEPARTMENT or COUNTY's waiver of sovereign immunity, or the limits established in Section 768.28, Florida Statutes (2021).

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

**MARION COUNTY
BOARD OF COUNTY COMMISSIONERS**

By: 
Name: Carl Zalak, III
Title: Chairman

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: 
Name: John E. Tyler, P.E.
Title: Director of Transportation Operations


As approved by the Board on:

February 17, 2022

Attest:


Gregory C. Harrell, Clerk of Court

Attest:


Executive Secretary

Legal Review:


County Attorney

Legal Review:


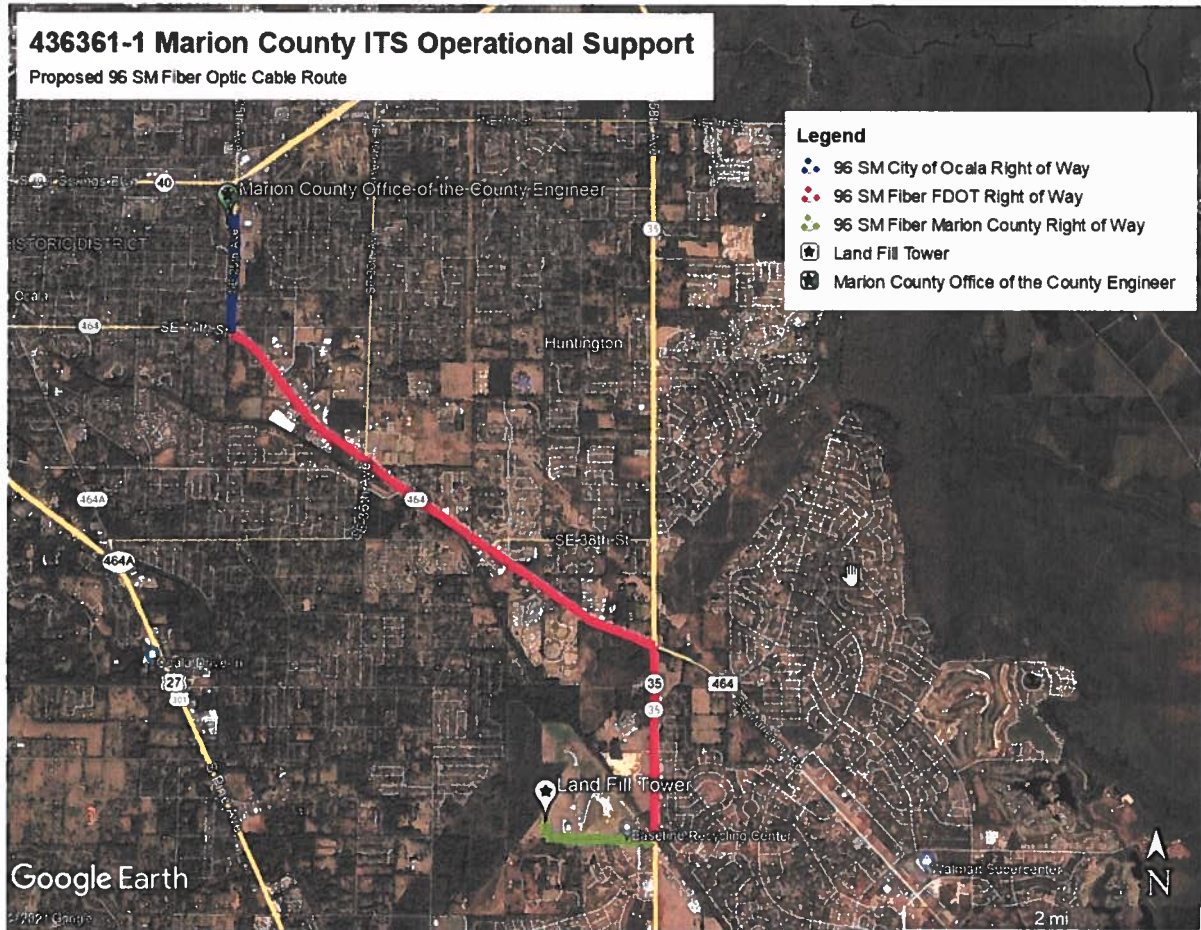


EXHIBIT "A"



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 25th 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.

Table 1: 436361-1 Project Device Locations

Proposed Location of Equipment	Proposed Equipment	R/W
US 301 at SE 132 nd St Rd	Network Switch, WAP	FDOT
SE 132 nd St Rd at CR 484	Network Switch, WAP (X2)	Marion Co
CR 484 at SE 47 th Ave	Network Switch, WAP (X3)	Marion Co
CR 484 at CR 467 (SE 36 th Ave)	Network Switch, WAP (X2)	Marion Co
CR 484 at CR 475	Network Switch, WAP (X2)	Marion Co
CR 484 at CR 475A (SW 16 th Ave)	Network Switch, WAP (X2)	Marion Co
CR 484 at I-75 NB off-ramp	Network Switch	FDOT
CR 484 at I-75 SB off-ramp	Network Switch	FDOT
CR 484 at SW 20 th Ave Rd	Network Switch, WAP (X2)	Marion Co
CR 484 at Marion Oaks Blvd	Network Switch, WAP (X2)	Marion Co
CR 484 at Marion Oaks Course	Network Switch, WAP (X2)	Marion Co
CR 484 at SW 49 th Ct Rd	Network Switch, WAP (X2)	Marion Co
CR 484 at SW 57 th Ave Rd	Network Switch, WAP (X3)	Marion Co
Marion Oaks Trl at SW 49 th Ave	Network Switch, WAP	Marion Co
SR 200 (SW College Rd) at SW 66 th St	Network Switch, WAP	FDOT
SR 200 (SW College Rd) at SW 60 th Ave	Network Switch, WAP (X2)	FDOT
SR 200 (SW College Rd) at SW 65 th Ave Rd	Network Switch, WAP (X2)	FDOT
SR 200 (SW College Rd) at SW 90 th St/SW 95 th St Rd	Network Switch, WAP (X2)	FDOT
SR 200 (SW College Rd) at SW 93 rd St Rd	Network Switch, WAP (X2)	FDOT
SR 200 (SW College Rd) at SW 80 th Ave	Network Switch, WAP (X2)	FDOT
SR 200 (SW College Rd) at SW 99 th St Rd/SW 100 th St	Network Switch, WAP (X2)	FDOT
SR 200 (SW College Rd) at Steeplechase Plaza	Network Switch, WAP (X2)	FDOT
SR 200 (SW College Rd) at SW 103 rd St Rd	Network Switch, WAP (X3)	FDOT
SR 200 (SW College Rd) at SW 88 th Ter	Network Switch, WAP (X2)	FDOT
SR 200 (SW College Rd) at SW 110 th St	Network Switch, WAP (X2)	FDOT
SR 200 (SW College Rd) at SW 95 th Cir	Network Switch, WAP (X2)	FDOT
SR 200 (SW College Rd) at CR 484	Network Switch, WAP (X2)	FDOT
SW 80 th Ave at SW 90 th St	Network Switch, WAP (X2)	Marion Co
SW 80 th Ave at SW 80 th St	Network Switch, WAP	Marion Co
Oak Run Water Tower	Network Switch, WAP (X2)	Marion Co
SR 35 (Baseline Rd)/NE 55 th Ave at SR 40 (Silver Springs Blvd)	Network Switch, WAP	FDOT
SR 35 (Baseline Rd) south of NE 24 th St	Conc. Pole, Cabinet, Network Switch, WAP (X2)	FDOT
SR 35 (Baseline Rd) north of Silver Spring State Park	Conc. Pole, Cabinet, Network Switch, WAP (X2)	FDOT
SR 35 (Baseline Rd) at NE 7 th St	Network Switch, WAP (X2)	FDOT

Proposed Location of Equipment	Proposed Equipment	R/W
SR 35 (Baseline Rd) at E Fort King St	Network Switch, WAP (X3)	FDOT
SR 35 (Baseline Rd) at SE 20 th St	Network Switch, WAP (X2)	FDOT
SR 35 (Baseline Rd) at SE 28 th St	Network Switch, WAP (X2)	FDOT
SR 35 (Baseline Rd) at SR 464 (SE Maricamp Rd)	Network Switch, WAP	FDOT
SR 35 (Baseline Rd) at Dogwood Rd	Network Switch	FDOT
SR 35 (Baseline Rd) at SE 66 th St	Network Switch, WAP	FDOT
SR 35 (Baseline Rd) at SE 92 nd Lp	Network Switch, WAP	FDOT
Baseline Landfill Radio Tower	Network Switch, WAP (X4)	Marion Co
SR 464 (SE Maricamp Rd) at SE 44 th Ave Rd	Network Switch	FDOT
SR 464 (SE Maricamp Rd) at Forest High School	Network Switch	FDOT
SE Maricamp Rd at SE 64 th Ave Rd	Network Switch, WAP	Marion Co
SE Maricamp Rd at Pine Rd	Network Switch, WAP (X2)	Marion Co
SE Maricamp Rd at Midway Rd	Network Switch, WAP (X2)	Marion Co
SE Maricamp Rd at Bahia Ave	Network Switch, WAP (X2)	Marion Co
SE Maricamp Rd at Bahia Rd	Network Switch, WAP (X3)	Marion Co
SE Maricamp Rd at Water Rd	Network Switch, WAP (X2)	Marion Co
SE Maricamp Rd at Emerald Rd	Network Switch, WAP (X2)	Marion Co
SE Maricamp Rd at Oak Rd	Network Switch, WAP (X2)	Marion Co
US 301/441 at SE Lake Weir Ave (CR 464A)	Network Switch, WAP	FDOT

RESOLUTION 22-R- 050

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, FLORIDA, INCORPORATING RECITALS; MAKING FINDINGS; PROVIDING FOR AUTHORITY; DESIGNATING AN AUTHORIZED REPRESENTATIVE FOR THE AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the State of Florida Legislature has approved and mandated the Florida Department of Transportation (FDOT) to complete various projects included in the FDOT's Work Program; and

WHEREAS, included in FDOT's Work Program is Project Number FM # 436361-1-XX-XX (Operational Support – Marion County CMGC Contract) Federal Funds #D521-028-B and #D521-058-B, (herein collectively "Project"). The Project is to install and to construct fiber optic cable, switches, poles, relays, and other associated devices to assist the COUNTY in improving the COUNTY's arterial traffic management monitoring from the Marion County Traffic Management Center and to establish network redundancy along arterial corridors in Marion County, some, or all of which, are not on the State Highway System; and

WHEREAS, FDOT and the County have collaborated in the development of the Request for Proposal for the procurement process to provide for the Project's needs and will collaborate on the design of the system to be constructed by FDOT in Marion County; and

WHEREAS, the parties agree that it is in the best interest of FDOT and of the County for FDOT to act on behalf of the County in completing all aspects of all portions 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. The Parties hereto agree that it is in the best interest of the County and FDOT for the County to assume ownership of the transportation fiber optic infrastructure and off-system ITS devices at the completion of construction of the Project and for the County to operate and to maintain the Project for the life of the Project; and



Certified A True Copy
of 3 page document
this 21 day of Feb 2022
GREGORY C. HARRELL
Clerk of Court and Comptroller
By [Signature] D.C.

WHEREAS, in order to execute this Construction, Maintenance and Operations Agreement, the Board of County Commissioners must approve of the Agreement and authorize its officers to execute the Agreement on its behalf.

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Marion County, Florida:

SECTION 1. Recitals. The above recitals are hereby incorporated as a factual basis for the passage of this Resolution.

SECTION 2. The Board is Authorized. The Marion County Board of County Commissioners is authorized to enter the Construction, Maintenance and Operations Agreement with FDOT, a substantial form of which is attached hereto as **Exhibit "A"** and by this reference made a part hereof.

SECTION 3. Designation of Authorized Representative to Sign the Grant Agreement. The Chairman of the Board is hereby designated as the authorized representative to execute the Construction, Maintenance and Operations Agreement.

SECTION 4. Repealing Clause. All resolutions or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and released.

SECTION 5. Severability. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect or any other section or part of this Resolution.

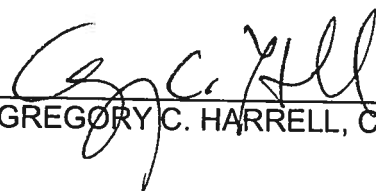
SECTION 6. Effective Date. This Resolution shall take effect immediately upon its adoption.

DULY ADOPTED in this 17th day of February, 2022.

**BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, FLORIDA**


CARL ZALAK, III, CHAIRMAN

ATTEST:

By: 
GREGORY C. HARRELL, CLERK OF COURT