

**FDOT Non-Motorized Traffic Monitoring Program
Continuous Counting Hardware (or Permanent Count)**

Memorandum of Agreement

This Memorandum of Agreement (the "Agreement") is made and entered into on the last date executed below, by and between the Florida Department of Transportation (the "Department"), an agency of the State of Florida, and Charlotte County, (the "Partnering Agency"). The Department and the Partnering Agency are collectively referred to as the "Parties," each being a "Party."

RECITALS:

- A. WHEREAS, the Department developed a statewide Non-Motorized Traffic Monitoring Program (the "Program") with the purpose of collecting and maintaining statistically valid bicycle and pedestrian volume data that would allow the Department to calculate the statistics for annual publication to serve all Department's data customers and partner agencies; and
- B. WHEREAS, the data obtained from the Program may be used for various types of analyses such as planning, designing, and programming facilities, pavement, and trail maintenance, and as a result, the Department seeks to continue expanding said Program; and
- C. WHEREAS, Partnering Agency benefits from the installation of a non-motorized continuous counter system ("Counter System") in its right-of-way and this would expedite the advancement of the Program; and
- D. WHEREAS, Partnering Agency seeks and has agreed to participate in the Program by assuming certain responsibilities in the manner and to the extent set forth in this Agreement; and
- E. WHEREAS, the Department is authorized under Section 334.044, Florida Statutes, to enter into contracts and agreements.

NOW, THEREFORE, in consideration of the mutual benefits contained in this Agreement, the Parties agree as follows:

1. GENERAL PROVISIONS

- 1.1. The Department shall be responsible for administering all work performed under this Agreement and for complying with the terms of this Agreement. The Department may select any vendor with which it has established agreements or contracts and who is qualified and approved to perform the work described in this Agreement.
- 1.2. The Department will provide technical oversight to the Partnering Agency which may include, but is not limited to, determining final site location for the project and advising

in the selection of the Counter System to be installed. The Partnering Agency must provide a primary contact for the project to the Department upon signing this Agreement.

- 1.3. The Department will ensure the installation of the Counter System is performed by the Department's selected vendor in accordance with the Counter System manufacturer's instructions and applicable federal and state guidelines.
- 1.4. The Parties agree that the provisions of this Agreement shall also apply in the event a second Counter System is sought to be installed.
- 1.5. Any changes to this Agreement must be agreed upon in writing by the Parties prior to being implemented. Changes to this Agreement are interpreted to mean, but are not limited to, any amendments, additions, addendums, or exhibits attached to this Agreement, any revisions to the General Provisions, Scope of Project, Roles and Responsibilities, Useful Life & Term, Maintenance, Termination, Choice of Law, Indemnification, and any changes to the definition of any terms contained herein.

2. SCOPE OF PROJECT

- 2.1. The Parties agree on the distribution responsibilities between the Department and the Partnering Agency. The Department will acquire the equipment and will coordinate the installation of the equipment at the project site located at **Cape Haze Pioneer Trail South at Coral Creek Golf Club (26.839586, -82.263145)**. The equipment, during its Useful Life as defined in section 4 of this Agreement, will detect and record non-motorized traffic 24 hours a day, 365 days a year.
- 2.2. At the end of its Useful Life, the Department will coordinate to replace or remove the Counter System following consultation with the Partnering Agency and in line with the priorities of the Program.

3. ROLES AND RESPONSIBILITIES

- 3.1. The Partnering Agency agrees to:
 - 3.1.1. Approve Counter System installation location.
 - 3.1.2. Coordinate with the Department, or with Department's selected vendor, to schedule the date for Counter System installation.
- 3.2. The Department agrees to:
 - 3.2.1. Provide the Counter System equipment for the project, which consists of a side fire infrared device and inductive loops, which shall be made available on the project site for installation purposes within a reasonable time of execution of this Agreement.
 - 3.2.2. Locate Utilities, if necessary, for Counter System installation.
 - 3.2.3. Conduct Counter System field test prior to field deployment.
 - 3.2.4. Test for environmental interference with Counter System.

- 3.2.5. Determine final Counter System location.
- 3.2.6. Provide Counter System installation through its selected vendor.
- 3.2.7. Conduct site inspection and certification after installation.
- 3.2.8. Provide routine Counter System maintenance which shall include, but is not limited to, battery upkeep and replacement of the Counter System and its parts. Replacement of the Counter System and its parts shall include, but is not limited to, the replacement of solar panels, infrared sensor, piezoelectric sensors, and batteries.

4. USEFUL LIFE & TERM

- 4.1. The Useful Life of the Counter System is determined to be 3-5 years. This Agreement shall be for the length of the Useful Life. In the event the Parties seek the installation of a second Counter System, the Parties may incorporate the terms of this Agreement into a second, subsequent, agreement. A second, or subsequent, agreement for the installation of a second Counter System must be attached in writing as a written Addendum to this agreement and must be executed a manner consistent with the policies and procedures of each respective Party.

5. MAINTENANCE

- 5.1. The Department and/or its agent, shall assume all maintenance responsibilities for the Counter System for its Useful Life.
- 5.2. Expected routine maintenance responsibilities may include battery replacement, removing obstructions or equipment hazards on or near the Counter System, and monitoring the security of the Counter System. The Partnering Agency shall not perform any activities which may interfere with the Counter System's condition or functionality. The Partnering Agency shall make its best efforts to ensure its agents, contractors, and subcontractors do not perform activities which interfere with the Counter System's condition or functionality.
- 5.3. The Department will provide Partnering Agency access to the data collected by the Counter System during its Useful Life. This data will continue to be subject to the Department's formats and standards, as defined by the Program.

6. TERMINATION

- 6.1. Termination for cause:
 - 6.1.1. This Agreement is meant to work as an equal partnership, and as such, both the Department and Partnering Agency are expected to comply with all the provisions of this Agreement. This Agreement will be effective upon execution by both Parties and will remain in effect until terminated or amended in writing by the Parties. This Agreement may be terminated by either Party if an action by the other Party constitutes breach of the material terms ("Material Breach"). A Material Breach shall extend to a breach of the essential terms contained herein and include a breach of any essential terms of subsequent properly executed

amendments or attached addendums. The Party seeking to terminate this Agreement must serve the other a thirty (30) day written notice (the "Breach Notice"). The Breach Notice shall contain a simple statement of the actions consisting of the breach and shall identify the relevant section or language which the breaching Party has failed to adhere to. The breaching Party shall have thirty (30) days from the receipt of the Breach Notice to cure its material breach. This Agreement shall be terminated if the breaching Party does not cure its violation within thirty (30) days of receiving a Breach Notice.

6.2. Termination for convenience:

- 6.2.1. Either Party may unilaterally terminate this Agreement with a 30-day written notice of intent to terminate ("Notice of Termination"). The Notice of Termination shall make reference to the Party's election of termination under this subsection.
- 6.2.2. In the event of termination, the Partnering Agency will receive all data collected up to the day of termination.

6.3. Upon termination of the Agreement, the Partnering Agency will receive all data collected up to the day of termination.

7. CHOICE OF LAW

- 7.1. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any action arising out of this Agreement shall be in Charlotte County, Florida.

8. INDEMNIFICATION

8.1. To the extent provided by law, the Partnering Agency shall indemnify, defend, and hold harmless the Department, its officers, agents or employees, against any action, claim, loss, damage, cost, charge, or expense arising out of, relating to, or resulting from any act, error, omission, negligent or wrongful act(s) of Partnering Agency, or any of its officers, agents or employees, acting within the scope of their office or employment, in connection with this Agreement, to the extent and within the limitations of Section 768.28, Florida Statutes. The foregoing indemnification shall not constitute a waiver of the Partnering Agency's sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by Partnering Agency to indemnify the Department, its officers, agents or employees for any action, claim, loss, damage, cost, charge, or expense solely arising out of any act, error, omission, negligent or wrongful act(s) of the Department its officers, agents or employees in connection with this Agreement.

8.2. To the extent provided by law, the Department shall indemnify, defend, and hold harmless the Partnering Agency, its officers, agents or employees, against any action, claim, loss, damage, cost, charge, or expense arising out of, relating to, or resulting from

any act, error, omission, negligent or wrongful act(s) of Partnering Agency, or any of its officers, agents or employees, acting within the scope of their office or employment, in connection with this Agreement, to the extent and within the limitations of Section 768.28, Florida Statutes. The foregoing indemnification shall not constitute a waiver of the Department's sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by Department to indemnify the Partnering Agency, its officers, agents or employees for any action, claim, loss, damage, cost, charge, or expense solely arising out of any act, error, omission, negligent or wrongful act(s) of the Partnering Agency its officers, agents or employees in connection with this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement in Charlotte County, Florida for the purposes expressed herein as of the date(s) below:

PARTNERING AGENCY:

THE BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

BY: _____
Joseph Tiseo, Chairman

DATE: _____

ATTEST:

Roger D. Eaton, Clerk of the Circuit
Court and Ex-Officio Clerk of the
Board of County Commissioners

BY: _____
Deputy Clerk

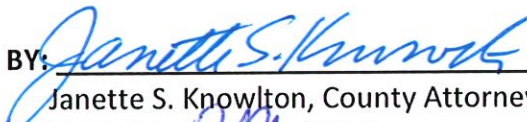
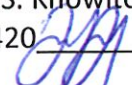
DEPARTMENT:

FLORIDA DEPARTMENT OF
TRANSPORTATION, AN AGENCY OF THE
STATE OF FLORIDA

BY: _____
Transportation Data and Analytics Office
Manager

DATE: _____

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:**

BY:  _____
Janette S. Knowlton, County Attorney
LR25-0420  (DJM)