

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

Memorandum of Agreement

This Memorandum of Agreement, hereinafter referred to as the “Agreement” is made and entered into on the last date executed below, by and between the Florida Department of Transportation, an agency of the State of Florida, hereinafter referred to as the “Department”, and ORANGE COUNTY, hereinafter referred to as 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 a 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;
- 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;
- 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;
- 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;
- 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. 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 will be applicable to the installation of a second Counter System, if any.
- 1.5. Any amendments to this Agreement or its terms will be agreed upon in writing by the Parties prior to being implemented.

2. SCOPE OF PROJECT

- 2.1. This partnership includes agreement upon distributed 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 **Orlando SE Trail at Narcoossee Rd (28.414441, -81.239068)**, and **Pine Hills Trail at Dolores Dr (replacement for PH Trail at PH Elementary School) (28.561196, -81.449318)**. 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 and have it available on the project site for installation purposes within 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 may include battery upkeep and replacement of Counter System parts such as solar panels, infrared sensors, piezoelectric sensors, batteries, etc.

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.

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. Partnering Agency shall not perform any activities which may interfere with the Counter System's condition or functionality. Partnering Agency shall make its best efforts to ensure its agents, contractors, and subcontractors do not perform activities which may 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. 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. If at any time either Party demonstrates a material breach with the provisions on this Agreement, the Agreement may be terminated if the breaching party does not come into compliance within thirty (30) calendar days of the event causing the breach.

6.2. Either Party may unilaterally terminate this Agreement with a 30-day written notice of intent to terminate. In the event of termination, 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 Leon County, Florida.

8. INDEMNIFICATION

8.1. Each party agrees to defend, indemnify, and hold harmless the other party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorneys' fees) arising from the indemnifying party's own negligent acts or omissions, or those negligent acts or omissions of the indemnifying party's officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this Agreement. Each party's indemnification is expressly limited to the amounts set forth in Section 768.28(5), Florida Statutes as amended by the Florida State Legislature. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability of any kind for the acts, omissions, and/or negligence of the other party, its officers, officials, employees, agents, or contractors.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) below:

ORANGE COUNTY

SIGNED BY: _____

PRINT NAME: Jerry L. Demings

TITLE: Orange County Mayor

DATE: _____

FLORIDA DEPARTMENT OF TRANSPORTATION

SIGNED BY: _____

PRINT NAME: _____

TITLE: Transportation Data and Analytics Office Manager

DATE: _____