

5. Consideration of a License Agreement with the Florida Department of Transportation (FDOT) to connect to the FDOT Intelligent Transportation System.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Valentino Perez, Public Works Director

DATE: November 7, 2024

RE: Consideration of a License Agreement with the State of Florida Department of Transportation (FDOT) to connect to the FDOT Intelligent Transportation System.

SUMMARY:

The Public Works Department requests to enter into a license agreement with the State of Florida Department of Transportation (FDOT) to connect to the FDOT ITS system. Public Works would like to work with FDOT to assist in regional traffic monitoring to provide our citizens an improved driving experience. The agreement will allow the city to connect to existing FDOT owned fiber infrastructure via a primary wireless access point that will be installed at Public Works Traffic Operations facility and connect to a fiber link located at I-95 and Malabar Road. The connection will allow FDOT to be able to monitor traffic along State owned and local roads. As the city deploys its own ITS system the connection will provide redundancy to our system.

REQUESTING DEPARTMENTS:

Public Works

FISCAL IMPACT:

The cost for the wireless equipment required to make the connection to the Traffic Operations facility is estimated at \$3,000. Funding is available in Traffic Operations/Signal Maintenance account 001-7026-541-4637.

STAFF RECOMMENDATION:

Motion to approve and authorize executing the license agreement with the Florida Department of Transportation to connect to their ITS system.

ATTACHMENTS:

Honorable Mayor and Members of the City Council

Legislative Memorandum

Page | **2**

1. Agreement-COPB-FDOT ITS License
2. FDOT ITS License Agreement Approval

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”), made and entered into this day of _____, 2024, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter called the “DEPARTMENT” and the **CITY OF PALM BAY**, (hereinafter referred to as the “CITY”). The DEPARTMENT and CITY are sometimes collectively referred to herein as the “Parties”.

WITNESSETH

WHEREAS, the DEPARTMENT owns and operates its own Intelligent Transportation System;


WHEREAS, the DEPARTMENT and CITY have available certain Wireless Access Point (“WAP”) devices and the CITY intends to utilize its WAP devices to connect to the DEPARTMENT’s Intelligent Transportation System;

;



WHEREAS, the Parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party; and

WHEREAS, the CITY, adopted Resolution No._____, dated _____, 2024, attached hereto as Exhibit A, authorizing its officers to execute this Agreement on its behalf.

NOW THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1.  DEPARTMENT acknowledges and agrees to allow the CITY to connect to the DEPARTMENT’s Intelligent Transportation System, via WAP device, for the sole purpose of exchanging transportation related information, as provided in Exhibit B attached hereto.
2. The Parties agree to provide a wireless or single mode fiber optic connection for mutual access to the DEPARTMENT’s Intelligent Transportation System.
3. The video images provided by the DEPARTMENT’s Intelligent Transportation System are not recorded by the DEPARTMENT and shall not be recorded by the CITY.
4. This Agreement is non-exclusive, and nothing herein shall be deemed to limit the ability of the DEPARTMENT to provide the video images or other transportation data

or services referenced herein to other parties.

5. The DEPARTMENT shall make a good faith effort to maintain the quality of service of the connection.
6. The CITY agrees to hold the DEPARTMENT harmless for any loss in service or degradation in quality of services that may arise.
7. The CITY agrees that it will not install or operate any equipment, hardware or software that may interfere with the DEPARTMENT's communications equipment or other DEPARTMENT electronic systems. In the event any such interference occurs; the CITY shall immediately remedy all problems caused by such interference. The CITY further authorizes the DEPARTMENT to disconnect or deactivate any equipment, hardware or software causing such interference and waives any claim it might otherwise assert as a result of such disconnection or deactivation.
8. The DEPARTMENT requests that the CITY give appropriate on-screen, on-air, online, and in-print attribution to the DEPARTMENT for use of the video images.
9. The CITY acknowledges that the content of the images on the video feed may contain sensitive images that can be disturbing or offensive to some viewers, potentially including images of persons or vehicles involved in fatal accidents; law enforcement stops or pursuits of vehicles; identifiable images of the general public or license plates of vehicles; or images of catastrophic events.
10. If the video feed is broadcast by the CITY, the CITY shall provide a disclaimer of any DEPARTMENT endorsement of any advertising located near or in association with the presentation of the video images.
11.  The CITY shall not be charged any fees under this Agreement. In the event the DEPARTMENT determines that the CITY caused damage to DEPARTMENT equipment, facilities, or software the CITY shall reimburse the DEPARTMENT for all damages caused by the CITY upon invoice from the DEPARTMENT to the CITY.
12. The DEPARTMENT may terminate this Agreement at any time with or without cause, upon notification to the  CITY.

13. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts 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.
14. The term of this Agreement commences upon execution and continues in full force until modified by mutual agreement of the Parties or until terminated in accordance with the terms hereto.
15. To the extent permitted by law, the CITY shall indemnify, defend, and hold harmless the DEPARTMENT and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission or negligent act by the CITY, its agents, or employees, during the performance of the Agreement, including but not limited to the use of transportation data or video images generated by and obtained from the Intelligent Transportation System, except that neither the CITY, its agents, nor its employees will be liable pursuant to this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the DEPARTMENT or any of its officers, agents, or employees during the performance of the Agreement.
16. 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.
17. This Agreement may not be assigned or transferred by the CITY in whole or part without the consent of the DEPARTMENT.
18. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the Agreement and Florida Statutes, Florida Statutes shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed

the day and year first above written.

**CITY OF PALM BAY
BOARD OF CITY COUNCIL**

By: _____

Name: _____

Title: _____

As approved by City Council on:

Attest:

Legal Review:

CITY Attorney

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

Name: Charles M. Heffinger, Jr., P.E.

Title: Director of Transportation Operations

Attest:

Executive Secretary

Legal Review:

EXHIBIT "A"

RESOLUTION

EXHIBIT "B"

SCOPE OF SERVICES

General

This project shall provide a network connection between the DEPARTMENT's Intelligent Transportation System and the CITY's Public Works Department building located at 1750 Main Street NE, Palm Bay, FL 32905. The DEPARTMENT will utilize existing fiber optic cable along State Road (SR) 507 near Sunlake Road to facilitate the network connection. DEPARTMENT staff will deploy a Wireless Access Point (WAP) device along SR 507 immediately south of Sunlake Road. CITY staff will deploy a second WAP device on the CITY's Public Works building (1750 Main Street NE, Palm Bay, FL 32905), completing the connection.

The DEPARTMENT will use existing fiber optic communication along SR 514 near I-95 to facilitate a secondary, redundant network connection via a future City of Palm Bay ITS Malabar system. CITY staff will deploy the future fiber optic communication connection as part of the ITS Malabar system, which will connect to the Palm Bay City Hall complex located at 1050 Malabar Road SW, Palm Bay, FL 32909.

From: [Michael Rodriguez](#)
To: [Alan Done](#)
Cc: [Valentino Perez](#); [Christeen Sullivan](#)
Subject: RE: agreement
Date: Friday, July 26, 2024 10:48:39 AM

Their responses are fine.

From: Alan Done <Alan.Done@palmbayflorida.org>
Sent: Friday, July 26, 2024 10:35 AM
To: Michael Rodriguez <Michael.Rodriguez@palmbayflorida.org>
Cc: Valentino Perez <Valentino.Perez@palmbayflorida.org>; Christeen Sullivan <Christine.Sullivan@palmbayflorida.org>
Subject: FW: agreement

Here is the response from FDOT on the changes of the agreement, please review.

Thank you

From: Giovinazzo, Aurelio <Aurelio.Giovinazzo@dot.state.fl.us>
Sent: Friday, July 26, 2024 10:10 AM
To: Alan Done <Alan.Done@palmbayflorida.org>
Cc: Ballard, Tricia <Tricia.Ballard@dot.state.fl.us>; Williams, David <David.Williams2@dot.state.fl.us>
Subject: FW: agreement

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Good morning Alan,

The attached agreement has been approved by FDOT legal. Please pass this along to the City legal team for review. Please see David's comments below.

Thank You,

Aurelio Giovinazzo
FDOT ITS Consultant
Florida Department of Transportation – District 5
4975 Wilson Rd.
Sanford, FL 32771
321-257-7250
aurelio.giovinazzo@dot.state.fl.us

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From: Williams, David <David.Williams2@dot.state.fl.us>
Sent: Friday, July 26, 2024 9:56 AM
To: Giovinazzo, Aurelio <Aurelio.Giovinazzo@dot.state.fl.us>
Subject: Re: agreement

Aurelio,

Here's the version FDOT legal reviewed. The only changes we made were to adjust the Exhibit A/B ordering in the first page and in the appendix, based on their edits. We also responded to their comments. If City Legal is good with everything, they can accept all tracked changes and move forward with their signature process.

Thank you!

David Williams, AICP
VHB Consultant

Florida Department of Transportation - District Five

4975 Wilson Rd

Sanford, FL 32771

Office: (407) 965-5807

Mobile: (407) 462-9886

Email: david.williams2@dot.state.fl.us and dwilliams@vhb.com

From: Giovinazzo, Aurelio <Aurelio.Giovinazzo@dot.state.fl.us>
Sent: Tuesday, July 23, 2024 9:14 AM
To: Williams, David <David.Williams2@dot.state.fl.us>
Subject: Fwd: agreement

Sent from my iPhone

Begin forwarded message:

From: Alan Done <Alan.Done@palmbayflorida.org>
Date: July 23, 2024 at 8:31:31 AM EDT
To: "Giovinazzo, Aurelio" <Aurelio.Giovinazzo@dot.state.fl.us>
Subject: agreement

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Have you heard anything back on the agreement?

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