

## LOCALLY FUNDED AGREEMENT

**THIS LOCALLY FUNDED AGREEMENT** (hereinafter ‘Agreement’) is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between the **CITY/COUNTY**, a municipal corporation of the State of Florida, hereinafter referred to as the ‘CITY/COUNTY’, and the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION** a component agency of the State of Florida, hereinafter referred to as the ‘DEPARTMENT’.

### RECITALS:

**WHEREAS**, the CITY/COUNTY has jurisdiction over and maintains State Road (S.R.) XXX corridor within the corporate limits of the CITY/COUNTY; and

**WHEREAS**, the CITY/COUNTY has requested the DEPARTMENT to install or cause to be installed patterned textured pavement crosswalks (which include concrete curb ramps, curb and gutter, brick pavers, conduit, pull boxes, loop detectors, loop assemblies, pedestrian countdown signals, pedestrian detectors, and pedestrian crossing signs) to various intersections along S.R. XXX from XX to XX; and

**WHEREAS**, the DEPARTMENT has agreed to install or cause to be installed patterned textured pavement crosswalks to various intersections along S.R. XXX from XX to XX, subject to the terms and conditions detailed in this Agreement; and

**WHEREAS**, the CITY/COUNTY shall fund the increased costs, under financial project number XXXXXX-X-XX-XX, associated with the installation of the patterned textured pavement crosswalks on S.R. XXX, from XX to XX, hereinafter collectively called the ‘PROJECT’, and as detailed in the attached Exhibit “A”, “Scope of Services”, which is herein incorporated by reference; and

**WHEREAS**, the parties are authorized to enter into this Agreement pursuant to **Sections 334.044(7) and 339.12 (2006), Florida Statutes**, and authorize its officers to do so.

**NOW, THEREFORE,** in consideration of the premises, the mutual covenants and other valuable considerations contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Recitals.** The Recitals to this Agreement are true and correct and are incorporated herein by reference and made a part hereof.

**2. General Requirements**

(a) A true and correct copy of the Resolution of the CITY/COUNTY Commission approving this Agreement is attached hereto as Exhibit "C", 'CITY/COUNTY RESOLUTION', and is incorporated herein by reference.

(b) E-Verify:

The CITY/TOWN/Contractors or Vendors shall:

- i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the Agreement; and
- ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

**(Executive Order Number 2011-02)**

The CITY/TOWN shall insert the above clause into any contract entered into by the CITY/TOWN with vendors or contractors hired by the CITY/TOWN for purposes of performing its duties under this Agreement.

- (c) The DEPARTMENT will administer and construct the PROJECT in accordance with the signed and sealed PROJECT plans and as detailed in the attached Exhibit “A”, ‘Scope of Services’. The DEPARTMENT will complete the PROJECT utilizing the funds provided by the CITY/COUNTY.
- (d) The CITY/COUNTY will provide funding to the DEPARTMENT, in the aggregate amount of ONE HUNDRED SIXTY THOUSAND DOLLARS (\$160,000.00), for the PROJECT, subject further to the provisions in Section 3 of this Agreement and as outlined in the attachment Exhibit “B”, “Financial Summary”, which is herein incorporated by reference.
- (e) The DEPARTMENT Contractor will not commence work on the PROJECT until CITY/COUNTY funding for the PROJECT is on deposit with the DEPARTMENT.
- (f) Upon the receipt, authorization and encumbrance of funding received from the CITY/COUNTY as a result of this Agreement, the DEPARTMENT Contractor will commence work on the PROJECT.

**3. Financial Provisions.**

- (a) The CITY/COUNTY agrees that it will, no later than thirty (30) calendar days after the DEPARTMENT’s execution of this Agreement, furnish the DEPARTMENT an advance deposit in the amount of DOLLARS (\$0.00) for full payment of the estimated PROJECT cost for Locally Funded project number 418238-6-52-02. The advance deposit shall be the total estimated PROJECT cost plus allowances. The DEPARTMENT may utilize this deposit for payment of the costs of the PROJECT.
- (b) If the accepted bid amount plus allowances is in excess of the advance deposit amount, the CITY/COUNTY will provide an additional deposit within fourteen (14) calendar

days of notification from the DEPARTMENT or prior to posting of the accepted bid, whichever is earlier, so that the total deposit is equal to the bid amount plus allowances. The DEPARTMENT will notify the CITY/COUNTY as soon as it becomes apparent the accepted bid amount, plus allowances, is in excess of the advance deposit amount. However, failure of the DEPARTMENT to so notify the CITY/COUNTY shall not relieve the CITY/COUNTY from its obligation to pay for its full participation on final accounting as provided herein below. If the CITY/COUNTY cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT's project manager indicating when the deposit will be made. The CITY/COUNTY understands the request and approval of the additional time could delay the PROJECT, and additional costs may be incurred due to a delay of the PROJECT.

(c) If accepted bid amount plus allowances is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the bid amount plus allowances if such refund is requested by the CITY/COUNTY in writing.

(d) Should PROJECT modifications or changes to bid items occur that increase the CITY/COUNTY's share of total PROJECT costs, the CITY/COUNTY will be notified by the DEPARTMENT accordingly. The CITY/COUNTY agrees to provide, without delay, in advance of additional work being performed, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund its share of the PROJECT. The DEPARTMENT shall notify the CITY/COUNTY as soon as it becomes apparent the actual costs will overrun the award amount. However, failure of the DEPARTMENT to so notify the CITY/COUNTY shall not relieve the

CITY/COUNTY from its obligation to pay for its full participation during the PROJECT and on final accounting as provided herein below. Funds due from the CITY/COUNTY during the PROJECT not paid within forty (40) calendar days from the date of the invoice are subject to an interest charge at a rate established pursuant to **Section 55.03, Florida Statutes (F.S.)**.

- (e) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred and sixty (360) days of final payment to the Contractor. The DEPARTMENT considers the PROJECT complete when final payment has been made to the Contractor, not when the construction work is complete. All PROJECT cost records and accounts shall be subject to audit by a representative of the CITY/COUNTY for a period of three (3) years after final close out of the PROJECT. The CITY/COUNTY will be notified of the final cost. Both parties agree that in the event final accounting of total PROJECT costs pursuant to the terms of this agreement is less than the total deposit to date, a refund of the excess will be made by the DEPARTMENT to the CITY/COUNTY. If the final accounting is not performed within three hundred and sixty (360) days, the CITY/COUNTY is not relieved from its obligation to pay.
- (f) In the event the final accounting of total PROJECT costs is greater than the total deposits to date, the CITY/COUNTY will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The CITY/COUNTY agrees to pay interest at a rate as established pursuant to **Section 55.03, F.S.**, on any invoice not paid within forty (40) calendar days until the invoice is paid.

(g) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached **Three Party Escrow Agreement** between the CITY/COUNTY, Department and the State of Florida, Department of Financial Services, Division of Treasury.

(h) Nothing in this Agreement shall be construed to violate the provisions of Section 339.135(6)(a), Florida Statutes, which provides 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 such 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 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 TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than one year.”

**4. Effective Date of this Agreement.** This Agreement shall become effective upon execution by the CITY/COUNTY and the DEPARTMENT and as of the date set forth on page one (1) hereof.

5. **Provisions Separable.** The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

6. **Amendment of Agreement.** This Agreement may only be amended by mutual agreement of the DEPARTMENT and the CITY/COUNTY, expressed in writing and executed and delivered by each.

7. **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when delivered (personally, by courier service such as Federal Express, or by other messenger) against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below:

(a) If to the CITY/COUNTY:

Attention:

(b) If to the DEPARTMENT: Florida Department of Transportation  
1000 NW 111 Avenue, Room 6202B  
Miami, Florida 33172  
Attention: Pablo Valin, Senior Contract Analyst

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

8. **Entire Agreement.** This Agreement, including its attached Exhibits, contain the sole and entire Agreement between the parties with respect to such subject matter and supersede any and all other prior written or oral agreements between them with respect to such subject matter.

9. **Binding Effect.** This Agreement shall be binding upon the parties and their respective representatives, successors and assigns.
10. **Waiver.** Waiver by either party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.
11. **Captions.** The captions contained in this Agreement are inserted only as a matter of convenience or reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.
12. **Absence of Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to (a) confer upon any entity or person other than the parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third party beneficiary or otherwise except as specifically provided in this Agreement; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement.
13. **Other Documents.** The parties shall take all such actions and execute all such documents which may be reasonably necessary to carry out the purposes of this Agreement, whether or not specifically provided for in this Agreement; provided that the parties further acknowledge that certain additional actions by the CITY/COUNTY may require approval by the CITY/COUNTY **Commission/Council**, and, to the extent such approval is required by applicable law, obtaining such approval shall be a condition to the obligations of the CITY/COUNTY under this Section.
14. **Governing Law.** This Agreement and the interpretation of its terms shall be governed by the laws of the State of Florida, without application of conflicts of law principles. Venue for any



judicial, administrative or other action to enforce or construe any term of this Agreement or arising from or relating to this Agreement shall lie exclusively in Miami-Dade County, Florida.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the day and year first above written, the CITY/COUNTY, signing by and through its CITY/COUNTY Manager, and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, signing by and through its District Secretary, each duly authorized to execute same.

**CITY/COUNTY:**

**STATE OF FLORIDA,  
DEPARTMENT OF TRANSPORTATION:**

**BY:** \_\_\_\_\_  
CITY/COUNTY MAYOR

**BY:** \_\_\_\_\_  
DISTRICT SECRETARY

**ATTEST:** \_\_\_\_\_  
(SEAL) CITY/COUNTY CLERK

**ATTEST:** \_\_\_\_\_  
(SEAL) EXECUTIVE SECRETARY

**LEGAL REVIEW:**

\_\_\_\_\_  
CITY/COUNTY ATTORNEY

\_\_\_\_\_  
DISTRICT CHIEF COUNSEL

**EXHIBIT ‘A’**

**SCOPE OF SERVICES**

The PROJECT work consists of constructing pedestrian improvements consisting of patterned textured pavements crosswalks (patterned pavements crosswalks include concrete curb ramps, curb and gutter, brick pavers, conduit, pull boxes, loop detectors, pedestrian countdown signals, pedestrian detectors, and pedestrian crossing signs) installations at various intersections along 41<sup>st</sup> Street from Chase Avenue to Pine Tree Drive in the CITY/COUNTY. The PROJECT is further defined in Attachment “A1”, PROJECT plans (incorporated herein by reference). The CITY/COUNTY has requested that the patterned textured pavement crosswalks be of certain style that is consistent CITY/COUNTY wide and that been installed by the DEPARTMENT at other crosswalk locations. The crosswalk design will consist of a textured pavement pattern that is highly visible and safer for pedestrians.

PROJECT LIMITS: **S.R. XXX from XX to XX**

DEPARTMENT Financial Project Number: **XXXXXXX-X-XX-XX**

COUNTY: **Monroe/Miami-Dade**

DEPARTMENT Project Manager:

CITY/COUNTY Project Manager:

**EXHIBIT 'B'**  
**FINANCIAL SUMMARY**

The DEPARTMENT's Work Program allocates the following funding, programmed under Financial Project Number XXXXXX-X-XX-XX, for PROJECT completion:

<b><u>Fiscal Year:</u></b>	<b><u>Amount:</u></b>	<b><u>Fund Type:</u></b>
2008/2009	\$160,000.00	Local Funds (LF)

CITY/COUNTY FINANCIAL RESPONSIBILITY: \$ 160,000.00

Incorporated herein by reference is Exhibit "B1", cost estimate.

**EXHIBIT 'C'**

**CITY/COUNTY RESOLUTION**

To be attached hereto and incorporated herein once ratified by the CITY/COUNTY Council/Commission.

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