

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
LOCALLY FUNDED AGREEMENT**

THIS Locally Funded Agreement ("Agreement"), entered into this _____ day of _____, 20_____, by and between the State of Florida Department of Transportation hereinafter called the DEPARTMENT, and the City of Fort Lauderdale located at 100 N. Andrews Avenue, Fort Lauderdale, FL 33301, hereinafter called the PARTICIPANT.

WITNESSETH

WHEREAS, the DEPARTMENT and the PARTICIPANT are desirous of having the PARTICIPANT provide financial assistance to the DEPARTMENT for the development (design) of a full set of signed and sealed construction plans for the DEPARTMENT's construction of a pedestrian plaza at the intersection of Las Olas Boulevard and SE 6th Avenue over the Henry E. Kinney Tunnel in the City of Fort Lauderdale, Florida, Broward County. (Financial Management (FM) Number 439714-1-32-02, Funded in Fiscal Year 2017/2018) as set forth in **Exhibit A** attached hereto and made a part hereof and hereinafter referred to as the Project; and

WHEREAS, the improvements are in the interest of both the PARTICIPANT and the DEPARTMENT and it would be more practical, expeditious, and economical for the DEPARTMENT to perform such activities; and

WHEREAS, the PARTICIPANT by Resolution No. _____ adopted on _____, 20_____, a copy of which is attached hereto and made a part hereof, authorizes the Mayor of its Board of Commissioners or designee to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the Project, the parties agree to the following:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. The DEPARTMENT shall be responsible for assuring that the Project complies with all applicable Federal, State and Local laws, rules, regulations, guidelines and standards.
3. The PARTICIPANT agrees to make all previous studies, maps, drawings, surveys and other data and information pertaining to the Project available to the DEPARTMENT at no extra cost.
4. The DEPARTMENT shall have the sole responsibility for resolving claims and requests for additional work for the Project. The DEPARTMENT will make reasonable efforts to obtain the PARTICIPANT's input in its decisions.
5. The total cost for the Project referenced above is estimated at TWO MILLION FOUR HUNDRED NINETY EIGHT THOUSAND SEVEN HUNDRED TWENTY TWO DOLLARS

AND NO CENTS (\$2,498,720.00). The PARTICIPANT'S share for the Project is estimated to be FOUR HUNDRED NINETY EIGHT THOUSAND SEVEN HUNDRED TWENTY TWO DOLLARS AND NO CENTS (\$498,720.00), which sum shall be paid to the DEPARTMENT. In the event the actual cost of the Project is less than the PARTICIPANT's payment, the difference shall be refunded to the PARTICIPANT. In the event the actual cost of the Project, without modifications, results in a sum greater than that paid by the PARTICIPANT, then any additional cost shall be the sole responsibility of the PARTICIPANT and shall be paid to the DEPARTMENT.

- A. The PARTICIPANT agrees that it will, within thirty (30) days of execution of this Agreement, furnish the DEPARTMENT with a check in the amount of FOUR HUNDRED NINETY EIGHT THOUSAND SEVEN HUNDRED TWENTY TWO DOLLARS AND NO CENTS (\$498,720.00) towards the Project Costs.

In the event payment is not received by the DEPARTMENT within thirty (30) days of execution of this Agreement, the DEPARTMENT reserves the right to terminate this Agreement and remove the two monument signs and landscaping.

Remittance shall be made payable to the Department of Financial Services, Revenue Processing. Payment shall be clearly marked to indicate that it is to be applied to FM No. 439714-1-32-02. The DEPARTMENT shall utilize this amount towards costs of Project No. 439714-1-32-02.

Payment shall be mailed to:
Florida Department of Transportation
Program Management, Attention: Norma C. Corredor
3400 W. Commercial Boulevard
Fort Lauderdale, Florida 33309-3421

- B. If Project cost are in excess of the advance deposit amount, the PARTICIPANT 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 PARTICIPANT as soon as it becomes apparent the accepted bid amount plus allowances are in excess of the advance deposit amount; however, failure of the DEPARTMENT to so notify the PARTICIPANT shall not relieve the PARTICIPANT from its obligation to pay for its full participation. If the PARTICIPANT cannot provide the additional deposit within fourteen (14) calendar days, a letter must be submitted to and approved by the DEPARTMENT's Project Manager indicating when the deposit will be made and the DEPARTMENT's written consent to the payment of the additional deposit and said date. The PARTICIPANT understands the request and approval of the additional time could delay the Project, and additional costs may be incurred due to delay of the Project. In the event of non-payment, the DEPARTMENT reserves the right to terminate this Agreement and remove the

Project and the DEPARTMENT's roadway work from the Department's Work Program.

- C. Should Project modifications occur that increase the PARTICIPANT's payment for the Project, the PARTICIPANT will be notified by the DEPARTMENT. The PARTICIPANT agrees to provide, without delay, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the Project. The DEPARTMENT shall notify the PARTICIPANT as soon as it becomes apparent the actual costs will overrun the award amount; however, failure of the DEPARTMENT to so notify the PARTICIPANT shall not relieve the PARTICIPANT from its obligation to pay for its full participation. Funds due from the PARTICIPANT, for 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, F.S.*
 - D. The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty (360) days of final payment to the Contractor. The DEPARTMENT considers the Project and the resurfacing work complete when the final payment has been made to the Contractor, not when the construction work is complete. All Project & construction cost records and accounts shall be subject to audit by a representative of the PARTICIPANT for a period of three (3) years after final close out of the Project and the resurfacing work. The PARTICIPANT will be notified of the final cost. Both parties agree that in the event the final accounting of total Project costs pursuant to the terms of this Agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the PARTICIPANT. If the final accounting is not performed within three hundred sixty (360) days, the PARTICIPANT is not relieved from its obligation to pay.
 - E. In the event the final accounting of total Project costs indicate that the Project costs are greater than the total deposits to date, the PARTICIPANT will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The PARTICIPANT 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.
6. The payment of funds under this Agreement, once they have been received by the DEPARTMENT from the PARTICIPANT, will be sent directly to the Department of Financial Services, Division of Treasury for deposit as provided in the attached 3 Party Escrow Agreement, between the PARTICIPANT, the DEPARTMENT, and the State of Florida Department of Financial Services, Division of Treasury, a copy of which is attached hereto and made a part hereof as **Exhibit B**.

7. In the event it becomes necessary for either party to institute suit for the enforcement of the provisions of this Agreement, each party shall be responsible to pay their own attorney fees and court costs. Venue with respect to any such litigation shall be in Broward County.
8. This Agreement and any interest herein shall not be assigned, transferred or otherwise encumbered by the PARTICIPANT under any circumstances without the prior written consent of the DEPARTMENT. However, this Agreement shall run to the DEPARTMENT and its successors.
9. Except as otherwise set forth herein, this Agreement shall continue in effect and be binding to both the PARTICIPANT and the DEPARTMENT until the Project and the roadway work is completed as evidenced by the written acceptance of the DEPARTMENT, or June 30, 2019, whichever occurs first.
10. The PARTICIPANT warrants that it has not employed or obtained any company or person, other than bona fide employees of the PARTICIPANT, to solicit or secure this Agreement, and it has not paid or agreed to pay any company, corporation, individual or firm, other than a bona fide employee employed by the PARTICIPANT. For breach or violation of this provision, the DEPARTMENT shall have the right to terminate the Agreement without liability.
11. The PARTICIPANT / Vendor/ Contractor:
 - (A) shall utilize the U.S. Department of Homeland Security's E-verify system to verify the employment eligibility of all new employees hired by the PARTICIPANT/ Vendor/Contractor during the term of the contract; and
 - (B) shall 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.
12. This Agreement is governed by and construed in accordance with the laws of the State of Florida.
13. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this agreement that are not contained in this document.
14. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

15. Any or all notices (except invoices) given or required under this Agreement shall be in writing and either personally delivered with receipt acknowledged or sent by certified mail, return receipt requested. All notices delivered shall be sent to the following addresses:

If to the DEPARTMENT:

Florida Department of Transportation - District Four
3400 West Commercial Blvd.
Fort Lauderdale, Florida 33309-3421
Attn: Norma C. Corredor
With a copy to: Auraliz Benitez
A second copy to: Office of the General Counsel

If to the PARTICIPANT:

City of Fort Lauderdale
290 NE 3rd Avenue
Fort Lauderdale, Florida 33301
Attn: Elizabeth Van Zandt
With a copy to: City Attorney

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IN WITNESS WHEREOF, this Agreement is to be executed by the parties below for the purposes specified herein. [Authorization has been given to enter into and execute this Agreement by Resolution No _____, hereto attached.]

AGENCY
ATTEST:

CITY OF FORT LAUDERDALE,
through its CITY COMMISSIONERS

Jeffrey A. Modarelli, City Clerk

BY: _____
John P. "Jack" Seiler, Mayor
_____ day of _____, 20__

Lee R. Feldman, City Manager

Approved as to form by Office of City Attorney:

BY: _____
Cole J. Copertino, Assistant City Attorney

DEPARTMENT:
ATTEST:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Executive Secretary (SEAL)

BY: _____
Transportation Development, Director
_____ day of _____, 20__

APPROVED:

LEGAL REVIEW:

District Program Management Administrator

BY: _____
Office of The General Counsel

Exhibit A
Scope of Services
FM# 439714-1-32-02

The scope of the Project consists of designing a pedestrian plaza at the intersection of Las Olas Boulevard and SE 6th Avenue over the Henry E. Kinney Tunnel in the City of Fort Lauderdale in Broward County. The project will extend the tunnel deck northward approximately 50 feet from the edge wall of Las Olas Boulevard to accommodate the pedestrian plaza over the tunnel. The plaza will include sitting areas with shelters, landscape, and pedestrian lighting. The DEPARTMENT's staff will coordinate with the PARTICIPANT's staff to reach consensus on a design concept which will meet the needs of the PARTICIPANT as well as the DEPARTMENT's intent to rehabilitate the tunnel. In addition, the intersection of Las Olas will be milled and resurfaced with stamped asphalt and include countdown pedestrian signals.

Design services include:

- Project Management
- Roadway
- Field survey
- Structures
- Utility Coordination
- Drainage design/permitting
- Lighting
- Architecture

Exhibit B
THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), City of Fort Lauderdale ("Participant"), and the State of Florida, Department of Financial Services, Division of Treasury ("Escrow Agent"), and shall become effective upon the Agreement's execution by Escrow Agent.

WHEREAS, FDOT and Participant are engaged in the following project ("Project"):

Project Name: Design of a pedestrian plaza at the intersection at the intersection of Las
Olas Boulevard and S.E. 6th Avenue over the Henry E. Kinney
Project #: 439714-1-32-02
County: Broward

WHEREAS, FDOT and Participant desire to establish an escrow account for the project.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit will be made into an interest bearing escrow account established hereunder for the purposes of the Project. The escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent's receipt and execution of this Agreement.
2. Other deposits to the escrow account may be made during the life of this Agreement.
3. Deposits will be delivered in accordance with instructions provided by the Escrow Agent to the FDOT for deposit into the escrow account. A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible.
4. FDOT's Comptroller or designee shall be the sole signatory on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from the account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided to the Escrow Agent by FDOT's Comptroller or designee.
5. Moneys in the escrow account will be invested in accordance with section 17.61, Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while invested. There is no guaranteed rate of return. Investments in the escrow account will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of the investments shall accrue to the escrow account.
6. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the Project.

7. The Escrow Agent agrees to provide written confirmation of receipt of funds to FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon request.
8. The Escrow Agent further agrees to provide quarterly reports to FDOT concerning the escrow account. FDOT agrees to provide a copy of such quarterly reports to Participant upon request.
9. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.
10. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.
11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. This Agreement shall terminate upon disbursement by the Escrow Agent of all money held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent that the account is to be closed.

The remainder of this page is blank.

IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

For FDOT (signature)

Name and Title

59-3024028

Federal Employer I.D. Number

Date

For PARTICIPANT (signature)

Name

Title

F-596-000-319-005

Federal Employer I.D. Number

Date

FDOT Legal Review:

For Escrow Agent (signature)

Name and Title

Date

THIS IS AN EXHIBIT ONLY NOT FOR EXECUTION!!!