LOCALLY FUNDED AGREEMENT

THIS LOCALLY FUNDED AGREEMENT (hereinafter 'Agreement') is made and entered into this 16th day of May, 2014 between the **CITY OF NORTH MIAMI,** a municipal corporation of the State of Florida, hereinafter referred to as the 'CITY', 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 has jurisdiction over and maintains State Road (S.R.) 922/NE 125th Street corridor within the corporate limits of the CITY; and

WHEREAS, the CITY has requested the DEPARTMENT to install or cause to be installed patterned textured pavement crosswalks and sidewalk pavers to various intersections along S.R. 922/NE 125th Street from East of 7th Avenue to west of Biscayne Boulevard; and

WHEREAS, the DEPARTMENT has agreed to install or cause to be installed patterned textured pavement crosswalks and sidewalk pavers to various intersections along S.R. 922/NE 125th Street from east of 7th Avenue to west of Biscayne Boulevard, subject to the terms and conditions detailed in this Agreement; and

WHEREAS, the CITY shall fund the increased costs, under financial project number 429137-1-52-02, associated with the installation of the patterned textured pavement crosswalks and sidewalk pavers on S.R. 922/NE 125th Street from east of 7th Avenue to west of Biscayne Boulevard, 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 Council approving this Agreement is attached hereto as Exhibit "C", 'CITY OF NORTH MIAMI RESOLUTION', and is incorporated herein by reference.

(b) E-Verify

The CITY / Contractors or Vendors:

i. 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 Vendor/Contractor during the term of the contract; and

ii. 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.

The CITY shall insert the above clause into any contract entered into by the CITY with vendors or contractors hired by the CITY 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.

(d) The CITY will provide funding to the DEPARTMENT, in the aggregate amount of NINETY NINE THOUSAND ONE HUNDRED NINETY EIGHT DOLLARS ($99,198.00), 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 funding for the PROJECT is on deposit with the DEPARTMENT.

(f) Upon the receipt, authorization and encumbrance of funding received from the CITY as a result of this Agreement, the DEPARTMENT Contractor will commence work on the PROJECT.

3. Financial Provisions.

(a) The CITY 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 NINETY NINE THOUSAND ONE HUNDRED NINETY EIGHT DOLLARS ($99,198.00) for full payment of the estimated PROJECT cost for Locally Funded project number 429137-1-52-02. 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 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. If the PROJECT accepted bid amount plus allowances is more than TWENTY THOUSAND DOLLARS ($20,000.00) over the advance deposit amount, the CITY shall have the option to authorize the DEPARTMENT to remove the patterned textured pavement crosswalks and sidewalk pavers from the DEPARTMENT's construction project, terminate this Agreement and refund the CITY the advance deposit amount. The DEPARTMENT will notify the CITY as soon as it becomes apparent the accepted bid amount, plus allowances, is in excess of the advance deposit amount. If the CITY opts to terminate this Agreement (in the event that the bid amount plus allowances exceeds the advance deposit by more than $20,000.00), the CITY shall provide the DEPARTMENT notice of its request to terminate within (7) calendar days after the DEPARTMENT provides notice to the CITY that the bid amount, plus allowances, exceeds the advance deposit amount. If the CITY 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 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 in writing.

(d) Should PROJECT modifications or changes to bid items occur that increase the CITY's share of total PROJECT costs, the CITY will be notified by the DEPARTMENT accordingly. The CITY 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. If the PROJECT modifications or changes to bid items occur that increase the CITY's share of total PROJECT costs by more than TWENTY THOUSAND DOLLARS ($20,000.00), the CITY shall have the option to authorize the DEPARTMENT to remove the patterned textured pavement crosswalks and sidewalk pavers from the DEPARTMENT's construction project, terminate this Agreement and refund the CITY the unexpended deposit amount. The DEPARTMENT shall notify the CITY as soon as it becomes apparent the actual costs will overrun the award amount. If the CITY opts to terminate this Agreement (in the event that actual cost will overrun the award amount by more than $20,000.00), the CITY shall provide the DEPARTMENT notice of its request to terminate within seven (7) calendar days after the DEPARTMENT provides notice to the CITY that the actual costs will overrun the award amount. Funds due from the CITY 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 for a period of three (3) years after final close out of the PROJECT. The CITY 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. If the final accounting is not performed within three hundred and sixty (360) days, the CITY 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 will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The CITY 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.

(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 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, 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: City of North Miami
776 NE 125th Street
North Miami, Florida 33161
Attention: Stephen E. Johnson, City Manager

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

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 may require approval by the CITY 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 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 OF NORTH MIAMI, signing by and through its CITY Manager, and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, signing by and through its District Secretary, each duly authorized to execute same.

CITY OF NORTH MIAMI:

BY: _____
CITY MANAGER

ATTEST: _____
(SEAL) CITY CLERK

STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION:

BY: _____ for G.P.
DISTRICT SECRETARY

ATTEST: Margaret Deggins
(SEAL) EXECUTIVE SECRETARY

LEGAL REVIEW:

_____
CITY ATTORNEY

_____
DISTRICT CHIEF COUNSEL

EXHIBIT 'A'

SCOPE OF SERVICES

The PROJECT work consists of constructing pedestrian improvements consisting of patterned textured pavement crosswalks at intersections of NE 8th Avenue, NE 9th Avenue and NE 10th Avenue along S.R. 922/NE 125th Street in the CITY. Additionally, work consists of installation of sidewalk pavers at NW corner of the intersection of NE 10th Avenue and S.R. 922/NE 125th Street. The PROJECT is further defined in Attachment "A1", Roadway Plans (incorporated herein by reference). The CITY has requested that the patterned textured pavement crosswalks be of certain style that is consistent CITY wide and that has been installed 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. 922/NE 125th Street from east of 7th Avenue to west of Biscayne Boulevard**

DEPARTMENT Financial Project Number: **429137-1-52-02**

COUNTY: **Miami-Dade**

DEPARTMENT Project Manager: **Leonard Salazar, PE 305-470-5498**

CITY Project Manager: **John O'Brien, City Transportation Planner 305-895-9883**

EXHIBIT 'B'

FINANCIAL SUMMARY

The DEPARTMENT's Work Program allocates the following funding, programmed under Financial Project Number 429137-1-52-02, for PROJECT completion:

Fiscal Year:	**Amount:**	**Fund Type:**
2014/2015	$99,198.00	Local Funds (LF)

CITY OF NORTH MIAMI FINANCIAL RESPONSIBILITY: $ 99,198.00

EXHIBIT 'C'

CITY OF NORTH MIAMI RESOLUTION

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

RESOLUTION NO. R-2014-35

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE A LOCALLY FUNDED AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT), IN SUBSTANTIALLY THE ATTACHED FORM, FOR THE INSTALLATION OF PATTERNED-PAVEMENT CROSSWALKS AT THE INTERSECTIONS OF NORTHEAST 125TH STREET AND NORTHEAST 8TH AVENUE, NORTHEAST 9TH AVENUE, AND NORTHEAST 10TH AVENUE; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, on May 28, 2013, the Mayor and City Council of the City of North Miami ("City") passed Resolution Number R-2013-55, adopting the Downtown Master Development and Major Corridor Plan ("Master Plan") to serve as a design guide for future development and redevelopment; and

WHEREAS, the Master Plan has been developed to serve as a visual design guide for future development and redevelopment of the downtown core area and major corridors, to further advance the objectives of the Comprehensive Plan and Land Development Regulations; and

WHEREAS, the Comprehensive Plan, also requires that the City adopts guidelines for unified urban design, architectural and landscape regulations for major corridors to further assist in creating a sense of place throughout the City, including the enhancement of the pedestrian experience throughout the downtown area; and

WHEREAS, as part of the State of Florida Highway System, the Florida Department of Transportation ("FDOT") is currently in the process of repaving Northeast 125th Street from Northeast 7th Avenue to Biscayne Boulevard ("Services"); and

WHEREAS, City administration has requested that the FDOT incorporate the design and installation of patterned-pavement crosswalks ("Crosswalks") at key intersections concurrently with their Services; and

WHEREAS, the installation of the Crosswalks by FDOT will be developed at the following intersections: Northeast 125th Street and Northeast 8th Avenue, Northeast 9th Avenue, and Northeast 10th Avenue; and

WHEREAS, the Locally Funded Agreement between the City of North Miami and FDOT, in substantially the attached form, delineates the parties' responsibilities for the design, installation and cost of Crosswalks ("Agreement"); and

WHEREAS, the Mayor and City Council find that entering into the Agreement for the purpose of fostering pedestrian friendly use of the downtown area is not only consistent with the City's Comprehensive Plan, but also serves to improve the public's health, safety and welfare.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AS FOLLOWS:

Section 1. **Authority of City Manager.** The Mayor and Council of the City of North Miami, Florida, hereby authorize the City Manager to execute a Locally Funded Agreement between the City of North Miami and the Florida Department of Transportation (FDOT), in substantially the attached form, for the installation of patterned-pavement crosswalks at the intersections of Northeast 125th Street and Northeast 8th Avenue, Northeast 9th Avenue, and Northeast 10th Avenue.

Section 2. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, this 22nd day of April, 2014.

LUCIE M. TONDREAU
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Galvin

Seconded by: Keys

Vote:

Mayor Lucie M. Tondreau	x	(Yes)		(No)
Vice Mayor Philippe Bien-Aime	x	(Yes)		(No)
Councilperson Scott Galvin	x	(Yes)		(No)
Councilperson Carol Keys, Esq.	x	(Yes)		(No)
Councilperson Marie Erlande Steril	x	(Yes)		(No)

...IFICATION
...ertify this to be a true and correct copy
of the record in my office.
WITNESSETH my hand and official seal
of the City of NORTH MIAMI
Florida, this the 14th day of
May, 20 14
Louis Thelisca for City Clerk