

PREPARED BY AND RETURN TO:

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Chief Assistant City Attorney
City Attorney's Office
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**FUNDING AGREEMENT BETWEEN
CITY OF ORLANDO AND BIKE/WALK CENTRAL FLORIDA, INC.
RE: BEST FOOT FORWARD FOR PEDESTRIAN SAFETY**

THIS FUNDING AGREEMENT, entered into this ____ day of _____, 20____, by and between **The City of Orlando**, a municipality duly enacted under the laws of the State of Florida, whose address is 400 S. Orange Avenue, Orlando, FL, 32802, "City", and **Bike/Walk Central Florida, Inc.** a Florida non-profit corporation, whose address is 501 S. New York Ave., Ste. 200, Winter Park, FL 32789, "Administrator".

W I T N E S S E T H

WHEREAS, Best Foot Forward For Pedestrian Safety, "BFF", is a coalition of the civic leaders, public safety officials, engineers, educators, transportation planners, advocates and concerned citizens; and

WHEREAS, BFF is an initiative of Bike/Walk Central Florida, Inc.; and

WHEREAS, charter members of the BFF include Orlando Health, Lynx, MetroPlan Orlando, Orlando Police Department, Orange County Sheriff's Office, City of Orlando, Orange County, Winter Park, Maitland, Eatonville, Windermere and Winter Garden as well the police chiefs of Orange County; and

WHEREAS, on average, a pedestrian is killed every week in the metro Orlando area and two are injured every day; and

WHEREAS, the metro Orlando area has been ranked as the most dangerous community in the country for pedestrians for more than a decade; and

WHEREAS, BFF was created to prevent accidents and improve pedestrian safety, while encouraging walking as a safe, fun form of transportation and healthy activity; and

WHEREAS, BFF uses a “3E” approach, “BFF Project”, Engineering to make sure crossings and crossing signals are properly designed; Education to make sure that both drivers and pedestrians know what is expected of them; and Enforcement because this is a serious public safety concern; and

WHEREAS, the City and Bike/Walk Central Florida, Inc. entered into an Agreement on December 15, 2014, providing for the City’s contribution of Forty Thousand Dollars (\$40,000.00) towards implementation of the BFF Project; and

WHEREAS, the City’s funds were utilized in conjunction with additional contributions from Metro Plan Orlando and Orange County, among others; and

WHEREAS, the Administrator has requested the City contribute Sixty Thousand Dollars (\$60,000.00), “City Funds,” to ensure continuation of the BFF Project and completion of its mandate; and

WHEREAS, the Administrator will ensure that, as part of the BFF Project, the City Funds are expended on activities occurring, or improvements located, within the City limits or on activities that directly benefit the citizens of the City of Orlando; and

WHEREAS, the City and Administrator desire to memorialize their agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the City and Administrator agree as follows:

1. Recitals. The above recitals are true and correct and incorporated into the substantive body of this Agreement as if set forth therein.

2. City Funds. City agrees to provide the City Funds to the Administrator no later than thirty (30) days of the City’s receipt of a written request from the Administrator. City shall make payment of the City Funds by check made payable to the Administrator, or by wire transfer, at the City’s discretion. The Administrator shall maintain the City Funds in such a way as to ensure satisfactory record-keeping, monitoring and auditing as provided in Paragraph 5 of this Agreement.

3. Return of City Funds. If the Administrator has not expended the City Funds within 180 days of payment, then Administrator shall immediately, and without further action on the City’s part, return the City Funds to the City. This timeframe for the return of City Funds

may be extended upon the written request of Administrator and the written consent of the City. In no event, shall the timeframe be extended beyond one (1) year from the date on which the City made payment of the City Funds.

4. Utilization of Funds. Administrator warrants and represents that the City Funds shall be utilized to conduct the BFF Project, including though not exclusively, “I Yield for Peds”, which raises awareness of Florida’s law requiring drivers to yield to pedestrians in cross walks and aims to increase the percentage of drivers obeying the law; “Walk Wise”, which emphasizes the consequences of careless crossing and aims to get more pedestrians to use cross walks; and “Walk Safe”, which is a sunshine state standards compliant pedestrian safety curriculum for grades K through 5.

5. Administrator Responsibilities. Administrator shall ensure that the City Funds area utilized exclusively to fund the BFF Project within the City of Orlando.

6. Audit. Administrator shall maintain and keep books and records as are reasonably necessary to audit, track and verify all expenditures of the City contribution under this agreement and related to the BFF Project. The Administrator shall retain and maintain such books and records for at least five (5) years after the termination of this Agreement, or until all outstanding audits are closed, whichever is later. The City shall have the right to independently examine, audit, inspect and transcribe the books and records of the Administrator related to this Agreement and the Grant. Any and all such records shall be made available for review by the City during normal business hours on reasonable notice to the Administrator.

7. Notice. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of (i) the date and time the same are personally delivered at the address set forth below, (ii) on the same day if sent between 8:00 A.M. and 6:00 P.M. on Monday through Friday via facsimile transmission to the respective facsimile numbers set forth below, or (iii) within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, (iv) within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt or written confirmation may be obtained, and addressed as follows:

To the City at the following address:

Tanya Wilder, Transportation Planning Division Manager
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
Phone: (407) 246-2126
Fax: (407) 246-3616
Email: Tanya.Wilder@CityofOrlando.Net

To the Administrator at the following address:

Bike/Walk Central Florida, Inc.
501 S. New York Ave., Ste. 200
Winter Park, FL 32789
Phone: 407-716-8221
Fax:
Email: Amanda@bikewalkcentralflorida.org

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

8. Assignment. Neither party may assign this Agreement or any portion thereof, without the prior written consent of the other party.

9. Third Parties. There shall be no third party beneficiaries with respect to this Agreement and no right nor any cause of action shall accrue to or the benefit of any third party.

10. Governing Law and Venue. This Agreement shall be governed by and in accordance with the laws of the State of Florida. Any action or proceeding related to this Agreement shall be brought in Orange County, Florida.

11. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes and controls any and all prior agreements, undertakings, representations and statements.

12. Captions. The captions in this Agreement are for convenience of reference only and do not describe the scope or intent of this Agreement or the interpretation or construction thereof.

13. No Joint Venture or Agency. Nothing contained in this Agreement or in any other document executed in connection herewith, is intended or shall be construed to establish the City as a joint venture or partner, team member, contractor, agent, or assign of the Administrator. The City and Administrator, along with their respective agents and assigns shall perform all activities that are required by this Agreement as separate and independent entities

and not as agents of the other party hereto. Nothing herein operates to impose any obligation, responsibility or liability upon the City with respect to the Grant or the implementation of the BFF Project.

14. Severability. If any sentence, phrase, section, provision or any portion thereof of this Agreement is for any reason held illegal or invalid by a court of competent jurisdiction, such part shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the full force and binding effect of the remainder of this Agreement.

15. Default Notice. The City and Administrator will immediately notify each other in the event of any known, discovered, or anticipated default hereunder.

16. Non-Action or Failure to Observe Provisions. The failure of either party to promptly insist upon strict performance of any term of this Agreement shall not be deemed a waiver of any right or remedy and shall not be deemed a waiver of a subsequent default or non-performance of such term.

17. Modification. Modification of this Agreement may only be made by written agreement of the parties hereto.

18. Defaults. Failure by either the City or Administrator to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them, respectively, shall constitute a default under this Agreement and 1) if such default is not cured or remedied within thirty (30) days after the non-defaulting party provides written notice to the defaulting party specifying with particularity the nature of such default or 2) if such default cannot be reasonably cured or remedied within such thirty (30) day period, the defaulting party fails to commence to cure or remedy the default within such thirty (30) day period and thereafter fails to diligently and expeditiously pursue such cure or remedy, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, at law and in equity, including without limitation the right to terminate this Agreement. Upon any such termination, Administrator shall immediately return the City Funds to the City and this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect. This provision shall survive termination of this Agreement.

19. No Waiver of Regulatory Authority. Nothing in this Agreement operates as a waiver of the City's regulatory authority, including, though not exclusively, with respect to the BFF Project.

20. Litigation and Attorney's Fees. In the event either party to this Agreement should bring or defend any suit to enforce or interpret any provision hereof, the predominantly prevailing party shall be entitled to reasonable attorney's fees and costs and expenses of investigation, all as actually incurred, including, without limitation, attorney's fees, costs and expenses incurred before, during or after trial or in any appellate proceedings. The terms of this section shall survive the termination of this Agreement.

21. Indemnification. Administrator hereby agrees to indemnify, release and hold the City, its agents, assigns, employees, elected and appointed officials, harmless from and against any and all claims, causes of action, liability and damages (including attorney's fees) that may arise under this Agreement, except to the extent that said claims, causes of action, liability and damages arise from the negligence of the City.

22. Effective Date. This Agreement shall be effective upon the date of full and complete execution by both parties hereto.

ATTEST:

CITY OF ORLANDO, FLORIDA, a municipal corporation, organized and existing under the laws of State of Florida

By: _____
Celeste Brown, City Clerk

By: _____
Mayor / Mayor Pro Tem

Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this ____ day of _____, 20____ by _____, Mayor / Pro Tem and _____, City Clerk, who are personally known to me who did (did not) take an oath.

Name
Notary Public

Signed in the presence of Two Witnesses:

BEST FOOT FORWARD, INC., a Florida
non-profit corporation

Signature

Print Name: _____

By: _____

Name: _____

Signature

Print Name: _____

Title: _____

CORPORATE ACKNOWLEDGMENT

STATE OF FLORIDA

COUNTY OF _____

THE FOREGOING was acknowledged before me this _____ day of _____, 20____, by _____, as _____ of Best Foot Forward, Inc., a Florida non- profit corporation. He/She ☐ is personally known to me or ☐ who has produced _____ as identification.

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

Approved as to form and legality for the use
and reliance of the City of Orlando, Florida only

_____, 20____

By: _____

Chief Assistant City Attorney