

Agency: City of Orlando Vendor No: F 596000396 014	Fund: LF Contract Amount: \$326,167.00	Financial Management No.: 239496-3-52-01
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**LOCALLY FUNDED AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
CITY OF ORLANDO**

This **AGREEMENT**, made and entered into this ____ day of _____, 2017, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the “DEPARTMENT”) and the CITY OF ORLANDO, a municipal corporation organized under the laws of the State of Florida, (hereinafter referred to as the LOCAL GOVERNMENT),

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the LOCAL GOVERNMENT, by Resolution, a copy of which is attached hereto as Exhibit “C”, and made apart hereof, has authorized its officers to execute this Agreement on its behalf; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Adopted Five Year Work Program, to undertake the project described as: “State Road 423 (John Young Parkway) Widening from State Road 50 to Shader Road”, said project being known as Financial Management (FM) Number 239496-3-52-01, hereinafter referred to as the “Project”; and

WHEREAS, the Project is not revenue producing and is contained in the Adopted Work Program; and

WHEREAS, the implementation of the Project is in the interests of both the DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious, and economical for the LOCAL GOVERNMENT to provide the funds for: “Upgrade Standard Intersection Crosswalks Pavement to Patterned Pavement Crosswalks at the Intersections of State Road 423 at State Road 50 (W. Colonial Drive) on all four (4) legs of the Intersection; State Road 423 at Lynx Lane on the South, East, and West legs of the Intersection; State Road 423 at State Road 416 (Silver Star Road) on all four (4) legs of the Intersection; and State Road 423 at Shader Road on all four (4) legs of the Intersection”, in Fiscal Year 2017/2018, said

Project being known as FM# 239496-3-52-01, and said improvements shall hereinafter be referred to as the “Additional Improvements”; and

WHEREAS, in order to maintain uniformity throughout the Project and to provide for the Additional Improvements in a cost effective manner, the LOCAL GOVERNMENT desires to have said Additional Improvements made a part of the Project and to provide funding to the DEPARTMENT to be used for the Additional Improvements as described in “Exhibit A”;

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the LOCAL GOVERNMENT. The DEPARTMENT may, at any time and at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interests of the public. After the Project is complete, the term of this Agreement shall continue in effect and be binding on the parties in perpetuity for maintenance responsibilities of the LOCAL GOVERNMENT.

2. The DEPARTMENT shall cause the Additional Improvements described in Exhibit “A” to be incorporated into the DEPARTMENT’S plans and to be constructed as a part of said Project.

3. The DEPARTMENT shall perform necessary preliminary engineering, prepare any and all design plans, acquire all necessary right-of-way, perform the construction, provide all necessary engineering supervision, and otherwise perform all other necessary work, all as may be applicable for the Project as previously defined. The Project as previously defined may include some or all of the foregoing activities. Nothing herein shall be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Project as previously defined. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in its sole discretion, deems appropriate. The LOCAL GOVERNMENT shall not have any jurisdiction or control over the DEPARTMENT’S activities, except as specifically stated in this Agreement. The LOCAL GOVERNMENT shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

4. Within sixty (60) days of project acceptance, the LOCAL GOVERNMENT shall evaluate all lanes of each patterned crosswalk for surface friction pursuant to Section 2.1.6.2 of

the Plans Preparation Manual, Volume 1, Maintenance Memorandum of Agreement Requirements for Patterned Pavement. The friction test shall be conducted using either a locked wheel tester in accordance with FM 5-592 (Florida Test Method for Friction Measuring Protocol for Patterned Pavements) or a Dynamic Friction Tester in accordance with ASTM E1911. FM 5-592 can be accessed at the following link:

<http://maerials.dot.state.fl.us/smo/administration/resources/library/publications/fstm/Methods/fm5-592.pdf>

The initial friction resistance must be at least thirty-five (35) obtained at forty (40) mph with a ribbed tire test (FN40R) or equivalent. Failure to achieve this minimum resistance must require all deficient crosswalk areas to be removed to their full extent (lane-by-lane) and replaced with the same product installed initially. If the DEPARTMENT determines that more than 50% of the lanes in the intersection require replacement, the entire intersection installation may be reconstructed with a different product on the Approved Products List (APL) or replaced with conventional pavement.

Approximately one (1) year after project acceptance and every two (2) years thereafter and for the life of the adjacent pavement, only the outside traffic lane areas of each patterned crosswalk must be tested for friction resistance in accordance with ASTM E274 or ASTM E1911. Friction resistance must, at a minimum, have a FN40R value of thirty-five (35) or equivalent.

The results of all friction tests shall be sent to the DEPARTMENT'S Project Manager, Todd Alexander, E.I., with a cover letter either certifying that the crosswalks comply with the minimum friction criteria, or stating what remedial action will be taken to restore the friction.

Failure to achieve the minimum resistance must require all lanes of the crosswalk to be friction tested to determine the extent of the deficiency. All deficient areas must be removed to their full extent (lane-by-lane) and replaced with the same product installed initially. If the DEPARTMENT determines that more than 50% of the lanes in the intersection require replacement, the entire intersection installation may be reconstructed with a different product on the APL or replaced with conventional pavement.

When remedial action is required in accordance with the above requirements, the LOCAL GOVERNMENT shall complete all necessary repairs at its own expense within ninety (90) days of the date when the deficiency is identified. No more than two (2) full depth

patterned pavement repairs shall be made to an area without first resurfacing the underlying pavement to 1" minimum depth.

The DEPARTMENT will not be responsible for replacing the treatment following any construction activities in the vicinity of the treatment.

Should the LOCAL GOVERNMENT fail to satisfactorily perform any required remedial work in accordance with this Agreement, the DEPARTMENT reserves the right to replace the patterned pavement with conventional pavement (matching the adjacent pavement) and bill the LOCAL GOVERNMENT for this cost.

6. After construction is complete, the LOCAL GOVERNMENT shall at all times be responsible, at their own cost and expense, for maintaining the Additional Improvements constructed under this agreement in perpetuity which includes clean-up, removal and disposal of debris from catastrophic events or accidents as well as routine maintenance. If the roadway needs to be rehabilitated and/or resurfaced at any time in the future, the DEPARTMENT is under no obligation to restore, repair or replace the Additional Improvements.

7. Participation by the LOCAL GOVERNMENT of the funds for the construction phase of the Project shall be made as follows:

(A) The DEPARTMENT'S current estimate of cost for the Additional Improvements is **\$326,167.000 (Three Hundred Twenty Six Thousand One Hundred Sixty Seven Dollars and No/100)**. The DEPARTMENT'S performance and obligation to construct the Project is contingent upon an annual appropriation by the Florida Legislature. The parties agree that in the event funds are not appropriated to the DEPARTMENT for the Project, this Agreement may be terminated, which shall be effective upon the DEPARTMENT giving written notice to the LOCAL GOVERNMENT to that effect.

(B) The LOCAL GOVERNMENT agrees that it will, **on or before but no later than July 15, 2017**, furnish the DEPARTMENT an advance deposit in the amount of **\$326,167.000 (Three Hundred Twenty Six Thousand One Hundred Sixty Seven Dollars and No/100)** for full payment of the estimated cost of the Additional Improvements. The advance deposit shall be the total estimated cost for the Additional Improvements. The DEPARTMENT may utilize this deposit for payment of the cost of the Additional Improvements.

(C) Both parties further agree that in the event the Additional Improvements are not constructed or this Agreement is terminated prior to commencement of construction of the Project, the funds provided by the LOCAL GOVERNMENT for construction of the Additional Improvements will be returned to the LOCAL GOVERNMENT. However, in the event the LOCAL GOVERNMENT decides not to participate in the Additional Improvements of the Project prior to construction, the LOCAL GOVERNMENT agrees to furnish the DEPARTMENT 25% (twenty five percent) of the estimated Additional Improvements cost to cover the extra cost associated with design plan revisions. The LOCAL GOVERNMENT will provide the 25% charge to the DEPARTMENT within fourteen (14) calendar days of notification that the LOCAL GOVERNMENT will not participate in this Agreement. If in the event the LOCAL GOVERNMENT has made the advance deposit required herein prior to their decision not to participate, the DEPARTMENT shall be entitled to retain 25% of the advance deposit amount and to remit the 75% balance to the LOCAL GOVERNMENT.

(D) If the accepted bid amount for the Additional Improvements is in excess of the advance deposit amount, the LOCAL GOVERNMENT 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 for the Additional Improvements. The DEPARTMENT will notify the LOCAL GOVERNMENT as soon as it becomes apparent the accepted bid amount is in excess of the advance deposit amount; however, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation. If the LOCAL GOVERNMENT cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to the DEPARTMENT'S Project Manager indicating when the deposit will be made. The LOCAL GOVERNMENT 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.

(E) If the accepted bid amount for the Additional Improvements is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the bid amount if such refund is requested by the LOCAL GOVERNMENT in writing.

(F) Should Project modifications or changes to bid items occur that increase the costs of the Additional Improvements, the LOCAL GOVERNMENT will be notified by the DEPARTMENT accordingly. The LOCAL GOVERNMENT 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 Additional Improvements. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent the actual costs will overrun the award amount; however, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation during the Project and on final accounting as provided herein below.

(G) 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 days (360) of final payment to the Contractor. The DEPARTMENT considers the Project complete when the 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 LOCAL GOVERNMENT for a period of three (3) years after final close out of the Project. The LOCAL GOVERNMENT will be notified of the final cost of the Additional Improvements. Both parties agree that in the event the final accounting of total costs for the Additional Improvements pursuant to the terms of this Agreement is less than the total deposits to date, a refund of the excess plus accrued interest will be made by the DEPARTMENT to the LOCAL GOVERNMENT. If the final accounting is not performed within three hundred and sixty (360) days, the LOCAL GOVERNMENT is not relieved from its obligation to pay.

(H) In the event the final accounting of total Additional Improvements cost is greater than the total deposits plus accrued interest to date, the LOCAL GOVERNMENT will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The LOCAL GOVERNMENT agrees to pay interest at a rate as established pursuant to Florida Statutes, Section 55.03, on any invoice not paid within forty (40) calendar days until the invoice is paid.

(I) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached Escrow

Agreement between the LOCAL GOVERNMENT, the DEPARTMENT and the State of Florida, Department of Financial Services, Division of Treasury. All interest earned will remain in the account for purposes of the Project.

(J) The DEPARTMENT and the LOCAL GOVERNMENT agree that the payment shall be an asset of the DEPARTMENT for the cost of the work.

(K) Contact Persons:

Florida Department of Transportation

Teresa R. Hutson	Todd Alexander, E.I.
Local Government	Project Manager/MS 542
Agreements/MS 4-520	719 South Woodland Boulevard
719 South Woodland Boulevard	DeLand, Florida 32720-6834
DeLand, Florida 32720-6834	PH: (386) 943-5420
PH: (386) 943-5486	todd.alexander@dot.state.fl.us
teresa.hutson@dot.state.fl.us	

Local Government

Benton StJ Bonney, P.E., Transportation Systems Manager
City of Orlando
City Hall, 8th Floor
400 South Orange Avenue
Orlando, Florida 32802
(407)246-3626
benton.bonney@cityoforlando.net

8. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. The LOCAL GOVERNMENT may, however, inspect those materials upon providing reasonable advance notice to the DEPARTMENT.

9. In the event this Agreement is in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated 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 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 (1) 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 \$25,000.00 and which have a term for a period of more than one (1) year.”

10. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by such party in conjunction with this Agreement.

11. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. 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. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

12. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

13. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:

(A) The LOCAL GOVERNMENT 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 LOCAL GOVERNMENT during the term of the contract; and

(B) The LOCAL GOVERNMENT shall expressly require any contractors and 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 contractor/subcontractor during the contract term.

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement this _____ day of _____, 2017, and the DEPARTMENT has executed this Agreement this _____ day of _____, 2017.

CITY OF ORLANDO

By: _____

Name: _____

Title: _____

Attest:

Legal Review

City Attorney

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

Name: Richard B. Morrow, P.E.

Title: Director of Transportation Development

Attest:

Executive Secretary

Legal Review:

Financial Provisions Approval by
Department of Comptroller on:

Exhibit “A”
SCOPE OF SERVICES
Additional Improvements
FM# 239496-3-52-01

The LOCAL GOVERNMENT wishes to add Patterned Pavement Crosswalks for the following Crosswalk Locations on State Road 423 (John Young Parkway):

- All four (4) Intersections at State Road 50 (W. Colonial Drive);
- Three (3) South, East, and West legs of Intersection at Lynx Lane;
- All four (4) Intersections at State Road 416 (Silver Star Road); and
- All four (4) Intersections at Shader Road

The DEPARTMENT’S Contractor shall construct the Additional Improvements as part of the construction contract at the above referenced intersections.

After construction is complete, the LOCAL GOVERNMENT shall at all times be responsible, at their own cost and expense, for maintaining the Additional Improvements constructed under this Agreement, in perpetuity, which includes clean-up, removal and disposal of debris from catastrophic events or accidents as well as routine maintenance. The LOCAL GOVERNMENT will respond to and handle any citizen complaints. If the roadway needs to be rehabilitated and/or repaired at any time in the future, the LOCAL GOVERNMENT is under no obligation to restore, repair or replace the Additional Improvements.

Exhibit "B"
Estimate
FM# 239496-3-52-01

PROJECT: JOHN YOUNG PARKWAY (SR 423) - FROM COLONIAL DR TO NORTH OF SHADER ROAD			
COUNTY: ORANGE			
FPID: 239496-3-52-01			
ENGINEERS ESTIMATE FOR CROSSWALK UPGRADES (Pay Item 523-1)			
Updated 05/15/2017			
Patterned Pavement			
LOCATION OF INTERSECTION WITH SR 423	AREA	UNIT COST	COST
	(SY)	(\$ / SY)	(\$X.XX)
SR 50 (W Colonial Dr.)	151.76	\$176.00	\$26,709.76
	180.98	\$176.00	\$31,852.48
	168.92	\$176.00	\$29,729.92
	154.59	\$176.00	\$27,207.84
Subtotal			\$115,500.00
LYNX LANE	29.1	\$176.00	\$5,121.60
	133.92	\$176.00	\$23,569.92
	78.43	\$176.00	\$13,803.68
	82.49	\$176.00	\$14,518.24
Subtotal			\$57,013.44
SILVER STAR ROAD (SR 416)	162.9	\$176.00	\$28,670.40
	83.82	\$176.00	\$14,752.32
	77.21	\$176.00	\$13,588.96
	153.87	\$176.00	\$27,081.12
			\$84,092.80
SHADER ROAD	58.27	\$176.00	\$10,255.52
	61.26	\$176.00	\$10,781.76
	138.7	\$176.00	\$24,411.20
	137	\$176.00	\$24,112.00
Subtotal			\$69,560.48
Total	1853.22		
TOTAL COST FOR PATTERN PAVEMENT (PAY ITEM 523-1)			\$326,166.72
Rounded Total Cost			\$326,167.00

Exhibit “C”
Resolution
FM# 239496-3-52-01