

## **AGREEMENT REGARDING ORANGE AVENUE CORRIDOR IMPROVEMENTS**

THIS AGREEMENT is effective as of this 22<sup>nd</sup> day of April 2024 and is made and entered into by and between the City of Orlando, Florida, a municipal corporation (“CITY”), and the Downtown South Neighborhood Improvement District of the City of Orlando, a body politic and corporate of the State of Florida and a created pursuant to Chapter 163, Part IV, Florida Statutes, (“DSNID”).

WHEREAS, the DSNID was created by ordinance of City Council on July 25, 2011 as a public body corporate and agency of the City of Orlando for the purpose of, among others, carrying out the purposes of Ch. 163, Part IV, Florida Statutes; and

WHEREAS, the DSNID adopted a Safe Neighborhood Improvement Plan which establishes the construction of streetscape and roadway improvements as a specific goal, particularly along major roadways, including Orange Avenue; and

WHEREAS, the DSNID desires to have landscaping installed along certain enhanced median separators, floater islands, and roadway edges along Orange Avenue (“Landscaping”); and

WHEREAS, the State of Florida Department of Transportation (“FDOT”) has agreed to proceed with the landscaping of the median and roadway edge along South Orange Avenue from Pineloch Avenue to Grant Street (“Project”); and

WHEREAS, the City has entered into a Joint Participation Agreement (“JPA”) with FDOT whereby the City agreed to undertake construction of the Project and FDOT agreed to reimburse the City for up to \$90,677 in grant funds (“Grant Funds”) towards implementation of the Project; and

WHEREAS, the City has engaged Yellowstone Landscape-Southeast, LLC (“Yellowstone”) to complete the Project (“Yellowstone Contract”); and

WHEREAS, completion of the Project will help the DSNID achieve the goals of facilitating improvements within the district boundaries; and

WHEREAS, the DSNID desires to provide to the City for payment to Yellowstone the amount of the cost of the landscaping as set forth in the Yellowstone Contract (\$319,912.64) less the amount of FDOT’s Grant Funds provided to the City pursuant to the JPA (\$90,677); and

WHEREAS, the achievement of the DSNID’s goals through this funding serves an important and valid public purpose.

NOW THEREFORE, in consideration of the promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the DSNID and City agree as follows:

1. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated herein as if fully set out below.

2. Funding. Within sixty (60) days of the City’s execution of the Yellowstone Contract, the DSNID shall provide the City with Funding in the amount of Two Hundred Twenty-Nine Thousand

Two Hundred Thirty-Five Dollars and 64/100 (\$229,235.64). Such payment shall be provided to the City's Chief Financial Officer at 400 South Orange Avenue, Orlando, Florida 32801. Should either the agreement with Yellowstone Contract be terminated, or construction of the Project not occur, the City shall refund the Funding related to such Project to the DSNID. Should the overall cost of the Landscaping under the Yellowstone Contract decrease, such unused portion of the Funding shall be returned by the City to the DSNID.

3. Conditions to Funding. The DSNID shall not be obligated to provide the Funding provided for herein unless the City enters into the Yellowstone Contract and remains in compliance with the terms thereof, as well as remains in compliance with the terms of the JPA with FDOT.

4. Records. CITY and DSNID shall keep records and accounts which shall be available at all reasonable times for examination and audit by DSNID and shall be kept for a period of three (3) years after the date of the last payment made under this Agreement.

5. Default. City's failure to comply with the Conditions of Funding contained in section 3 above shall be a default and breach of this Agreement by the City and shall entitle the DSNID to immediately cease funding payments contemplated herein to the City and to terminate this Agreement upon ten (10) days written notice to the City.

6. Continued Cooperation. This Agreement assumes the close coordination and cooperation between the DSNID, City, and FDOT regarding the construction of the Landscaping Project.

7. Term and Termination.

A. This Agreement shall take effect on April 22, 2024 and shall continue in effect through the latest of the term of the JPA or Yellowstone Contract, unless terminated by the mutual agreement of the parties.

B. This Agreement shall automatically terminate upon the completion of construction of the Landscaping Project.

8. Sovereign Immunity. Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities of the parties as set forth in Section 768.28, Florida Statutes.

9. Assignments and Amendments.

A. This Agreement or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by DSNID or CITY, without the prior written consent of the other party.

B. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

10. Notice. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended and the remaining party, at the place last specified, and the places for giving of notice shall remain such until

they shall have been changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following as the respective places for giving of notice:

CITY: Chief Financial Officer  
City of Orlando  
400 S. Orange Avenue  
Orlando, FL 32801

With a copy to:

City Attorney  
City of Orlando  
400 S. Orange Avenue  
Orlando, FL 32801

DSNID: Downtown South Neighborhood Improvement District of the  
City of Orlando  
400 S. Orange Avenue  
Orlando, FL 32801  
Attention: Project Manager

With a copy to:

City Attorney  
City of Orlando  
400 S. Orange Avenue  
Orlando, FL 32801

11. Third Party Beneficiary. This Agreement is solely for the benefit of the parties signing hereto and their successors and assigns, and no right, nor cause of action, shall accrue to or for the benefit of any third party.

12. Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

13. Severability. If any provision of this Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to the persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be effected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

14. Governing Law. This Agreement shall be governed by the law of the State of Florida with venue lying in Orange County.

15. Entire Agreement. This Agreement embodies the entire agreement between the parties. It may not be modified or terminated except as provided herein. It is further understood and agreed that 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. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements, whether oral or written.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

**CITY OF ORLANDO**

By: \_\_\_\_\_  
Buddy Dyer, Mayor

ATTEST:

\_\_\_\_\_  
Stephanie Herdocia, City Clerk

APPROVED AS TO FORM AND LEGALITY  
for use and reliance of the City of Orlando only.

STATE OF FLORIDA  
COUNTY OF ORANGE

\_\_\_\_\_, 2024  
Assistant City Attorney

**DOWNTOWN SOUTH NEIGHBORHOOD  
IMPROVEMENT DISTRICT**

By: \_\_\_\_\_  
Buddy Dyer, Chairman

APPROVED AS TO FORM AND LEGALITY  
For the use and reliance of the DSNID only.

\_\_\_\_\_, 2024.

\_\_\_\_\_  
Assistant City Attorney