

LOCALLY FUNDED AGREEMENT

This Locally Funded Agreement (“Agreement”) is entered into this ____ day of _____, 2023, (the “Effective Date”) by and between the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION (the “Department”) and BROWARD COUNTY, FLORIDA (the “County”) (the Department and the County may be referred to individually as a “Party” and collectively as the “Parties”).

RECITALS

A. The Department is authorized to enter into agreements with governmental entities that wish to aid in any Department project or project phase in the Department’s adopted work program in accordance with Section 339.12, Florida Statutes.

B. The Department’s adopted work program includes a project to widen and improve the Sawgrass Expressway (SR 869) in Broward County, Florida, from south of Sunrise Boulevard to north of Oakland Park Boulevard, as described in the Department’s Five-Year Adopted Work Program as Financial Project Identification Number (FPID) 437155-1 (the “Project”).

C. A partial interchange currently exists within the Project limits at Pat Salerno Drive (an off-system arterial roadway under the jurisdiction of the County) and SR 869, with ramps accommodating traffic movements to and from the south.

D. The County and the City of Sunrise (the “City”) have asked the Department to include design and construction of a full interchange at Pat Salerno Drive and SR 869, with ramps accommodating traffic movements both to and from the south and to and from the north (the “Full Interchange,” conceptually depicted on Exhibit “A” attached hereto), as part of the overall Project. The current estimate of the design and construction costs for the Full Interchange is \$87,641,473. The Department has programmed \$58,641,473 in funding for the estimated design and construction costs of the Full Interchange and is willing to include the Full Interchange in the Project, contingent upon certain financial and right-of-way contributions by the County (which includes right-of-way contributions by the City).

E. The Department and the County have entered into that certain Turnpike Interchange and Right of Way Agreement, of even date (the “Project Agreement”), pursuant to which the County has agreed to provide the funding specified herein and contribute certain right-of-way for the Full Interchange, and the Department has agreed to design and construct the Full Interchange as part of the Project.

F. On _____, 2023, the Broward County Board of County Commissioners authorized the County to enter into this Agreement.

AGREEMENT

In consideration of the mutual covenants and promises contained in this Agreement, the County and the Department agree that the Recitals are true and correct and further agree as follows:

SECTION 1 OBLIGATIONS OF THE DEPARTMENT

- 1.1 In accordance with the terms of the Project Agreement, the Department shall prepare all design, construction plans and specifications, and right-of-way maps required to construct the Full Interchange as part of the Project.
- 1.2 The Department will utilize the County's Local Share (defined below) to pay the costs of design, right-of-way acquisition, environmental mitigation to be conducted by the Department pursuant to the Project Agreement, construction, construction engineering and inspection, equipment, and other work required for completion of the Full Interchange as part of the Project. The Department will be responsible for the cost of the Full Interchange that exceeds the County's Local Share, except that the County shall additionally be responsible for the Local Right-of-Way Contribution (as defined in the Project Agreement) and its other commitments under the Project Agreement.
- 1.3 After execution of this Agreement and the Project Agreement, the Department will provide copies of the right-of-way maps for the Full Interchange to the County.
- 1.4 As provided in the Project Agreement, the Department will construct the Full Interchange in accordance with the terms and conditions of a construction contract currently scheduled to be advertised by the Department on September 13, 2024. The Department will advise the County of any changes in the scheduled date of advertisement.

SECTION 2 OBLIGATIONS OF THE COUNTY

- 2.1 On or before the dates provided below, the County shall contribute the additional sum of Twenty-Six Million Dollars (\$26,000,000) to the Department, which, together with the \$3,000,000 previously contributed by the County pursuant to the Locally Funded Agreement dated December 2, 2020, will constitute the funding to be provided by the County for the Full Interchange (the "Local Share"). The County's Local Share contribution will not be subject to reduction at any time and will not be refundable. The Local Share amount in excess of the \$3,000,000 previously contributed will be due as follows: \$4,000,000 within thirty (30) days after the Effective Date of this Agreement, an additional \$2,000,000 within six (6) months after the Effective Date of this Agreement, and the remaining \$20,000,000 no later than fourteen (14) days before advertisement by the Department for bids on the construction contract for the Project. Refer to Exhibit "B" for the Project Schedule of Payments.
- 2.2 The County shall not use any federal funds to provide the Local Share to the Department.

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- 2.3 The County shall separately convey the Local Right-of-Way Contribution as defined and described in the Project Agreement.

SECTION 3 FINANCIAL PROVISIONS

- 3.1 The requirements of Section 339.135(6)(a), Florida Statutes are incorporated in this Agreement:

“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 and which have a term for a period of more than 1 year.”

- 3.2 The County’s contribution of the Local Share funds may be withdrawn, used and applied by the Department to pay actual costs of design, right-of-way acquisition, and environmental mitigation and permitting costs to be conducted by the Department pursuant to the Project Agreement, construction, construction engineering and inspection, equipment, and other work required to construct the Full Interchange as part of the Project. Timely contribution of the Local Share funds by the County is a condition precedent to the Department’s obligations under this Agreement and the Project Agreement.

- 3.3 The payment by the County of the Local Share funds under this Agreement will be made directly to the Department. Funds can be wired to the Department using the account codes below:

Wells Fargo Bank, N.A.
Account # 4834783896
ABA # 121000248
Chief Financial Officer of Florida
Re: DOT – K 11-78, Financial Project: 437155-1-32-01 (\$3,000,000 (FY 2019));
437155-1-32-02 (\$4,000,000 (FY 2023)); 437155-1-43-02 (\$2,000,000 (FY
2023)); and 437155-1-52-02 (\$20,000,000 (FY 2025))

If the payment of Local Share funds is in the form of a check, the check must be forwarded to:

Florida Department of Transportation
OOC-GAO, LFA Section
605 Suwannee Street, MS 42B
Tallahassee, Florida 32399

Funds received from the County will be deposited into a master escrow account with the Florida Department of Financial Services, Division of Treasury, Bureau of Collateral Management. The County will not earn interest on the funds.

- 3.4 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 its consultants and contractors. The Department considers the work complete when the final payment has been made to its consultants and contractors. All cost records and accounts shall be subject to audit by a representative of the County for a period of three (3) years after final closeout of the work for the Full Interchange.

SECTION 4 COMMENCEMENT AND TERMINATION OF AGREEMENT

- 4.1 This Agreement shall be effective as of the Effective Date and shall terminate upon the earlier of the mutual written consent of the Parties or three hundred sixty (360) days after final payment has been made to the Department's consultants and contractors for work on the Full Interchange. Notwithstanding any termination, terms which by express terms and context are intended to survive the performance, termination or expiration of this Agreement shall so survive.

SECTION 5 MISCELLANEOUS PROVISIONS

- 5.1 Any amendment to or modification of this Agreement or any alteration, extension, supplement, or change of time or scope of work shall be in writing and signed by both Parties.
- 5.2 Any notice or other document which either Party is required to give or deliver to the other under the terms of this Agreement shall be given in writing and delivered personally or sent to:

TO DEPARTMENT:

Executive Director
Florida's Turnpike Enterprise
Turnpike Headquarters -Bldg. 5315
P.O. Box 613069
Ocoee, FL 34761-3069

TO COUNTY:

County Administrator
Broward County
115 S. Andrews Avenue, Room 409
Ft. Lauderdale, FL 33301-4800

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With a copy to:

Florida's Turnpike Chief Counsel
Turnpike Headquarters -Bldg. 5315
P.O. Box 613069
Ocoee, FL 34761-3069

County Attorney
Broward County
115 S. Andrews Avenue, Room 423
Ft. Lauderdale, FL 33301-4800

Notice shall be deemed to have been given upon mailing in the United States mail to the appropriate address(es) provided above, or upon delivery to the identified (if hand delivered).

- 5.3 This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in the Circuit Court in and for Leon County, Florida.
- 5.4 Nothing herein shall be construed to create any third-party beneficiary rights in any person not a party to this Agreement or waive the Parties' respective sovereign immunity protections against claims by third parties.
- 5.5 This Agreement shall be binding upon the Parties, their successors and assigns.
- 5.6 This Agreement may be executed in two or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.
- 5.7 THE COUNTY AND THE DEPARTMENT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.
- 5.8 Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County or the Department, nor shall anything included herein be construed as consent by County or the Department to be sued by third parties in any matter arising out of this Agreement.
- 5.9 If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

[SIGNATURE PAGE FOLLOWS ON THE NEXT PAGE]

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement effective as of the Effective Date described above: BROWARD COUNTY, FLORIDA, through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day of _____, 20____, and STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, signing by and through its _____, duly authorized to execute same.

County

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor/Vice-Mayor
____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By _____
Al DiCalvo (Date)
Senior Assistant County Attorney

By _____
Annika Ashton (Date)
Deputy County Attorney

Department

STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION

By: Nicola Liquori
Nicola Liquori, Executive Director and CEO
Florida's Turnpike Enterprise

16 day of May, 2023

Approval:

[Signature] 5-16-23
Office of the General Counsel (Date)

EXHIBIT "A" DEPICTION OF FULL INTERCHANGE



EXHIBIT "B"
PROJECT SCHEDULE OF PAYMENT

PROJECT SCHEDULE OF PAYMENT - LOCAL FUNDING					
FPID	PHASE DESCRIPTION	LOCAL FUNDING AMOUNT (\$)	FDOT FISCAL YEAR	REMITTANCE PAYMENTS DUE	NOTES
437155-1-32-01	PRELIMINARY DESIGN	\$3,000,000	2019	PAID (SEE NOTES)	Payment Received by the Department per the executed initial design LFA.
437155-1-32-02	FINAL DESIGN	\$4,000,000	2023	Within 30 Days of the Effective Date on the executed "Project Agreement"	-
437155-1-43-02	RIGHT OF WAY PURCHASE	\$2,000,000	2023	Within 6 Months of the Effective Date on the executed "Project Agreement"	-
437155-1-52-02	CONSTRUCTION	\$20,000,000	2025	No later than 14 Days before advertisement by the Department for bid on the construction contract for the Project which is anticipated to occur on 09/13/2024.	-
Total Local Funding:		\$29,000,000			
Local Funding Paid:		\$3,000,000			
Total Local Funding Remaining:		\$26,000,000			