

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**STATE HIGHWAY SYSTEM**  
**PROJECT FUNDING AGREEMENT**

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FPN: <u>447655-1-58-01</u>	Fund: <u>DDR, DS</u> Org Code: <u>55043030452</u>	FLAIR Category: <u>088797</u> FLAIR Obj: _____
FPN: _____	Fund: _____ Org Code: _____	FLAIR Category: _____ FLAIR Obj: _____
FPN: _____	Fund: _____ Org Code: _____	FLAIR Category: _____ FLAIR Obj: _____
County No: <u>86</u>	Contract No: _____	Vendor No: <u>F596-000-411</u>

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This Project Funding Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the “Effective Date”) between the State of Florida Department of Transportation, an agency of the State of the Florida (the “Department”) and the City of Pompano Beach, a governmental entity existing under the laws of the State of Florida (the “Agency”) (each a “Party” and collectively, the “Parties”).

The Parties agree as follows:

**1. Authority.** Section 339.12, Florida Statutes, authorizes the Department and other governmental entities in the State of Florida to enter into agreements by which the governmental entity agrees to perform a highway project or project phase in the Department’s adopted work program that is not revenue producing and the Department agrees to reimburse the other governmental entity for the costs of the project. Section 339.12(4), Florida Statutes, also authorizes the Department and other governmental entities in the State of Florida to enter into agreements by which the governmental entity agrees to perform a project or project phase not included in the adopted work program, but which is a high priority of the governmental entity, reimbursement for the costs of which may be made by the Department from funds appropriated by the Legislature pursuant to section 339.135(5), Florida Statutes. The governing body of the Agency has authorized the Agency to perform the project or project phase identified in this Agreement.

**2. Purpose of Agreement.** The purpose of this Agreement is to provide the terms and conditions under which the Agency will perform Construction (Resurfacing) along SR-A1A: from N.E. 5<sup>th</sup> Street to South End of Hillsboro Inlet Bridge (the “Project”). The Project is more particularly described in Exhibit A to this Agreement.

**3. The Project.** The Agency agrees to perform and complete the Project in a satisfactory, timely and proper manner in accordance with all applicable laws and the terms and conditions of this Agreement. Exhibit A describes the scope of work to be performed by the Agency and provides a proposed schedule for the Project. The Project scope in Exhibit A identifies the ultimate project deliverables. Deliverables for requisition, payment and invoice purposes will be the incremental progress made toward completion of Project scope elements. All Project activities must be consistent with the scope described in Exhibit A. An amendment to this Agreement is required for any proposed change in the scope of work. Execution of this Agreement by both Parties shall be deemed a Notice to Proceed to the Agency for the design phase or other non-construction phases of the Project. If the Project involves a construction phase, the Agency shall not begin the construction phase of the Project until the Department issues a written Notice to Proceed for the construction phase. Prior to commencing the construction work described in this Agreement, the Agency shall request a Notice to Proceed from the Department.

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**4. Term of Agreement.** The term of this Agreement and the period for performance of the Project under this Agreement extends from the Effective Date through June 30, 2026 (the "Completion Date"). If the Agency does not complete the Project on or before the Completion Date, this Agreement will expire, unless the Completion Date is extended by an executed amendment to this Agreement. Expiration of this Agreement will be considered termination of the Project.

**5. Project Costs.**

**a.** The estimated cost of the Project is \$ 2,234,651.00 (the "Project Estimate"), and is allocated among the Project activities in the Project Budget in Exhibit B. An amendment to this Agreement is required for any re-budgeting of Project funds provided under this Agreement.

**b.** The total Department funding available for the Project is TWO MILLION TWO HUNDRED THIRTY-FOUR THOUSAND SIX HUNDRED FIFTY-ONE DOLLARS AND NO CENTS (\$ \$2,234,651.00), as more fully described in Exhibit B ("Department Funding"). The Department Funding may be increased or reduced following receipt of the actual bid amounts for the Project by execution of an amendment to this Agreement. The Agency agrees to bear all costs it incurs to complete the Project in excess of the Department Funding.

Prior to the execution of this Agreement, a Project schedule of funding shall be prepared by the Agency and approved by the Department. The Agency shall maintain said schedule of funding, carry out the Project, and shall incur obligations against and make disbursements of Project funds only in conformity with the latest approved schedule of funding for the Project. The schedule of funding may be revised by execution of an amendment to this Agreement. The Agency acknowledges and agrees that funding for this project may be reduced upon determination of the Agency's contract award amount.

**c.** Project costs incurred by the Agency prior to the Effective Date or after the Completion Date or other termination of this Agreement will not be eligible for reimbursement by the Department. If the Project is not included in the first year of the Department's adopted work program for the state fiscal year that includes the Effective Date, it is understood that Department participation in eligible Project costs is subject to:

- i. Legislative approval of the Department's appropriation request in the work program year that the Project is scheduled to be committed;
- ii. Availability of funds as stated in paragraphs 7.g. and 7.h. of this Agreement; and
- iii. Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement.

**6. Requests for Reimbursement.**

**a.** Requests for reimbursement by the Agency shall include an invoice, progress report and supporting documentation for the period of work being billed that are acceptable to the Department. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of charges as described in Exhibit C, Contract Payment Requirements. Requests for reimbursement and supporting documentation shall be submitted by the Agency in detail sufficient for a proper pre-audit and post-audit based on the quantifiable, measurable and verifiable units

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of deliverables identified in Exhibit A. Supporting documentation must substantiate the amount of progress made on the Project in a quantifiable, measurable, and verifiable manner, and provide evidence that the payment requested is commensurate with the accomplished incremental progress and costs incurred by the Agency. Supporting documentation must also establish to the Department Project Manager's satisfaction that deliverables were received and accepted in writing by the Agency and must also establish that the required minimum level of service to be performed and criteria for evaluating successful completion have been met. The Agency shall submit requests for reimbursement to the Department no more often than monthly and no less than once every 90 days (quarterly). If the Agency fails to submit quarterly invoices to the Department, and such failure results in the loss of state appropriation authority, the Agency will be solely responsible to provide all funds necessary to complete the Project and the Department will not be obligated to provide any additional funding for the Project.

**b.**      Travel expenses are NOT eligible for reimbursement under this Agreement.

Travel expenses ARE eligible for reimbursement under this Agreement.

Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes and the most current version of the Disbursement Handbook for Employees and Managers. If compensation for travel is authorized under this Agreement and by the Department's Project Manager, the Department shall not compensate the Agency for lodging/hotel expenses in excess of \$150 per day (excluding taxes and fees). The Agency may expend its own funds to the extent lodging/hotel expenses incurred by the Agency, its consultants or contractors, exceed \$150 per day. The Department, in its sole discretion and pursuant to its internal policies and procedures, may approve reimbursement to the Agency for lodging/hotel expenses in excess of \$150 per day.

**c.**     The Agency must submit the final invoice on the Project to the Department within 120 days of the Completion Date or completion of the Project, if earlier. Invoices submitted after the 120-day time period may not be paid.

**d.**      If this box is selected, the Project is not included in the first year of the Department's adopted work program for the state fiscal year that includes the Effective Date. The Department will only reimburse the Agency in accordance with section 339.12, Florida Statutes. The Agency will not invoice the Department for Project costs until July 1 of the state fiscal year(s) the Project is scheduled in the Department's work program as of the Effective Date. After receipt of properly documented invoices and supporting documentation as otherwise required in this Agreement, payment(s) will be made to the Agency to reimburse eligible Project costs in annual amounts equal to the amounts programmed in the Department's adopted work program in each state fiscal year, up to the amount of eligible Project costs incurred after the Effective Date.

**7. Payment.**

**a.**     Subject to other provisions of this Agreement, the Department will reimburse the Agency for eligible Project costs, up to the amount of the Department Funding. Notwithstanding any other provision of this Agreement, the Department may elect by written notice not to make a payment if:

**i.**     The Department determines that the Agency has misrepresented a material fact in any documents submitted to obtain the Department Funding under this Agreement, or any document or data furnished pursuant to this Agreement;

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ii. There is any pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments for the Project;

iii. The Agency takes any action on the Project which, under this Agreement, requires the approval of the Department or makes a related expenditure or incurs related obligations without Department approval when required;

iv. There has been any violation of the conflict of interest provisions contained in this Agreement; or

v. The Department determines the Agency is otherwise in default under any provisions of this Agreement.

**b.** Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes or the Department's Comptroller under Section 334.044(29), Florida Statutes.

If this box is selected, advance payment is authorized for this Agreement and Exhibit D, Alternative Advance Payment Financial Provisions is attached and incorporated into this Agreement.

**c.** If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Agency shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the Agency resolves the deficiency. If the deficiency is subsequently resolved, the Agency may bill the Department for the retained amount during the next billing period. If the Agency is unable to resolve the deficiency, the funds retained will be forfeited at the end of the Agreement's term.

**d.** Agencies providing goods and services to the Department should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), F.S., will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

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**e.** A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

**f.** If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.

**g.** The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

**h.** In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"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 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."

**8. Records.**

**a.** The Agency shall establish for the Project, consistent with the Department's program guidelines/procedures, separate accounts to be maintained within its existing accounting system or separate independent accounts ("Project Accounts"). The Agency shall charge to the Project Accounts all eligible costs of the Project except costs agreed to be borne by the Agency or its contractors and subcontractors. Costs in excess of the programmed Department funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges, as described in Exhibit C, Contract Payment Requirements.

**b.** Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Agency's contractors and subcontractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the required retention

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period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

**c.** The Agency shall permit, and shall require its contractors to permit, the Department's authorized representatives to access the Project site; inspect all work, materials, payrolls, and records; and to audit the books, records and accounts pertaining to the financing and development of the Project.

**d.** For any project requiring additional right-of-way, the Agency must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project in a format and at such time as required by the Department.

**e.** The Agency shall submit to the Department such data, reports, records, contracts and other documents relating to the Project as the Department may require, including those documents listed in Exhibit J to this Agreement. The Department may, at its discretion, require a progress report on a monthly basis. The progress report will include details of the progress of the Project towards meeting the requirements of the Agreement.

**9. Design and Construction Standards; Required Approvals.** The Project shall be designed and constructed in accordance with the latest edition of the Department's Standard Specifications for Road and Bridge Construction, the Department Design Standards, and the Manual of Uniform Traffic Control Devices (MUTCD), as more specifically provided in Exhibit E, Terms and Conditions of Construction. The Agency shall submit any construction plans required by the Department for review and approval prior to any work being commenced. Should any changes to the plans be required during construction of the Project, the Agency shall notify the Department of the changes and receive approval from the Department prior to the changes being constructed. The Agency shall maintain the area of the Project at all times and coordinate any work needs of the Department during construction of the Project.

**a. Permits.** The Agency is responsible for obtaining all permits necessary for the Project that have not been separately obtained by the Department prior to the Effective Date.

**b. Qualified Contractors.** The Agency shall hire a qualified contractor using the Agency's normal competitive bid procedures, modified as necessary to comply with the requirements of this Agreement, to perform the construction work for the Project. The Agency shall award the contract for construction of the Project to a Department prequalified contractor which is the lowest and best bidder in accordance with applicable state law, rules, and regulations. The Agency shall submit a copy of the bid tally sheet(s) and awarded bid contract to the Department.

**c. CEI.** The Agency is responsible for provision of Construction Engineering Inspection (CEI) services. The Agency shall hire a Department pre-qualified consultant firm that includes one individual that has completed the Advanced Maintenance of Traffic Level Training. Notwithstanding any provision of law to the contrary, design services and CEI services may not be performed by the same entity. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by Department. The Department shall have the right to approve the CEI firm. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. Subject to the approval of the Department, the Agency may choose to satisfy the requirements set forth in this paragraph by either hiring a Department prequalified consultant firm or utilizing Agency staff that

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meet the requirements of this paragraph, or a combination thereof. The Agency shall furnish CEI services for the project at its sole cost and expense.

**d. Design.** If the Project includes design work, the Agency is responsible for the preparation of all design plans for the Project required to deliver the Project. The Agency shall hire a Department pre-qualified consultant for the design phase of the Project. Notwithstanding any provision of law to the contrary, design services and CEI services may not be performed by the same entity. All design work on the Project shall be performed in accordance with the requirements of all applicable laws and governmental rules and regulations and federal and state accepted design standards for the type of construction contemplated by the Project, including, as applicable, but not limited to, the applicable provisions of the Manual of Uniform Traffic Control Devices and the AASHTO Policy on Geometric Design of Streets and Highways.

**e. Consultant Conflicts of Interest.** The Agency shall comply with the Department's current Conflict of Interest Procedure in employing consultants for the Project (currently Department Procedure 375-030-006).

**f. Department Plans Review.** The Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will provide the Agency with written approval of any approved portions of the Project plans and comments or recommendations covering any remainder of the Project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will provide the Agency with a written approval of the remaining Project plans. Failure to obtain this written approval shall be sufficient cause for nonpayment by the Department. Because the Project will be located on, under or over Department-owned right-of-way, the Department shall review the Project's design plans for compliance with all applicable standards of the Department, as provided in Exhibit E, Terms and Conditions of Construction. In its sole discretion, the Department may reject designs which it determines do not meet Department standards.

**g. Final Plans.** The Agency will provide copies of the final design plans and specifications and final bid documents to the Department's Project Manager prior to commencing construction of the Project. The Department will specify the number of copies required and the required format.

**h. Bonds and Guaranty of Payment of Claims.** The Agency shall require the Agency's contractor to post a payment and performance bond in accordance with applicable law and the Department's Standard Specifications for Road and Bridge Construction (2020), as amended. The Agency shall require the Agency's contractor to guaranty the payment of all just claims for materials, supplies, tools, or labor and other just claims against him or any subcontractor, in connection with the performance of the Project. The Department's final acceptance and payment shall not release the contractor's bond until all such claims are paid or released.

**i. Performance of Construction Work.** The Agency shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that it will meet all applicable Agency and Department standards.

**j. Public Safety.** The Agency is responsible for ensuring the safety of the public during all phases of Project construction. The Agency and its contractors shall request authority to and take appropriate action to restrict or prohibit travel on any public road when required to protect the traveling public. The Agency shall follow Department procedures for road closures. Notwithstanding anything to the contrary in any Department or other governmental procedure, if the Agency, or its contractors, become aware of circumstances related to the

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Project that could present an imminent risk of harm to the travelling public, the Agency shall, and shall require its contractors to, immediately take all appropriate steps to protect the public, including requesting immediate closure of any transportation facility.

**l. Completion of Construction.** Upon completion of the work authorized by this Agreement, the Agency shall certify to the Department in writing, in the form attached as Exhibit F, that construction of the Project has been completed. For all Project work that originally required certification by a professional engineer, this notification shall contain an Engineers Certification of Compliance, signed and sealed by a professional engineer, the form of which is attached as Exhibit G. If any deviations are found from the approved plans, the certification shall include a list of all deviations and the justification for each deviation.

**m. As-Built Plans.** The Agency shall provide the Department with as-built plans of any portions of the Project funded through this Agreement prior to final inspection.

**10. Termination and Suspension.**

**a. Generally.** If: (i) the Agency abandons the Project; (ii) the Agency fails to comply with applicable law or the terms of this Agreement; or (iii) for any other reason, the commencement, prosecution, or timely completion of the Project by the Agency is rendered improbable, infeasible, impossible, or illegal, the Department may, by written notice to the Agency, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or the Department may terminate any or all of its obligations under this Agreement. The Department may also terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.

**b. Actions Upon Termination or Suspension.** Upon receipt of any final termination or suspension notice from the Department, the Agency shall proceed promptly to carry out the actions required in such notice, which may include any or all of the following: (1) necessary action to terminate or suspend, as the case may be, Project activities and contracts and such other action as may be required or desirable to keep to the minimum the costs upon the basis of which the financing is to be computed; (2) furnish a statement of the Project activities and contracts, and other undertakings the cost of which are otherwise includable as Project costs; and, (3) remit to the Department such portion of the financing and any advance payment previously received as is determined by the Department to be due under the provisions of the Agreement. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and budget as approved by the Department or upon the basis of terms and conditions imposed by the Department upon the failure of the Agency to furnish the schedule, plan, and budget within a reasonable time. The approval of a remittance by the Agency shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

**11. Contracts of the Agency.**

**a. Approval Required.** Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of such consultant or contractor.



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**b. Consultant Services.** The Agency acknowledges and agrees that any Project consultant contract for engineering, architecture or surveying services must be procured in compliance with the provisions of Chapter 287.055, Florida Statutes, the Consultants' Competitive Negotiation Act. At the discretion of the Department, the Agency will involve the Department in the consultant selection process for all applicable project agreements funded under this Agreement. In all cases, the Agency's attorney shall certify to the Department that selection has been accomplished in compliance with Chapter 287.055, Florida Statutes, the Consultants' Competitive Negotiation Act.

**c. Design and Construction Services.** Except as otherwise authorized in writing by the Department, the Agency shall include the applicable provisions required by all applicable Department procedures, guidelines, manuals, standards, and directives in all contracts for design and construction of the Project.

**d. Preference for State Residents.** If the Project is procured pursuant to Chapter 255, Florida Statutes, for construction services and at the time of the competitive solicitation for the Project fifty (50) percent or more of the cost of the Project is to be paid from state-appropriated funds, the Agency must comply with the requirements of Section 255.099(1), Florida Statutes.

**e. Force Account Work.**

If this box is checked, the Agency is permitted to utilize its own forces in performing the Project. If the Agency proceeds with any phase of the Project utilizing its own forces, the Agency will only be reimbursed for direct costs (this excludes general overhead).

**f. Claims and Requests for Additional Work.** The Agency shall have sole responsibility for resolving claims and requests for additional work for the Project. The Agency will make best efforts to obtain the Department's input in its decisions. The Department is not obligated to reimburse for claims or requests for additional work.

**12. Disadvantaged Business Enterprise (DBE) Policy and Obligation.** It is the policy of the Department that DBE's, as defined in 49 CFR Part 26, as amended, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part under this Agreement. The Agency shall, and shall require its contractors to, take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that DBEs have the maximum opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

**13. Maintenance Obligations.** If the Project includes construction, the provisions of this paragraph are part of this Agreement. The Agency agrees to maintain any portion of the Project not located on the State Highway System for its useful life. For any improvements constructed by the Agency on Department right-of-way, the Agency

shall

shall not

maintain the improvements located on the Department right-of-way made for their useful life. If the Agency is required to maintain Project improvements located on the Department right-of-way beyond final acceptance, the Agency shall, prior to any payment under this Agreement, also execute a Maintenance Memorandum of

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Agreement in a form that is acceptable to the Department. This provision will survive termination or expiration of this Agreement.

**14. Project Property.**

**a.** Upon final acceptance of the Project, all portions of the Project that form a part of the State Highway System will be owned by the Department. The Agency agrees to execute any documents reasonably required by the Department to evidence such ownership.

**b. Tangible Personal Property.**

This contract does not involve the purchase of Tangible Personal Property, as defined in Chapter 273, Florida Statutes.  
or:

This contract includes the purchase of Tangible Personal Property as defined in Chapter 273, Florida Statutes, and is acquired in accordance with Rule 60A-1.017, Florida Administrative Code. The specific property(ies) and line item cost(s) is(are) detailed in Exhibit H, and will be subsequently transferred to and controlled by the Department upon completion of services or end of the contract, whichever occurs first. Upon receipt of property, the Agency shall forward to the Department a copy of the purchase invoice/property description/serial number and date of receipt. The Department will forward inventory control label(s) to be affixed to all property. The Agency will accommodate physical inventories required by the Department.

**15. Restrictions, Prohibitions, Controls, and Labor Provisions.** During the performance of this Agreement, the Agency agrees as follows, and shall require the following provisions to be included in each contract and subcontract entered into pursuant to this Agreement:

**a. Convicted Vendors.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**b. Discriminatory Vendors.** In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

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**c. Certificates of Qualification.** An entity or affiliate who has had its Department issued certificate of qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.

**d. Code of Conduct.** The Agency has established, and will maintain, a written code or standard of conduct applicable to its officers, employees, board members or agents, and those individuals' relatives, that prohibits their involvement in the selection, award, or administration of any contract in connection with the Project if they have a present or potential financial or other significant interest therein and prohibits the acceptance of any gratuity, favor, or other thing of monetary value from any person interested or involved in the performance of work on the Project.

**e. Unauthorized Aliens.** The Department shall consider the employment by the Agency of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Agency knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.

**f. E-Verify.** The Agency shall:

i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the Agreement; and

ii. Expressly require any contractors and subcontractors performing work or providing services pursuant to the Agreement 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 or subcontractor during the Agreement term.

**16. Indemnification and Insurance.**

**a. Indemnification.** To the extent permitted by law and as limited by and pursuant to the provisions of Section 768.28, Florida Statutes, the Agency shall indemnify and hold harmless the Department, including the Department's officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Agency and persons employed or utilized by the Agency in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity.

**b. Agency Contracts.** The Agency agrees to include the following indemnification clause in all contracts with contractors, subcontractors, consultants, or subconsultants who perform work in connection with this Agreement (modified to appropriately identify the parties):

"The Agency's contractor/consultant shall indemnify and hold harmless the Agency and the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor/consultant and persons employed or utilized by the contractor/consultant in the performance of this Agreement.

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This indemnification shall survive the termination of this Agreement.”

**c. Workers’ Compensation.** The Agency shall provide Workers’ Compensation Insurance in accordance with Florida’s Workers’ Compensation law for all employees. If contracting for any of the work, the Agency shall ensure that its contractors have Workers’ Compensation Insurance for their employees in accordance with Florida’s Workers’ Compensation law. If using “leased employees” or employees obtained through professional employer organizations (“PEO’s”), the Agency shall ensure that such employees are covered by Workers’ Compensation insurance through the PEO’s or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships or partners are covered by insurance required under Florida’s Workers' Compensation law.

**d. General Liability.** If the Agency elects to self-perform the Project, and such self-performance is approved by the Department in accordance with the terms of this Agreement, the Agency may self-insure and proof of self-insurance shall be provided to the Department. If the Agency elects to hire a contractor or consultant to perform the Project, then the Agency shall, or cause its contractor or consultant to carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. Agency shall, or cause its contractor to cause the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an “occurrence” basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Agency is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department’s approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.

**e. Railroad Protective Liability.** When the Agreement includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, the Agency shall, or cause its contractor to, in addition to the insurance coverage required above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with the Department as an Additional Insured on the policy/ies procured pursuant to the paragraph above. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, both the Department and the railroad shall be provided with an ACORD Certificate of

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Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have.

**f. Utilities.** When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the Commercial General Liability policy/ies procured above.

**g. Insurance Requirement Updates.** To the extent the Department's Standard Specifications for Road and Bridge Construction, as revised at the time the Agency enters into any contract for construction of the Project, require higher or different insurance coverages, the requirements of the Standard Specifications shall control.

## **17. Legal Requirements.**

**a. General.** The Agency acknowledges that legal requirements are subject to change and agrees that the most recent requirements shall govern its obligations under this Agreement at all times. The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project. Execution of this Agreement constitutes a certification that the Agency is in compliance with, and will require its contractors and subcontractors to comply with, all requirements imposed by applicable federal, state, and local laws and regulations.

**b. Equal Opportunity and Non-Discrimination.** In connection with the carrying out of the Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin and will comply with all statutes and implementing regulations relating to nondiscrimination.

**c. Environmental Regulations.** Execution of this Agreement constitutes a certification by the Agency that the Project will be carried out in accordance with all applicable environmental regulations including the securing of any applicable permits. The Agency will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the Department for any loss incurred in connection therewith.

**d. Compliance with Public Records Laws.** The Agency agrees to comply with all provisions provided in Chapter 119 Florida Statutes. If the Agency receives a public records request concerning its work undertaken pursuant to this Agreement, the Agency must take appropriate action as required by Chapter 119, Florida Statutes. The Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency, contractor, sub-contractor, or materials vendor to comply with the provisions of Chapter 119, Florida Statutes.

**e. Right of Way.** If the Project includes the acquisition of any right-of-way, the Agency must certify compliance with all applicable federal and state requirements. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, including if no right-of-way is required.

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**18. Miscellaneous Provisions.**

**a. Prohibited Interests.** The Agency shall not enter into a contract or arrangement in connection with the Project or any property included or planned to be included in the Project, with any officer, director or employee of the Agency, or any business entity of which the officer, director or employee or the officer's, director's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer, director or employee or the officer's, director's or employee's spouse or child, or any combination of them, has a material interest.

- i. "Material Interest" means direct or indirect ownership of more than 5% of the total assets or capital stock of any business entity.
- ii. The Agency shall not enter into any contract or arrangement in connection with the Project or any property included or planned to be included in the Project, with any person or entity who was represented before the Agency by any person who at any time during the immediately preceding two (2) years was an officer, director or employee of the Agency.
- iii. The provisions of this subsection shall not be applicable to any agreement between the Agency and its fiscal depositories, any agreement for utility services the rates for which are fixed or controlled by the government, or any agreement between the Agency and an agency of state government.
- iv. The Agency shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in the Project, and shall require its contractor to insert in each of their subcontracts, the following provision: "No member, officer or employee of the Agency or of the locality during his tenure or for two (2) years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof".

**b. Department Not Obligated to Third Parties.** The Department shall not be obligated or liable under this Agreement to any party other than the Agency. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

**c. Relationship of Parties.** The Agency, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.

**d. When Rights and Remedies Not Waived.** In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist, on the part of the Agency, and the making of such payment by the Department while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

**e. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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**f. Sovereign Immunity.** Nothing in this Agreement shall constitute a waiver by either party of its sovereign immunity for any damages claimed by third parties.

**g. Severability.** If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall be construed and enforced as if such invalid or unenforceable provision had not been contained in this Agreement, unless the omission of the invalid or unenforceable provision would cause this Agreement to violate any applicable law or fail its fundamental purpose.

**h. Bonus or Commission.** By execution of the Agreement the Agency represents that it has not paid and, also, agrees not to pay, any bonus or commission for the purpose of obtaining an approval of the financing hereunder.

**i. Notices.** Any notice, demand, or request which is required to be given under this Agreement in writing shall be delivered to the following addresses:

If to the Department:

Florida Department of Transportation - District Four  
3400 West Commercial Blvd.  
Fort Lauderdale, Florida 33309-3421  
Attn: Leos A. Kennedy, Jr.  
With a copy to: Brad Salisbury, P.E.  
A second copy to: Office of the General Counsel

If to Agency:

City of Pompano Beach  
100 W. Atlantic Blvd.  
Pompano Beach, Florida 33458  
Attn: Fernand Thony  
With a copy to: City Attorney

**j. Agreement Format.** All words used in this Agreement in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

**k. JURY TRIAL WAIVER. THE AGENCY 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.**

**l. Limitation on Liability.** Notwithstanding anything to the contrary in this Agreement, in no event shall the Agency or the Department be liable to each other for any indirect, punitive, special or consequential damages (including, but not limited to, loss of profits, interest, earnings or use) whether arising in contract, tort or otherwise, even if the party has been advised that such damages are possible. The limitation of remedies provided in the preceding sentence shall survive the expiration or termination of this Agreement.

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**m. Execution of Agreement.** This Agreement may be simultaneously executed in a minimum of two counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

**n. State Lobbying.** No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

**o. Inspector General Cooperation.** The Agency agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all contracts for performance of the Project the obligation to comply with Section 20.055(5), Florida Statutes.

**p. Agreement not Assignable.** The Agency may not assign any of its rights or obligations under this Agreement.

**q. Amendments.** This Agreement may not be amended, except by a writing signed by both Parties.

**r. Exhibits.** The following Exhibits are attached and incorporated into this Agreement:

- Exhibit A: Project Description and Responsibilities
- Exhibit B: Project Budget
- Exhibit C: Contract Payment Requirements
- Exhibit D: Advance Project Reimbursement
- Exhibit E: Terms and Conditions of Construction in Department Right-of-Way
- Exhibit F: Certificate of Completion
- Exhibit G: Engineer's Certificate
- Exhibit H: Tangible Personal Property
- 
- 
- Additional Exhibit(s): \_\_\_\_\_, are attached and are part of this Agreement

[signatures on following page]



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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date signed by the last party executing and inserted in the opening paragraph by the Department.

STATE OF FLORIDA,  
DEPARTMENT OF TRANSPORTATION

CITY OF POMPANO BEACH

\_\_\_\_\_  
JOHN P. KRANE, P.E.  
DIRECTOR OF TRANSPORTATION  
DEVELOPMENT

\_\_\_\_\_

FDOT LEGAL REVIEW

LEGAL REVIEW

\_\_\_\_\_  
OFFICE OF THE GENERAL COUNSEL

\_\_\_\_\_

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EXHIBIT A  
PROJECT DESCRIPTION

**A. Project Description** Construction (resurfacing) services along SR-A1A: from

**B. Project Location** Project Limits: N.E. 5<sup>th</sup> Street to South End of Hillsboro Inlet Bridge, in Pompano Beach, FL. Broward County

Illustration/graphic/map of project area is applicable and attached to this Exhibit A.

**C. Project Scope** (allowable costs: describe project components, improvement type/service type, approximate timeline, project schedule, project size):

All of the improvements are to be completed by the PARTICIPANT in accordance with the latest year of the Florida Design Manual Chapter 114 (Resurfacing, Restoration, and Rehabilitation) and Florida Department of Transportation (FDOT) Standard Plans/Specifications for Road and Bridge Construction. Services to be provided shall include, but not limited to the following:

Roadway

Mill and resurface the existing pavement. Upgrade existing pedestrian curb ramps to meet ADA standards.

Lighting

Upgrade lighting to meet intersection retrofit criteria at NE 14<sup>th</sup> Street.

Signalization

Install flexible backplates and pedestrian signalization upgrades at NE 14<sup>th</sup> Street.

Signing and Marking

Upgrade signing and pavement marking to latest Manual on Uniform Traffic Control Devices (MUTCD) Florida Department of Transportation (FDOT) standards.

**D. Unallowable Costs** (including but not limited to):

- Any service completed before the execution date or after the expiration date of the agreement will not be reimbursed.
- Any deliverables/ locations not listed in Exhibit A.

**E. Department Project Manager.** The Department's Project Manager for the Project, and contact information, is:

Brad Salisbury, P.E.  
Design Project Manager  
Florida Department of Transportation  
34000 W. Commercial Blvd.  
Fort Lauderdale, FL 33309  
954-777-4160

**Exhibit A**  
**Deliverables**  
**FM# 447655-1-58-01**

DESCRIPTION	QTY	UNIT
MOBILIZATION	1.00	LS
MAINTENANCE OF TRAFFIC	1.00	LS
TRAFFIC CONTROL OFFICER	120.00	MH
WORK ZONE SIGN	6,825.00	ED
CHANNELIZING DEVICE- TYPES 1, II, DI, VP, DRUM, OR LCD	10,650.00	ED
CHANNELIZING DEVICE- PEDESTRIAN LCD (LONGITUDINAL CHANNELIZING DEVICE)	11,340.00	FD
ARROW BOARD/ ADVANCE WARNING ARROW PANEL	1,220.00	ED
PORTABLE CHANGEABLE MESSAGE SIGN. TEMPORARY	876.00	ED
SEDIMENT BARRIER	1,861.00	LF
INLET PROTECTION SYSTEM	69.00	EA
LITTER REMOVAL	6.74	AC
MOWING	0.86	AC
CLEARING AND GRUBBING	1/(0.21)	LS/(AC)
REMOVAL OF EXISTING CONCRETE	3,305.00	SY
MAIL, BOX F&I SINGLE	2.00	EA
REGULAR EXCAVATION	443.00	CY
EMBANKMENT	182.90	CY
TYPE B STABILIZATION	17.80	SY
OPTION BASE, BASE GROUP 01	26.00	SY
OPTION BASE, BASE GROUP 06	514.00	SY
MILLING EXISTING ASPHALT PAVEMENT, 3" AVG DEPTH	58,524.80	SY
SUPERPAVE ASPHALTIC CONCRETE, TRAFFIC B	4,912.30	TN
ASPHALT CONCRETE FRECITION COURSE, TRAFFIC B, FC-12.5, PG 76-22	4,867.00	TN
MISCELLANEOUS ASPHALT PAVEMENT	1.80	TN
INLETS, CURB, TYPE P-5, PARTIAL	2.00	EA
INLETS, CURB, TYPE P-6, PARTIAL	2.00	EA
INLETS, CURB, TYPE 8, PARTIAL	1.00	EA
INLETS, DITCH BOTTOM, TYPE D, PARTIAL	1.00	EA
INLETS, DITCH BOTTOM, TYPE F, J BOT, <10'	1.00	EA
INLETS, GUTTER, TYPE V, <10'	4.00	EA
MANHOLES, P-7, PARTIAL	3.00	EA
MANHOLE, ADJUST, UTILITIES	72.00	EA
VALVES, ADJUST	106.00	EA
PIPE CULVERT, OPT MATERIAL, ROUND, 36" S/CD	111.00	LF
CONCRETE CURB & GUTTER, TYPE F	1,874.00	LF
CONCRETE CURB, TYPE B	1,179.00	LF
VALLEY GUTTER- CONCRETE	246.00	LF
SHOULDER GUTTER- CONCRETE	66.00	LF
CONCRETE SIDEWALK AND DRIVEWAYS. 4" THICK	1,968.00	SY
CONCRETE SIDEWALK AND DRIVEWAYS. 6" THICK	1,017.00	SY
BUS SHELTER PAD- CONCRETE	323.00	SY
PATTERNED PAVEMENT	738.80	SY
DETECTABLE WARNING	1,195.00	SY
PIPE RAIL	140.60	LF
GUARDRAIL END TREATMENT- PARALLEL APPROACH TERMINAL	1.00	EA
PERFORMANCE TURF, SOD	1,900.00	SY
SPLICE AND PULL BOX	40.00	EA

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**EXHIBIT C**

**CONTRACT PAYMENT REQUIREMENTS**

**Florida Department of Financial Services, Reference Guide for State Expenditures**  
*Cost Reimbursement Contracts*

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation shall be submitted for each amount for which reimbursement is being claimed indicating that the item has been paid. Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved agreement budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided.

Listed below are types and examples of supporting documentation for cost reimbursement agreements:

(1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

(2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

(3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.

(4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.

(5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.

(6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

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Contracts between state agencies, and or contracts between universities may submit alternative documentation to substantiate the reimbursement request that may be in the form of FLAIR reports or other detailed reports.

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address [http://www.fldfs.com/aadir/reference\\_guide.htm](http://www.fldfs.com/aadir/reference_guide.htm).

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**EXHIBIT E**  
**TERMS AND CONDITIONS OF CONSTRUCTION**

**1. Design and Construction Standards and Required Approvals.**

- a. The Agency understands that it is responsible for the preparation and certification of all design plans for the Project. The Agency shall hire a qualified consultant for the design phase of the Project or, if applicable, the Agency shall require their design-build contractor or construction management contractor to hire a qualified consultant for the design phase of the Project.
- b. Execution of this Agreement by both Parties shall be deemed a Notice to Proceed to the Agency for the design phase or other non-construction phases of the Project. If the Project involves a construction phase, the Agency shall not begin the construction phase of the Project until the Department issues a Notice to Proceed for the construction phase. Prior to commencing the construction work described in this Agreement, the Agency shall request a Notice to Proceed from the Department's Project Manager, Brad Salisbury (email: brad.salisbury@dot.state.fl.us) or from an appointed designee. Any construction phase work performed prior to the execution of this required Notice to Proceed is not subject to reimbursement.
- c. The Agency will provide one (1) copy of the final design plans and specifications and final bid documents to the Department's Project Manager prior to bidding or commencing construction of the Project.
- d. The Agency shall require the Agency's contractor to post a payment and performance bond in accordance with applicable law(s).
- e. The Agency shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that the construction work will meet all applicable Agency and Department standards.
- f. Upon completion of the work authorized by this Agreement, the Agency shall notify the Department in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineer's Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached to this Exhibit. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans or specifications, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

**2. Construction on the Department's Right of Way.** If the Project involves construction on the Department's right-of-way, then the following provisions apply to any and all portions of the Project that are constructed on the Department's right-of-way:

- a. The Agency shall hire a qualified contractor using the Agency's normal bid procedures to perform the construction work for the Project. The Agency must certify that the installation of the Project is completed by a Contractor prequalified by the Department as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2016), as amended, unless otherwise

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approved by the Department in writing or the Contractor exhibits past project experience in the last five years that are comparable in scale, composition, and overall quality to the site characterized within the scope of services of this Project.

- b. Construction Engineering Inspection (CEI) services will be provided by the Agency by hiring a Department prequalified consultant firm including one individual that has completed the Advanced Maintenance of Traffic Level Training, unless otherwise approved by the Department in writing. The CEI staff shall be present on the Project at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by Department. The Department shall approve all CEI personnel. The CEI firm shall not be the same firm as that of the Engineer of Record for the Project. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. Notwithstanding the foregoing, the Department may issue a written waiver of the CEI requirement for portions of Projects involving the construction of bus shelters, stops, or pads.
- c. The Project shall be designed and constructed in accordance with the latest edition of the Department's Standard Specifications for Road and Bridge Construction, the Department Design Standards, and the Manual of Uniform Traffic Control Devices (MUTCD). The following guidelines shall apply as deemed appropriate by the Department: the Department Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, Florida Design Manual, Manual for Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the "Florida Green Book"), and the Department Traffic Engineering Manual. The Agency will be required to submit any construction plans required by the Department for review and approval prior to any work being commenced. Should any changes to the plans be required during construction of the Project, the Agency shall be required to notify the Department of the changes and receive approval from the Department prior to the changes being constructed. The Agency shall maintain the area of the Project at all times and coordinate any work needs of the Department during construction of the Project.
- d. The Agency shall notify the Department a minimum of 48 hours before beginning construction within Department right-of-way. The Agency shall notify the Department should construction be suspended for more than 5 working days. The Department contact person for construction is Christian Rojas, (954) 931-6182.
- e. The Agency shall be responsible for monitoring construction operations and the maintenance of traffic (MOT) throughout the course of the Project in accordance with the latest edition of the Department Standard Specifications, section 102. The Agency is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the Department Design Standards, Index 600 series. Any MOT plan developed by the Agency that deviates from the Department Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.

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- f.** The Agency shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.
- g.** The Agency will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.
- h.** It is hereby agreed by the Parties that this Agreement creates a permissive use only and all improvements located on the Department's right-of-way resulting from this Agreement shall become the property of the Department. Neither the granting of the permission to use the Department right of way nor the placing of facilities upon the Department property shall operate to create or vest any property right to or in the Agency, except as may otherwise be provided in separate agreements. The Agency shall not acquire any right, title, interest or estate in Department right of way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Agency's use, occupancy or possession of Department right of way. The Parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to Chapter 163, F.S.
- i.** The Agency shall not cause any liens or encumbrances to attach to any portion of the Department's property, including but not limited to, the Department's right-of-way.
- j.** The Agency shall perform all required testing associated with the design and construction of the Project. Testing results shall be made available to the Department upon request. The Department shall have the right to perform its own independent testing during the course of the Project.
- k.** The Agency shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the Department, applicable Water Management District, Florida Department of Environmental Protection, the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Coast Guard and local governmental entities.
- l.** If the Department determines a condition exists which threatens the public's safety, the Department may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from its right-of-way at the sole cost, expense, and effort of the Agency. The Agency shall bear all construction delay costs incurred by the Department.
- m.** The Agency shall be responsible to maintain and restore all features that might require relocation within the Department right-of-way.
- n.** The Agency will be solely responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.



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- o.** The acceptance procedure will include a final “walk-through” by Agency and Department personnel. Upon completion of construction, the Agency will be required to submit to the Department final as-built plans and an engineering certification that construction was completed in accordance to the plans. Submittal of the final as-built plans shall include one complete set of the signed and sealed plans on 11" X 17" plan sheets and an electronic copy prepared in Portable Document Format (PDF). Prior to the termination of this Agreement, the Agency shall remove its presence, including, but not limited to, all of the Agency’s property, machinery, and equipment from Department right-of-way and shall restore those portions of Department right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.
- p.** If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have thirty (30) days from the date of receipt of the Department’s written notice, or such other time as the Agency and the Department mutually agree to in writing, to complete the Project and provide the Department with written notice of the same (the “Notice of Completion”). If the Agency fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department, within its discretion may: 1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Agency’s sole cost and expense, without Department liability to the Agency for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice within thirty (30) days of the date of the invoice.
- q.** The Agency shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. The Agency shall be responsible for the correction of any erosion, shoaling, or water quality problems that result from the construction of the Project.
- r.** Portable Traffic Monitoring Site (PTMS) or a Telemetry Traffic Monitoring Site (TTMS) may exist within the vicinity of your proposed work. It is the responsibility of the Agency to locate and avoid damage to these sites. If a PTMS or TTMS is encountered during construction, the Department must be contacted immediately.
- s.** During construction, highest priority must be given to pedestrian safety. If permission is granted to temporarily close a sidewalk, it should be done with the express condition that an alternate route will be provided and shall continuously maintain pedestrian features to meet Americans Disability Act (ADA) standards.
- t.** Restricted hours of operation will be as follows, unless otherwise approved by the Department’s District Construction Engineer or designee (insert hours and days of the week for restricted operation): 9:00 am – 3:30 pm (Monday – Friday).

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**STATE HIGHWAY SYSTEM**  
**PROJECT FUNDING AGREEMENT**

- u.** Lane closures on the state road system must be coordinated with the Public Information Office at least two weeks prior to the closure. The contact information for the Department's Public Information Office is:

Guillermo Canedo  
Florida Department of Transportation  
Public Information Office  
3400 West Commercial Blvd.  
Fort Lauderdale, FL 33309  
954-777-4302  
[Guillermo.Canedo@dot.state.fl.us](mailto:Guillermo.Canedo@dot.state.fl.us)

**Note: (Highlighted sections indicate need to confirm information with District Office or appropriate DOT person managing the Agreement)**

- 3. Engineer's Certification of Compliance.** The Agency shall complete and submit a Notice of Completion and if applicable Engineer's Certification of Compliance to the Department upon completion of the construction phase of the Project.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
STATE HIGHWAY SYSTEM  
PROJECT FUNDING AGREEMENT

EXHIBIT F

NOTICE OF COMPLETION

PROJECT FUNDING AGREEMENT  
BETWEEN  
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION  
and CITY OF POMPAÑO BEACH

PROJECT DESCRIPTION: CONSTRUCTION (RESURFACING) ALONG SR-A1A: NEW 5<sup>TH</sup> STREET TO SOUTH END OF HILLSBORO INLET BRIDGE

DEPARTMENT CONTRACT NO.: \_\_\_\_\_

FINANCIAL MANAGEMENT NO.: 447655-1-58-01

In accordance with the Terms and Conditions of the Project Funding Agreement, the undersigned provides notification that the work authorized by this Agreement is complete as of \_\_\_\_\_, 20\_\_\_. All work has been completed in compliance with the Project construction plans and specifications and the Project is suitable for its intended purpose.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
STATE HIGHWAY SYSTEM  
PROJECT FUNDING AGREEMENT

EXHIBIT G

ENGINEER'S CERTIFICATION OF COMPLIANCE

PROJECT FUNDING AGREEMENT  
BETWEEN  
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION  
and CITY OF POMPANO BEACH

PROJECT DESCRIPTION: CONSTRUCTION (RESURFACING) ALONG SR-A1A: NEW 5<sup>TH</sup> STREET TO SOUTH END OF HILLSBORO INLET BRIDGE

DEPARTMENT CONTRACT NO.: \_\_\_\_\_

FINANCIAL MANAGEMENT NO.: 447655-1-58-01

In accordance with the Terms and Conditions of the Project Funding Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification, the Agency shall furnish the Department a set of "as-built" plans certified by the Engineer of Record/CEI.

P.E.

By:

SEAL:

Name: \_\_\_\_\_

Date: \_\_\_\_\_