

**DISTRICT FOUR
MEMORANDUM OF AGREEMENT**

THIS AGREEMENT, is entered into this ____ day of _____, 20__, between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, (the “DEPARTMENT”) and **CITY OF FORT LAUDERDALE**, a municipal corporation existing under the Laws of Florida, (the “AGENCY”).

RECITALS:

A. The AGENCY has jurisdiction over the following roadways, as part of the City Roadway System (the “Agency Roads”):

SW 18 th Court	from FEC tracks to SW 1 st Avenue
SW 1 st Avenue	from SW 18 th Court to SW 18 th Street
SW 18 th Street	from SW 1 st Ave to S Andrews Ave
SE 6 th Street	from S Andrews Ave to SE 3 rd Ave
West Las Olas Blvd	from SW 1 st Ave to S Andrews Ave
East Las Olas Blvd	from S Andrews Ave to SE 3 rd Ave
SW 2 nd Street	from SW 1 st Ave to S Andrews Ave
SE 2 nd Street	from S Andrews Ave to SE 3 rd Ave
SW 1 st Avenue	from W Las Olas Blvd to W Broward Blvd
NW 1 st Avenue	from W Broward Blvd to NW 4 th Street
NW 4 th Street	from NW 1 st Ave to N Andrews Ave
NE 4 th Street	from N Andrews Ave to NE 3 rd Ave
NE 6 th Street	from N Andrews Ave to NE 3 rd Ave ; and

B. Pursuant to Sections 339.07, 339.08 and 339.12, Florida Statutes and Federal funding provisions the DEPARTMENT is authorized to undertake projects within the AGENCY’s geographical limits; and

C. Broward County, Florida (the “County”) and the DEPARTMENT have entered into that certain Wave Project Agreement, dated June 14, 2016 (the “Project Agreement”), under the terms of which the DEPARTMENT has agreed to design and construct the 2.8 mile modern streetcar known as The Wave Streetcar, defined in the Project Agreement and for the purposes of this Memorandum of Agreement as the “Project”; and

D. The AGENCY, the Downtown Development Authority of the City of Fort Lauderdale (the “DDA”) and the County have entered into an Interlocal Agreement effective June 15, 2016, allocating responsibility for the local share of capital cost overruns for the Project; and

E. The DEPARTMENT and the South Florida Regional Transportation Authority (the "SFRTA") have entered into a Project Assumption Agreement dated August 26, 2016, pursuant to which the DEPARTMENT has agreed to assume responsibility for implementation of the Project; and

F. The AGENCY desires that the DEPARTMENT undertake responsibility for implementation of the Project; and

G. Pursuant to the terms of the Project Agreement, the DEPARTMENT request a resolution of the governing body of the AGENCY authorizing and requesting the DEPARTMENT to enter onto the rights-of-way or other real property owned by the AGENCY that is necessary and desirable for the construction and implementation of the Project (defined in the Project Agreement and for the purposes of this Memorandum of Agreement as the "City Real Property") for the purpose of designing and constructing the Project; and

H. Although not a party to the Project Agreement, the AGENCY is willing to enter into this Memorandum of Agreement with the DEPARTMENT under which the AGENCY will provide the DEPARTMENT, and the DEPARTMENT's contractor(s), with all rights necessary to enter onto the City Real Property in order to perform the work required to design and construct the Project; and

I. The Agency Roads are part of the City Real Property necessary and desirable for the construction and implementation of the Project; and

J. Pursuant to the Local Funding Agreement ("LFA") between the AGENCY and the DEPARTMENT, and all subsequent amendments thereto, the DEPARTMENT will demolish the existing building at the Vehicle Maintenance and Storage Facility ("VMF") site; and

L. The AGENCY by Resolution on the _____ day of _____, 2017, a copy of which is attached hereto and by this reference made a part hereof, has approved this Memorandum of Agreement and has authorized the signatory below to execute this Memorandum of Agreement on behalf of the AGENCY;

AGREEMENT

In consideration of the mutual covenants expressed in this Memorandum of Agreement, and intending to be legally bound by this Agreement, the DEPARTMENT and the AGENCY agree that the foregoing recitals are true and correct and are incorporated as part of this Agreement, and further agree as follows:

1. Terms not defined in this Memorandum of Agreement shall have the meanings given in the Project Agreement.
2. The AGENCY hereby authorizes the DEPARTMENT and its contractors to enter onto the City Real Property, including the Agency Roads, to design and construct the Project. The AGENCY will certify to the DEPARTMENT that it owns fee title to the City Real Property reflected on right-of-way maps the AGENCY provides the DEPARTMENT for the DEPARTMENT's use in designing and constructing the Project. The DEPARTMENT will not be required to obtain any interest in the City Real Property from any third party in order to use the City Real Property for the Project (the DEPARTMENT has temporarily obtained title to the VMF Property, which will be conveyed to the

County in accordance with the Project Agreement). The AGENCY shall ensure that all City Real Property is free and clear of any liens, encroachments or other encumbrances that would prevent its use for the purpose of the Project. If any encroachments are found, the AGENCY will cause such encroachments to be promptly removed at no cost to the DEPARTMENT.

3. This Memorandum of Agreement constitutes the complete authorization of the AGENCY for the DEPARTMENT and the DEPARTMENT's contractors to enter onto the City Real Property and the VMF Property and to design and construct the Project in accordance with the Project Agreement. No further permits, approvals, permissions or agreements shall be required from the AGENCY for the DEPARTMENT to construct the Project, including tree permits, except the DEPARTMENT or its contractor will obtain building permits when required by law from the AGENCY. The AGENCY will expedite the issuance of any required building permits to avoid delays to the Project.

The DEPARTMENT will work in good faith with the AGENCY to ensure necessary input is received by all the appropriate subject matter experts and that the proper notification is made to the public about the project progress and potential impacts expected as part of construction.

4. The AGENCY shall continue to maintain the Agency Roads and any property owned by AGENCY until the DEPARTMENT begins construction of the Project.
5. It is understood and agreed by the parties that upon "final acceptance" by the DEPARTMENT of the Project, (as that term is described in the Standard Specifications for Roadway and Bridge Construction dated 2017, as amended by contract documents, "Final Acceptance"), and notice thereof to the AGENCY, the AGENCY shall be responsible for maintenance of those portions of the City's Real Property into which the Project is incorporated and do not form part of the streetcar tracks and infrastructure that will be maintained by the County under the Project Agreement, including roadway, curb, drainage, and sidewalk improvements adjacent to the streetcar infrastructure, described in Exhibit "A", at its own cost, in accordance with the following Federally and State accepted standards and all costs related thereto: (a) FDOT Plans Preparation Manual (PPM), current edition, (b) Florida Green Book dated 2013, as amended (c) Governing standards and specifications: FDOT Design Standards dated 2017, as amended (d) Standard Specifications for Roadway and Bridge Construction dated 2017, as amended by contract documents, and (e) Manual on Uniform Traffic Control Devices (MUTCD), current edition, or as amended. Upon Final Acceptance of the Project, the AGENCY shall also be responsible for maintenance of all Project landscaping features (whether such landscaping is incorporated into the City Real Property or otherwise installed as part of the Project) in accordance with this Agreement and the terms of the TIGER Grant or FTA Small Starts Grant for the Project with the exception of landscaping on the VMF Property. The AGENCY shall properly water and fertilize the plants within the scope of the AGENCY's landscape maintenance responsible; to keep them as free as practicable from disease and harmful insects; properly mulch the planting beds; to keep the premises free of weeds; mow the turf to the proper height; properly prune all plants which at a minimum includes removing dead or diseased parts of plants and replace removed plants with plants of the same species type, size, and grade as specified in the plans and specifications for the Project. The current planned landscaping for the Project is described in Exhibits B and C. The Department shall give the AGENCY ten (10) days notice before Final Acceptance.

6. Additionally, in accordance with the Project Agreement, upon final acceptance the DEPARTMENT may convey to the AGENCY certain property interests acquired by the DEPARTMENT in connection with the Project that are adjacent to the Agency Roads.
 - Said conveyance shall include, and the AGENCY fully accepts, a transfer and assignment of all rights and obligations pursuant to any maintenance, utility agreement, subordinations and/or other agreements, or matters of record relating to the property to be conveyed and the AGENCY shall assume all responsibilities and liabilities arising from any obligations thereunder which responsibilities, liabilities, obligations as set forth in the conveyance documents shall run with the land. This provision shall survive the termination of this Agreement.
 - Notwithstanding any other provision herein to the contrary, the Department shall not be responsible for any costs or attorney fees arising out of any liabilities or obligations incurred regarding the right of way after the transfer of property.
7. Warranties: The DEPARTMENT shall transfer to the AGENCY any applicable warranties for work performed as part of the Project for which the AGENCY is responsible for continuing maintenance under the terms of this Agreement.
8. Project permitting: If requested by a third party permitting agency, the AGENCY shall sign as a joint applicant for the permits related to those portions of the Project that are located on the City Real Property. If required, the DEPARTMENT will apply to all applicable permitting agencies to transfer any operating permits to the AGENCY if a permit is to be maintained by the AGENCY. It shall be the responsibility of the DEPARTMENT to produce applications or documents necessary for permitting. Further the AGENCY shall be in compliance with all permits after the construction is complete and the right of way is transferred to the AGENCY. To the extent permitted by law, the AGENCY shall indemnify the DEPARTMENT for any violations by the AGENCY of any permits issued to the Department or jointly to the AGENCY and the DEPARTMENT that occur after construction is complete. The AGENCY shall execute all documentation required by the permitting agencies in a timely manner. For various occupancy permits the AGENCY shall be the applicant.
9. Utilities: The AGENCY shall cooperate with the DEPARTMENT and the DEPARTMENT's Design-Build contractor, to the extent necessary, to accomplish relocations of utilities located on City Real Property for the Project. The DEPARTMENT's contractor will coordinate relocation of private utilities located on City Real Property with AGENCY staff to ensure that the AGENCY is aware of any issues with the relocation of private utilities. The AGENCY shall require all privately owned utilities (utilities not owned by the AGENCY, the DEPARTMENT, or Broward County) located on City Real Property to relocate or adjust their facilities as needed for construction of the Project and shall take all action required to accomplish the timely relocation of such utilities without cost to the DEPARTMENT. The AGENCY shall be solely responsible for any financial liability for delays incurred by the DEPARTMENT under the Design-Build Contract as a result of the failure of a privately owned utility located on City Real Property to timely relocate its facilities, and shall reimburse the DEPARTMENT for such costs, in full, within forty (40) calendar

days from the date of invoice from the DEPARTMENT. Funds due from the AGENCY not paid within forty (40) calendar days from the date of the invoice are subject to an interest charge at a rate established pursuant to section 55.03, Florida Statutes. The AGENCY shall be solely responsible for payment of the costs of relocating privately owned utilities that exist on City Real Property if the utility owner is not responsible for the payment of such costs. The AGENCY shall be solely responsible for taking such actions as it deems necessary or advisable to fully and finally determine the liability of the owner of a private utility located on City Real Property for the costs of relocation of its facilities for accomplishment of the Project. Nothing herein shall be construed as creating an independent right to reimbursement of relocation costs in favor of the owner of any private utility.

The DEPARTMENT will relocate certain AGENCY owned water lines, sanitary sewer lines and drainage as required for construction of the Project (the "City Utilities") and as provided herein. Any costs incurred by the DEPARTMENT in order to accomplish utility relocation for this Project, including the cost of relocating the City Utilities, shall be paid for in accordance with the terms of the Project Agreement, except as provided below.

For relocation of the City Utilities in connection with the Project:

- a. The design and construction work required to relocate the City Utilities will be performed by the DEPARTMENT's Design-Build contractor procured in accordance with the Project Agreement. The DEPARTMENT shall, and shall require its contractor to, allow AGENCY staff to inspect the work for relocation of the City Utilities at any time during regular business hours upon advance coordination with the DEPARTMENT and its contractor. The DEPARTMENT shall allow the AGENCY reasonable opportunity to monitor and test components and systems related to the relocation of the City Utilities. The AGENCY will timely provide the DEPARTMENT Project manager with all comments and concerns regarding Project plans that address relocation of the City Utilities to allow the DEPARTMENT adequate time to formally address those concerns with the DEPARTMENT's Design-Build Contract contractor. The AGENCY shall immediately notify the DEPARTMENT if it believes that any aspect of the construction work for relocation of the City Utilities is deficient or otherwise not in accordance with this Agreement.
- b. Design and construction of the relocation of the City Utilities shall accomplish relocation of the City Utilities as required for construction of the Project, but shall not include enhancements or upgrades to the City Utilities that are not required for implementation of the Project.
- c. The AGENCY shall fully cooperate with the DEPARTMENT and the DEPARTMENT's contractor in all matters relating to the performance of the work required to relocate City Utilities. The AGENCY shall be notified by the DEPARTMENT for inspections a minimum of 48 hours before inspection. The AGENCY shall be notified by the DEPARTMENT, and provide approval in writing, for any change to an already approved design before such change is accepted. The AGENCY recognizes that the DEPARTMENT's engineer has authority over the Project and will make every effort to make timely decisions and assist the DEPARTMENT with keeping the project on time and on budget. The AGENCY shall coordinate and cooperate with the DEPARTMENT's engineer.

- d. The City Utilities shall at all times remain the property of and be properly protected and maintained by the AGENCY; provided, however, that the AGENCY shall not be obligated to protect or maintain the City Utilities to the extent the DEPARTMENT's contractor has that obligation pursuant to the Design-Build contract for the Project.
 - e. To avoid the potential for inconsistent direction to the DEPARTMENT's contractors, representatives of the AGENCY shall address comments and concerns regarding Department contractors' work to the DEPARTMENT Project manager and not the contractor. Disputes regarding the performance of work by the DEPARTMENT's contractor will be resolved in accordance with the statutory claims and dispute resolution process established pursuant to chapter 337, Florida Statutes, and the Department design-build specifications, including the Partnering specification found at <http://www.fdot.gov/programmanagement/Implemented/DesignBuild/HistoryDB/July16/Default.shtm>.
 - f. If AGENCY staff have concerns regarding the DEPARTMENT's actions or interpretation of this Agreement during the course of the Project, they will advise the AGENCY Director of Transportation and Mobility Department who will discuss the concern with the Department's District 4 Operations Director, or their designee. If the AGENCY is not satisfied with the DEPARTMENT's position on the matter after such consultation, the AGENCY City Manager will discuss the issue with the DEPARTMENT's District 4 Secretary.
 - g. The DEPARTMENT shall not be responsible for any costs associated with relocation of the City Utilities that are attributable to the cost of enhancements or upgrades to the City Utilities requested by the AGENCY, in excess of the base requirements for implementation of the Project. Unless the AGENCY in advance enters into a Locally Funded Agreement acceptable to the DEPARTMENT, under the terms of which the AGENCY agrees to advance, and fully pay, the cost of any enhancements or upgrades to the City Utilities requested by the AGENCY, the DEPARTMENT shall not be required to accomplish any enhancements or upgrades to the City Utilities in connection with the Project.
10. Signals: The AGENCY shall cooperate with the DEPARTMENT, to the extent necessary, to affect signal and interconnect connections for the Project.
 11. Drainage: Any permits relating to the City Real Property will be obtained in the AGENCY's name and signed for by the AGENCY.
 12. Unforeseen issues: If unforeseen issues shall arise, the AGENCY shall cooperate with the DEPARTMENT, to the extent necessary, in order to construct the Project including but not limited to executing documents, allowing the DEPARTMENT or its contractor to enter into any real property owned, possessed and controlled by the AGENCY or any other Occupancy right the AGENCY may have.
 13. E-verify requirements: The AGENCY:
 - shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the AGENCY during the term of the contract; and

- shall expressly require any contractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the contractor during the contract term.
14. No deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.
 15. This Agreement shall be governed, interpreted and construed according to the laws of the State of Florida.
 16. LIST OF EXHIBITS

- Exhibit A:** Project Scope
Exhibit B: Concept Landscape Plans

[This space intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year provided below on _____ day of _____, 20_____

AGENCY

ATTEST:

CITY OF FORT LAUDERDALE, through its
CITY COMMISSION

City Clerk

By: _____
John P. "Jack" Seiler, Mayor

By: _____
Lee R. Feldman, City Manger

Approved as to form by Office of City Attorney

By: _____

DEPARTMENT

ATTEST:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Executive Secretary
(SEAL)

By: _____
Transportation Development Director

_____ day of _____, 20_____

Approval :

Office of the General Counsel (Date)

FM No.: 421390-7-52-01, 421390-8-52-01
AGENCY: City of Fort Lauderdale

EXHIBIT A
Project Scope
PROJECT MAINTENANCE RESPONSIBILITIES OF AGENCY

City shall maintain all aspects of the Project located on the Agency Roads or other City Real Property, except the streetcar infrastructure to be maintained by the County pursuant to the Project Agreement, including:

- Asphalt
- Drainage
- Curb & Gutter
- Sidewalk
- Pavement Markings
- Lighting (except Lighting mounted on Overhead Contact Poles and within the Vehicle Storage and Maintenance Facility)
-
- Decorative Features installed by the PROJECT such as:
 - Brick or Concrete Pavers
 - Painted intersections
 - Stamped Asphalt
 - Concrete headers
 - Landscaping (the obligation to maintain Project landscaping includes all landscaping installed with the geographical limits of the AGENCY, whether located on an Agency Road or other facility, except for the Vehicle Storage and Maintenance Facility).

EXHIBIT B

CONCEPT LANDSCAPE PLANS