

**AGREEMENT
BETWEEN
SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY
AND
CITY OF FORT LAUDERDALE
FOR THE WAVE STREETCAR PROJECT**

THIS AGREEMENT is entered into this _____ day of _____, 2014, by and between the South Florida Regional Transportation Authority (hereinafter referred to as the “SFRTA”), a body politic and corporate, a public instrumentality and an agency of the State of Florida pursuant to Chapter 343, Florida Statutes, and the City of Fort Lauderdale (hereinafter referred to as the “CITY”), a Florida municipal corporation.

WHEREAS, SFRTA and the CITY have entered into The Wave Modern Streetcar PARTNERSHIP AGREEMENT with Broward County, the Broward Metropolitan Planning Organization, the Downtown Development Authority of the City of Fort Lauderdale and the Florida Department of Transportation for The Wave Modern Streetcar & Future Extensions, Planning, Finance, Design, Implementation, Project Sponsorship, Ownership, Operations, And Maintenance (the “PARTNERSHIP AGREEMENT”); and

WHEREAS, the CITY has agreed in the PARTNERSHIP AGREEMENT to provide capital funding of PHASE 1 and PHASE 1A (the “CITY’S CAPITAL FUNDS”), as more fully set forth in the PARTNERSHIP AGREEMENT, for the construction of a modern streetcar system proposed for the urban core of the City of Fort Lauderdale, the “downtown” of Broward County (the “PROJECT”); and

WHEREAS, the CITY, as part of the CITY’S CAPITAL FUNDS, has agreed to provide Ten Million Five Hundred Thousand (\$10,500,000) or an equivalent combination of capital contribution; payable by in-kind services, real or personal property, cash or any other means as mutually agreed to by the CITY and SFRTA (the “CASH AMOUNT”); and

WHEREAS, a First Amendment to the PARTNERSHIP AGREEMENT was executed on January 28, 2014 (the “FIRST AMENDMENT”); and

WHEREAS, in accordance with the terms of the PARTNERSHIP AGREEMENT as amended by the FIRST AMENDMENT, the parties wish to provide, by separate agreement, for the means by which the CITY shall contribute the CITY’S CAPITAL FUNDS to SFRTA for the PROJECT;

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants, and obligations set forth herein, SFRTA and CITY agree as follows:

Section 1. Incorporation of Facts. The representations contained in the whereas clauses above are true and correct and incorporated into and made a part of this Agreement by reference.

Section 2. Definitions. The capitalized terms used in this Agreement that also appear in the PARTNERSHIP AGREEMENT shall have the same meaning as set forth in the PARTNERSHIP AGREEMENT, unless it clearly appears that another meaning was intended for a term. Other capitalized terms used in this Agreement that do not also appear in the PARTNERSHIP AGREEMENT shall have the meanings ascribed to them in this Agreement. The VEHICLE MAINTENANCE FACILITY (“VMF”) PROPERTY, as used in this Agreement, shall mean the real property used for the maintenance of streetcars used for the PROJECT.

Section 3. Purpose. The purpose of this Agreement is to set forth the means by which CITY will transfer of the CITY’s CAPITAL FUNDS to SFRTA to be used for the PROJECT in accordance with the terms of the PARTNERSHIP AGREEMENT and the FIRST AMENDMENT and to address certain other financial matters relating to the PROJECT.

Section 4. Term. This Agreement shall take effect as of the date this Agreement has been executed by both parties, and shall remain in full force and effect for a period of one (1) year, and then shall continue in full force and effect thereafter until the total CASH AMOUNT has been transferred to SFRTA, unless sooner terminated.

Section 5. CASH AMOUNT. The CITY’s CASH AMOUNT obligation of Ten Million Five Hundred Thousand Dollars (\$10,500,000) shall be satisfied as follows:

(a) SFRTA acknowledges that Three Million Two Hundred Thousand Dollars (\$3,200,000) of the CASH AMOUNT has been provided in cash payments as follows:

1. The CITY transferred to SFRTA One Million One Hundred Thousand Dollars (\$1,100,000) of the CASH AMOUNT on May 20, 2013;
2. The CITY transferred to SFRTA One Million Dollars (\$1,000,000) of the CASH AMOUNT on December 31, 2013;
3. The CITY transferred to SFRTA One Million One Hundred Thousand Dollars (\$1,100,000) of the CASH AMOUNT on August 25, 2014.

(b) Remainder of CASH AMOUNT. The remainder of the CASH AMOUNT due from the CITY, after subtracting the CASH AMOUNT payments made by the CITY pursuant to (a)1., 2., and 3. above, is Seven Million Three Hundred Thousand (\$7,300,000) and shall be satisfied as follows:

The CITY shall transfer to SFRTA \$2.5 million of the CASH AMOUNT by December 31, 2014 and the remainder of the CASH AMOUNT, less the FTA-accepted value of the VMF PROPERTY, no later than April 30, 2015.

In the event Site “O” is transferred to SFRTA as the VMF PROPERTY and the

FTA-accepted value is greater than the balance owed of the CASH AMOUNT, SFRTA to transfer to the CITY the amount paid above the \$10.5 million CASH AMOUNT obligation within 180 days of receiving the property title.

Section 6. Additional CITY and SFRTA Requirements.

- (a) VMF PROPERTY. The TIGER GRANT identified the VMF PROPERTY as the land parcel identified as Site O on the legal description attached and incorporated hereto as Exhibit A. The CITY and SFRTA acknowledge that the PARTNERS have requested that, if possible, the CITY and SFRTA substitute a portion of the land parcel identified as Site K, as set forth in the legal description attached and incorporated as Exhibit B, as the VMF PROPERTY. The CITY and SFRTA acknowledge that at the time of this Agreement, the relevant portions of either Sites O or K proposed for use as the VMF PROPERTY have not been finalized. From this point forward, all references in this Agreement to Sites O or K shall mean those portions of Sites O or K to be used as the VMF PROPERTY, unless the context clearly indicates that the entirety of Sites O or K is meant.
1. The CITY and SFRTA shall work cooperatively and in good faith to acquire Site K, subject to the three deadlines (December 19, 2014; April 15, 2015; and April 31, 2015) set forth below (the “DEADLINES”). In the event the City fails to fulfill any of its obligations, with the exception of delays attributed to FTA’s approval process, as set forth in this section by the relevant DEADLINE then the CITY shall transfer title to Site O to SFRTA within ninety (90) days after such failure. Upon transfer of Site O, pursuant to this section the CITY shall also simultaneously pay to SFRTA the remainder of the CASH AMOUNT due and shall no longer be obligated to transfer title to Site K. If upon taking title to Site O, SFRTA’s cost to remediate any environmental conditions on Site O exceeds Three Hundred Fifty Thousand Dollars (\$350,000), the excess costs shall be paid for as part of the PROJECT. The CITY agrees to maintain ownership of the Site O until such time its obligation to provide a VMF PROPERTY is fulfilled or discharged.
 2. On or before December 19, 2014, the CITY shall have entered into a Letter of Intent (the “LOI”) with the All Aboard Florida, LLC for the acquisition of Site K and the CITY shall have provided a copy of the LOI to SFRTA. The LOI shall contain the legal description of Site K, a closing date of no later than April 30, 2015 for transfer of title for Site K to the CITY, and other details of the real estate transaction.
 4. On or before December 19, 2014, the CITY shall provide a letter to SFRTA from the City Manager that includes the legal description of the VMF PROPERTY portion of Site K and the intent to provide such site as part of the City’s commitment to provide a

VMF PROPERTY.

5. On or before April 15, 2015, SFRTA shall have obtained in writing from the FTA the applicable NEPA clearance for Site K and the approval of the FTA-accepted value for Site K. SFRTA has agreed to complete the NEPA process for Site K and to complete 30% design plans for the improvements for Site K. If SFRTA does not take title to Site K by April 30, 2015, the PROJECT shall be reimbursed for the costs of such work as a CAPITAL COST OVERRUN.
4. On or before April 30, 2015 (the "CLOSING DATE"), the closing on Site K shall occur and title shall transfer to SFRTA. If upon taking title, SFRTA's estimated cost to remediate any environmental conditions on Site K exceeds Three Hundred Fifty Thousand Dollars (\$350,000), the excess estimated costs shall be paid for by the PROJECT.. Prior to completion of the NEPA clearance for Site K, the CITY and SFRTA agree to work together cooperatively and with the applicable regulatory agency(ies) to identify the most cost effective and acceptable method to the environmental remediation of Site K, including but not limited to, placement of a deed restriction prohibiting any residential development on Site K.

(b) Special Assessments. The CITY Commission on July 9, 2013 adopted a special assessment (the "ASSESSMENT") in the amount of Twenty Million Five Hundred and Ninety Thousand Dollars (\$20,590,000) (the "ASSESSMENT AMOUNT"), which along with the CASH AMOUNT, represents the total amount of CITY's CAPITAL FUNDS. The ASSESSMENT AMOUNT shall be provided as follows:

1. SFRTA acknowledges that the CITY transferred to SFRTA One Million One Hundred Thousand Dollars (\$1,100,000) of the ASSESSMENT AMOUNT on May 1, 2014, reducing the ASSESSMENT AMOUNT still owed to Nineteen Million Four Hundred Ninety Thousand Dollars (\$19,400,000).
2. The CITY agrees that execution of the SIB loan agreement by all parties making available the SIB loan proceeds to SFRTA prior to April 30, 2015, is a prerequisite to the execution by SFRTA of the FEDERAL GRANT AGREEMENTS.

Section 7. Northern Loop. The Northern Loop, as more particularly described in Exhibit B to this Agreement, shall be considered a BETTERMENT pursuant to the PARTNERSHIP AGREEMENT, and shall be included in the PROJECT, subject to the following conditions:

1. The CITY, or the Northwest Progresso Flagler CRA on behalf of the CITY, has transferred to SFRTA Five Hundred Thousand Dollars (\$500,000) by

October 31, 2014 and the CITY, or the Northwest Progresso Flagler CRA on behalf of the CITY, transfers to SFRTA One Million Two Hundred Seventy One Thousand Nine Hundred Eighty Seven Dollars (\$1,271,987) for professional services for the Northern Loop by December 19, 2014; and

2. The CITY, or the Northwest Progresso Flagler CRA on behalf of the CITY, transfers to SFRTA Five Million Seven Hundred Seventy Two Thousand Five Hundred Eighty One Dollars (\$5,772,581) for Northern Loop construction by April 30, 2015.
3. In the event the actual costs for design, professional services, and construction are less than the payments made by the CITY, or the Northwest Progresso Flagler CRA on behalf of the CITY, the SFRTA will transfer the overpayment back to the CITY within sixty (60) days after PROJECT construction completion.
4. Payments made by the CITY, or the Northwest Progresso Flagler CRA on behalf of the CITY, may count as the local share of the PROJECT, to the extent approved by the FTA, to leverage future State and Federal funds.

If the above conditions are not met, SFRTA shall have no obligation to consider the Northern Loop to be a BETTERMENT or to include the Northern Loop as part of the PROJECT and shall reimburse the CITY for any unused funds provided by the City pursuant to this section.

Section 8. Use of CITY's CAPITAL FUNDS. SFRTA shall only use the CITY's CAPITAL FUNDS to pay eligible PROJECT costs in accordance with the terms of the PARTNERSHIP AGREEMENT, the FIRST AMENDMENT, the FEDERAL GRANT AGREEMENTS and the SIB Loan Agreement.

Section 9. Termination. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party's representative in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party, provided the defaulting party has been provided with thirty (30) days to cure the alleged default or such longer period as is reasonably necessary to cure the default without jeopardizing the completion of the PROJECT in accordance with the FEDERAL GRANT AGREEMENTS and the SIB loan agreement. The remedies available to SFRTA for the CITY's default on the funding commitments made in Section 5 of this Agreement shall be those remedies set forth in the PARTNERSHIP AGREEMENT.

Section 10. Assignment. Except as provided in Section 6(b)2. neither this Agreement, nor any interest herein, shall be assigned, subcontracted, conveyed, transferred, or otherwise encumbered, in whole or in part, by the CITY or SFRTA without the prior written consent of the other party.

Section 11. No Waiver. No waiver of any provisions of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted. Any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed a continuing or future waiver.

Section 12. Captions. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

Section 13. Joint Preparation. The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial constraint, be construed more severely against one of the parties than the other.

Section 14. Severability. Should any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement.

Section 15. Entirety of Agreement and Modifications. The CITY and SFRTA agree that this Agreement sets forth the entire agreement between the parties as it relates to the obligations set forth herein. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith. This Agreement is not intended to in any way modify the respective responsibilities or obligations of the CITY and SFRTA contained in the PARTNERSHIP AGREEMENT, the FIRST AMENDMENT, the FEDERAL GRANT AGREEMENTS or the SIB loan agreement.

Section 16. Survivability. Any provision of this Agreement which is a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

Section 17. Notice. Notices, invoices, communications, and payments hereunder shall be deemed made if given in any of the following forms: (i) by registered or certified envelope, postage prepaid, and addressed to the party to receive such notice, invoice, or communication; (ii) by overnight courier service addressed to the party to receive such notice, invoice, or communication; or (iii) by hand delivery to the office of the party to whom such notice, invoice, or communication is being given. All notices, invoices, or communications shall be addressed to a party at the address given below or such other address as may hereafter be designated by notice in writing.

If to SFRTA:

South Florida Regional Transportation
800 NW 33rd Street
Pompano Beach, Florida 33064
Attn.: Executive Director

With Copy to:

South Florida Regional Transportation Authority
800 NW 33rd Street
Pompano Beach, FL 33064
Attn: General Counsel

If to the CITY:

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IN WITNESS WHEREOF, SFRTA and the CITY have hereunto set their hands the day and year above written.

ATTEST:

CITY OF FORT LAUDERDALE,
a Florida municipal corporation

By: _____
City Clerk

By: _____
Mayor

Approved as to Form and
Legal Sufficiency

City Manager

City Attorney

WITNESS:

SOUTH FLORIDA REGIONAL
TRANSPORTATION AUTHORITY

By: _____
Jack Stephens, Executive Director

By: _____
Bruno Barreiro, Chair

Approved as to Form and
Legal Sufficiency

Teresa J. Moore, General Counsel