

## WAVE ASSESSMENT INTERLOCAL AGREEMENT

**THIS WAVE ASSESSMENT INTERLOCAL AGREEMENT** (the "Agreement") is made and entered into as of \_\_\_\_\_, 2014, by and between

**THE CITY OF FORT LAUDERDALE, FLORIDA ("CITY"),**  
and

**DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF FORT LAUDERDALE, FLORIDA ("DDA").**

**WHEREAS**, CITY has entered into The Wave Modern Streetcar Partnership Agreement (the "Wave Partnership Agreement"), with Broward County ("County"), Broward Metropolitan Planning Organization ("Broward MPO"), DDA, and the South Florida Regional Transportation Authority ("SFRTA") (collectively, the "Parties"), for purposes of coordinating and participating in the planning, finance, design, implementation, project sponsorship, ownership, operations and maintenance of the "Wave Modern Streetcar" project within the downtown area of Fort Lauderdale, Florida and extending south to Southeast 17<sup>th</sup> Street, all as described therein (the "Project"); and

WHEREAS, the Parties have entered into the First Amendment to the Wave Partnership Agreement relating to the CITY's provision of "LOCAL FUNDS," as defined in the Wave Partnership Agreement, to the Project;

**WHEREAS**, CITY has duly enacted Ordinance No. C-13-14 and various resolutions in connection therewith (collectively, as now or hereafter amended, the "Assessment Legislation") necessary to (a) issue bonds or notes in one or more series sufficient to fund certain capital, financing, interest and related costs of the "Wave Streetcar Project" (the "WAVE") proposed for downtown Fort Lauderdale, Florida and extending south to Southeast 17<sup>th</sup> Street, and (b) levy the "Wave Assessments" (as defined in the Assessment Legislation) against certain benefitted properties within the Wave Assessment Area (as defined in the Assessment Legislation) as the security and source of repayment of such bonds or notes; and

**WHEREAS**, CITY, pursuant to the Wave Partnership Agreement, may designate a third party agreed upon by SFRTA, to direct use of the proceeds of the "State Infrastructure Bank Loan" (the "SIB Loan") with the Florida Department of Transportation (the "Department"); and

**WHEREAS**, CITY wishes to designate, and SFRTA has consented to, DDA as the "CITY's Designee" to be the "SIB Loan Applicant" for the SIB Loan in the principal amount not to exceed \$20,590,000 and as the "Agency" to perform certain payment, disbursement and administrative functions in connection therewith, all as further set forth in the documents pertaining to the SIB Loan (the "SIB Loan Documents"); and

**WHEREAS**, CITY and DDA wish to enter into this Wave Assessment Interlocal Agreement to set forth the roles and responsibilities of each of these parties in connection with the collection of the Wave Assessments, the payment and administration of such Wave Assessments and the payment and administration of the SIB Loan;

**NOW THEREFORE**, in consideration of these determinations and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto each agree as follows:

**1. CITY.**

(A) ***Determinations, Representations and Warranties.*** CITY does hereby determine, represent, warrant and covenant that:

- (1) It is in the best interests of CITY to enter into this Agreement and to retain the services of DDA as the "CITY's Designee" pursuant to the Wave Partnership Agreement to perform the services described herein in connection with (a) the annual methodology, calculation and recommendation of the amounts to be assessed and collected as the Wave Assessments, (b) the payment and administration of such collected Wave Assessments in accordance with the Assessment Legislation, and (c) the performance of various services with respect to the SIB Loan and the application and payment of the proceeds thereof in accordance with the SIB Loan Agreement.
- (2) CITY has full power and authority to enter into and comply with the provisions of this Agreement and shall initiate and prosecute to completion all proceedings necessary to enable CITY to assess and collect the necessary Wave Assessments for repayment of the SIB Loan.
- (3) CITY has the authority to assess and collect the Wave Assessments and to transfer the Net Wave Assessments (as defined in Section 1(E) hereof) to DDA for repayment of the Loan and no election or referendum is required to make the collection and assessment of the Wave Assessments by the City valid and legally enforceable.
- (4) CITY currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.
- (5) There is no material action, suit, proceeding, inquiry, or investigation, at law or in equity, before any court or public body, pending or, to the best of CITY's knowledge, threatened, which seeks to restrain or enjoin CITY from entering into or complying with this Agreement.
- (6) All CITY representations to DDA or the Department, pursuant to the Loan Application (a copy of which is attached hereto as Exhibit A) and this Agreement, were and are true and accurate as of the date the Loan Application and this Agreement. The financial information delivered by CITY to DDA was current and correct as of its date. Since the date of such financial information, there has not been any material adverse change in the financial condition or revenues and expenditures of CITY, or in the collection of the Wave Assessments. CITY shall comply with all applicable State and Federal laws, rules, and regulations. To the extent that any assurance, representation, or covenant regarding compliance with all applicable state and federal laws, rules and regulations requires a future action, CITY shall take such action as is reasonably necessary for compliance.
- (7) CITY has not pledged, assigned or transferred any funds or revenues of CITY to the performance of any obligations hereunder, other than the transfer of the Wave Assessments as set forth herein. Except for the Wave Assessments described herein, nothing in this Agreement shall be construed as creating a pledge, lien, or charge upon

any other funds, revenues or assessments of CITY or as requiring CITY to levy or appropriate any ad valorem tax revenues or other assessment revenues or other funds of any kind in connection herewith.

- (B) **Assessments and Collections.** Each Fiscal Year of the CITY ("Fiscal Year"), CITY will assess and receive the Wave Assessments from the County Property Appraiser and Tax Collector in accordance with the Assessment Legislation in amounts sufficient, to pay or account for the following amounts when due and payable (collectively, the "Wave Assessment Requirement"):
- (1) The maximum early payment discount available to taxpayers (currently 4%) plus a contingency of 1% (currently totaling 5%) to be included in Wave Assessment calculations pursuant to Section 2(B) hereof ;
  - (2) County Administrative Costs required pursuant to Section 1(C) hereof;
  - (3) CITY Administrative Costs required pursuant to Section 1(D) hereof;
  - (4) DDA Administrative Costs required pursuant to Section 2(H) hereof;
  - (5) The costs of design, construction, financing, etc. of the Wave Project to the extent not previously paid or reimbursed or earmarked to be paid or reimbursed from legally available monies other than the amounts collected from the Wave Assessments (including the transfer in the first year to SFRTA for payment of certain costs pursuant to Section 1(E) hereof);
  - (6) An amount equal to 1.25x the interest and principal due on the SIB Loan during the subsequent calendar year either from a combination of amounts on deposit in the Wave Rolling Coverage Reserve Account reserved therefor pursuant to Section 2(F)(1) hereof and/or from the annual Wave Assessment; and
  - (7) An amount sufficient to replenish the amount on deposit in the Wave Reserve Account until the amount therein equals the "Reserve Requirement" required by Section 2(E) hereof.

In the event the anticipated Wave Assessments are at any time projected to be insufficient to meet the Wave Assessment Requirement required pursuant to this Section 1(B), CITY shall notify DDA and shall include in the next available assessment process such amounts which will be sufficient to fund such deficiency.

- (C) **County Administrative Costs.** CITY has recognized that Broward County, Florida, through its Tax Collector and Property Appraiser, will assess and deduct from the collected Wave Assessments certain administrative costs and expenses (the "County Administrative Costs") before distributing the remaining balance to CITY. These County Administrative Costs shall be included in the Wave Assessment calculations to ensure that the Wave Assessments are sufficient to pay all amounts required hereunder.
- (D) **CITY Administrative Costs.** Within thirty (30) days after receipt of any Wave Assessments, CITY shall deduct from the collected Wave Assessments such amounts necessary to pay administrative costs and expenses incurred by CITY in connection with the assessment and collection of the Wave Assessments (the "CITY Administrative Costs"). CITY shall provide to DDA the detail of Wave Assessments received and their application to County Administrative Costs, to City Administrative Costs, to the transfer of Net Wave Assessments

assessed for calendar year 2013 to SFRTA and Net Wave Assessments assessed for calendar years after 2013 to DDA.

(E) ***Transfer of Net Wave Assessments.***

- (1) For Wave Assessments assessed for calendar year 2013, CITY will deposit the WAVE Assessments, net of CITY Administrative Costs (collectively, the "Net Wave Assessments"), received by CITY first, directly with SFRTA to pay the costs of design, construction, financing, etc. of the Wave Project to the extent not previously paid or reimbursed or earmarked to be paid or reimbursed from legally available monies other than the amounts collected from the Wave Assessments, with any remainder to be deposited into the "Wave Assessment Account" described in Section 2(D) hereof for payment and administration by DDA as set forth in Section 2(D) hereof.
- (2) For Wave Assessments assessed for calendar years after 2013, CITY will deposit the Net Wave Assessments received by CITY into the "Wave Assessment Account" described in Section 2(D) hereof for payment and administration by DDA as set forth in Section 2(D) hereof.

(F) ***Appointment and Authorization of DDA.*** CITY does hereby authorize and ratify DDA to serve as the "City's Designee" to be the "SIB Loan Applicant" and as the "Agency" and to perform the services required as such as set forth in Section 2(H) hereof.

2. **DDA.**

(A) ***Determinations, Representations and Warranties.*** DDA does hereby determine, represent, warrant and covenant that:

- (1) It is in the best interests of DDA to enter into this Agreement and to perform the services of DDA described herein in connection with (a) the annual methodology, calculation and recommendation of the amounts to be assessed and collected as the Wave Assessments, (b) the payment and administration of such collected Wave Assessments in accordance with the Assessment Legislation, and (c) the performance of various services with respect to the SIB Loan and the application and payment of the proceeds thereof in accordance with the SIB Loan Agreement.
- (2) DDA has full power and authority to enter into and comply with the provisions of this Agreement and shall initiate and prosecute to completion all proceedings necessary to enable DDA to collect the Net Wave Assessments from CITY for repayment of the SIB Loan.
- (3) DDA has the authority to pledge the Net Wave Assessments to Department for repayment of the SIB Loan.
- (4) DDA currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.
- (5) There is no material action, suit, proceeding, inquiry, or investigation, at law or in equity, before any court or public body, pending or, to the best of DDA's knowledge,

threatened, which seeks to restrain or enjoin DDA from entering into or complying with this Agreement.

- (6) All DDA representations to the Department, pursuant to the Loan Application and the SIB Loan Documents, were and are true and accurate as of the date of the Loan Application and the SIB Loan Documents. The financial information delivered by DDA to the Department was current and correct as of its date. Since the date of such financial information, there has not been any material adverse change in the financial condition or revenues and expenditures of DDA, or in the collection of the Wave Assessments. DDA shall comply with all applicable State and Federal laws, rules, and regulations. To the extent that any assurance, representation, or covenant regarding compliance with all applicable state and federal laws, rules and regulations requires a future action, DDA shall take such action as is reasonably necessary for compliance.

- (B) **Assessment Calculations and Recommendations.** Each Fiscal Year, DDA will employ professionals approved by the City Manager of CITY to calculate and review with CITY the amount of the Wave Assessments to be assessed and collected for that Fiscal Year in accordance with the Assessment Legislation in amounts sufficient, to pay the Wave Assessment Requirement as set forth in Section 1(B) hereof. In doing so, DDA is hereby authorized and directed to include in such calculations the presumption that the maximum early payment discount available to taxpayers (currently 4%) plus a contingency of 1% (currently totaling 5%) plus County Administrative Costs, CITY Administrative Costs and DDA Administrative Costs will be deducted from the collected Wave Assessments.

In the event the anticipated Net Wave Assessments are at any time projected to be insufficient to meet the payment requirements of the SIB Loan, DDA shall notify CITY and the Department and DDA shall include in the next available assessment process such amounts which will be sufficient to fund such deficiency.

- (C) **Establishment of Accounts.** DDA will establish and maintain the "Wave Assessment Account," the "Wave Reserve Account," the "Wave Rolling Coverage Reserve Account" and the "Wave Disbursement Account." Each of these accounts will be established and maintained in the Local Governments Surplus Fund Trust Fund administered by the State Board of Administration pursuant to Section 218.415 (17) (a), Florida Statutes, or else in a qualified public depository actively participating in the Florida Public Deposits Program pursuant to Florida Statutes, Chapter 280. Monies in the "Wave Assessment Account," the "Wave Reserve Account," the "Wave Rolling Coverage Reserve Account" and the "Wave Disbursement Account" may be invested by DDA in such investments as may be permitted by the SIB Loan Documents. Any and all interest or earnings thereon shall be retained in the account in which earned and applied as set forth in Sections 2(D), 2(E), 2(F) and 2(G) hereof.
- (D) **Wave Assessment Account.** DDA will deposit into the Wave Assessment Account (i) all Net Wave Assessments received from CITY, and (ii) all monies, interest or earnings in the Wave Reserve Account in excess of the Reserve Requirement as required pursuant to Section 2(E) hereof. Not more than once each month, DDA will pay and administer the amounts within the Wave Assessment Account, and any and all amounts earned thereon, as follows:

- (1) First, to the payment or reimbursement of CITY Administrative Costs due and payable pursuant to Section 1(D) hereof to the extent not previously paid or reimbursed from collected Wave Assessments;

- (2) Second, to the payment or reimbursement of DDA Administrative Costs due and payable pursuant to Section 2(H) hereof;
  - (3) Third, to the payment or reimbursement of interest due on the SIB Loan;
  - (4) Fourth, to the payment or reimbursement of principal due on the SIB Loan;
  - (5) Fifth, for deposit into the Wave Reserve Account until the amount therein equals the "Reserve Requirement" required pursuant to Section 2(E) hereof; and
  - (6) Sixth, to the payment or reimbursement of costs of design, construction, financing, etc. of the Wave Project to the extent not previously paid or reimbursed or earmarked to be paid or reimbursed from legally available monies other than the amounts on deposit in the Wave Assessment Account;
  - (7) Seventh, any remaining balance in the Wave Assessment Account will be held in such account and applied to the payment or reimbursement of amounts to be paid or reimbursed hereunder; the DDA shall, as directed by the CITY, apply remaining funds as follows:
    - (a) SIB Prepayment – amounts on deposit in the Wave Assessment Account may be used to prepay the principal due on the SIB Loan in part or in full at any time; or
    - (b) Wave Rolling Coverage Reserve Account – amounts on deposit in the Wave Assessment Account may be used to establish a separate account for a Wave Rolling Coverage Reserve Account that will be maintained during the subsequent fiscal year to be available to provide a portion of the debt service coverage of the SIB Loan for the year that when combined with the Net Wave Assessment for that year will equal a coverage of 1.25 times the subsequent year principal and interest payments due and payable on the SIB Loan.
  - (8) Eighth, at such time as the amount on deposit in the WAVE Assessment Account, equals the remaining balance of principal and interest due on the SIB Loan, whether at maturity or otherwise, to the payment or reimbursement of payment in full of all principal and interest due on the SIB Loan; and
  - (9) Ninth, any remaining amounts on deposit in the Wave Assessment Account after payment in full of all principal and interest due on the SIB Loan and all other amounts due and payable hereunder shall be paid to CITY for application and disbursement in accordance with applicable law.
- (E) **Wave Reserve Account.** DDA will deposit into the Wave Reserve Account monies from the Wave Assessment Account pursuant to Section 2(D) hereof until the amount on deposit in the Wave Reserve Account equals the Reserve Requirement required by the SIB Loan Documents (the "Reserve Requirement"). DDA will pay and administer the amounts within the Wave Reserve Account, and any and all amounts earned thereon, as follows:
- (1) First, in the event the funds on deposit in the Wave Assessment Account are insufficient on any interest payment date to pay the interest then due on the SIB Loan, to the payment or reimbursement of any deficiency in such interest payment;

- (2) Second, in the event the funds on deposit in the Wave Assessment Account are insufficient on any principal payment date to pay the principal then due on the SIB Loan, to the payment or reimbursement of any deficiency in such principal payment;
  - (3) Third, in the event the funds on deposit in the Wave Reserve Account exceed the Reserve Requirement, such excess will be transferred and deposited into the Wave Assessment Account and applied to the payment or reimbursement of future amounts to be paid or reimbursed thereunder pursuant to Section 2(D) hereof; and
  - (4) Fourth, at such time as the amount on deposit in the Wave Reserve Account equals the remaining balance of principal and interest due on the SIB Loan, whether at maturity or otherwise, to the payment or reimbursement of payment in full of all principal and interest due on the SIB Loan.
  - (5) Fifth, any remaining amounts on deposit in the Wave Reserve Account after payment in full of all principal and interest due on the SIB Loan and all other amounts due and payable hereunder shall be paid to CITY for application and disbursement in accordance with applicable law.
- (F) **Wave Rolling Coverage Reserve Account.** DDA may deposit into the Wave Rolling Coverage Reserve Account monies from the Wave Assessment Account pursuant to Section 2(D)(7)(b) hereof. DDA will pay and administer the amounts within the Wave Rolling Coverage Reserve Account, and any and all amounts earned thereon, as follows:
- (1) First, funds on deposit in the Wave Rolling Coverage Reserve Account may be reserved by DDA to provide a portion of the debt service coverage of the SIB Loan for the subsequent calendar year that when combined with the Net Wave Assessment for that subsequent calendar year will equal a coverage of 1.25 times the subsequent year principal and interest payments due and payable on the SIB Loan.
  - (2) Second, funds on deposit in the Wave Rolling Coverage Reserve Account that are not reserved pursuant to Section 2(F)(1) will be transferred and deposited into the Wave Assessment Account and applied to the payment or reimbursement of future amounts to be paid or reimbursed thereunder pursuant to Section 2(D) hereof; and
  - (3) Third, at such time as the amount on deposit in the Wave Rolling Coverage Reserve Account equals the remaining balance of principal and interest due on the SIB Loan, whether at maturity or otherwise, to the payment or reimbursement of payment in full of all principal and interest due on the SIB Loan.
  - (4) Fourth, any remaining amounts on deposit in the Wave Rolling Coverage Reserve Account after payment in full of all principal and interest due on the SIB Loan and all other amounts due and payable hereunder shall be paid to CITY for application and disbursement in accordance with applicable law.
- (G) **WAVE DISBURSEMENT ACCOUNT.** DDA will include SFRTA as an authorized signatory on the Wave Disbursement Account to permit SFRTA to disburse Loan Disbursements directly to pay or reimburse permissible costs. DDA will deposit into the WAVE Disbursement Account (i) all Loan Disbursements received from the SIB Loan, and (ii) any other monies received for the payment or reimbursement of costs of design, construction, financing, etc. of the Wave Project. Not more than once each month, DDA will pay and administer, or



cause SFRTA to pay and administer, the amounts within the WAVE Disbursement Account, and any and all amounts earned thereon, as follows:

- (1) First, to the payment or reimbursement of costs of design, construction, financing, etc. of the WAVE Project to the extent not previously paid or reimbursed or earmarked to be paid or reimbursed from legally available monies other than the amounts on deposit in the WAVE Disbursement Account and the WAVE Assessment Account; and
  - (2) Second, upon completion of the Project, any remaining balance in the WAVE Disbursement Account will be transferred and deposited into the WAVE Assessment Account and applied to the payment or reimbursement of future amounts to be paid or reimbursed thereunder pursuant to Section 2(D) hereof.
- (H) **DDA Administrative Costs.** For its services hereunder, DDA will be paid or reimbursed “DDA Administrative Costs” for each Fiscal Year in an amount equal to \$45,150 per year (which annual amount shall be increased on September 30, 2014 and on each September 30 thereafter by an amount equal to 2.0% of the then current annual amount due hereunder) plus any and all out-of-pocket costs or expenses incurred by DDA in the performance of its services hereunder (collectively, the “DDA Administrative Costs”). Not more than once each month, DDA will deduct from the amounts on deposit in the Wave Assessment Account such amounts necessary to pay the DDA Administrative Costs as set forth in Section 2(G) hereof.
- (I) **SIB Services.** DDA does hereby accept the duties and obligations set forth herein to serve as the “CITY’s Designee” to serve as the “SIB Loan Applicant” and the “Agency” in connection with the SIB Loan. Notwithstanding anything herein or in the SIB Loan Documents to the contrary, any liability of DDA hereunder shall be limited as set forth in Section 3(A) hereof. In its capacity as “SIB Loan Applicant” and as “Agency,” DDA will perform the following services:
- (1) DDA will serve as the “SIB Loan Applicant” and perform the following services:
    - (a) Apply for, negotiate the terms of, and close the “SIB Loan Documents” on terms and conditions approved by CITY whereupon a copy of the SIB Loan Agreement will be attached hereto as Exhibit B; and
    - (b) Monitor, prepare and distribute (or cause to be monitored, prepared and distributed) all reports required by the SIB Loan Documents.
  - (2) DDA will serve as the “Agency” and perform the following services:
    - (a) Direct the application and disbursement of SIB Loan proceeds to SFRTA for the payment or reimbursement of costs of design, construction, financing, etc. of the Wave Project to the extent not previously paid or reimbursed or earmarked to be paid or reimbursed from legally available monies other than the SIB Loan proceeds.
    - (b) Establish and administer the Wave Assessment Account, the Wave Reserve Account, the Wave Rolling Coverage Reserve Account and the Wave Disbursement Account pursuant to Sections 2(D), (E), (F) and (G) hereof and in compliance with any requirements of the SIB Loan Documents pertaining thereto;
    - (c) Monitor and perform (or cause to be monitored and performed) all duties and obligations of the “Agency” required by the SIB Loan Documents;



- (d) Provide annual progress reports to CITY to show how funds were distributed, remaining loan obligation, remaining term, and balances of all assessment associated accounts;
- (e) By September 30<sup>th</sup> of each year until all assessment funded project costs have been reimbursed, provide CITY with copies of the cost reimbursement packages prepared and provided by SFRTA to Department with proof of payment by SFRTA; and
- (f) By June 1 of each year during the term hereof, provide CITY with a copy of a single audit.

**3. Other.**

- (A) Any liability of DDA hereunder shall be limited to the amount of DDA Administrative Costs received by DDA hereunder during the twelve (12) months preceding the act or omission giving rise to such liability.
- (B) To the extent permitted by law, and subject to the limitations included within Florida Statutes Section 768.28, DDA shall protect and defend, at DDA's expense, and indemnify and hold harmless CITY and CITY's officers, employees, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, and liabilities of every and any kind, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission of DDA or of any officer, employee, agent, or subcontractor of DDA. However, nothing herein shall be deemed to indemnify CITY for any liability or claims arising out of the negligence, performance, or lack of performance of CITY. In addition, nothing herein shall constitute a waiver of CITY's or DDA's right to sovereign immunity, or the right and entitlement to the benefits and protections of Section 768.28, Fla. Stat.
- (C) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida.
- (D) No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto.
- (E) CITY is a municipal agency as defined in §768.28, Florida Statutes, and agrees to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law while they are employed by CITY. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third Parties in any matter arising out of this Agreement.
- (F) DDA is a state agency as defined in §768.28, Florida Statutes, and agrees to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law while they are employed by the DDA. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or

political subdivision of the State of Florida to be sued by third Parties in any matter arising out of this Agreement.

- (G) CITY is a municipal agency and is self-insured in accordance with provisions set forth within Section 768.28, Florida Statutes. The City of Fort Lauderdale shall furnish DDA with written verification of liability protection in accordance with state law prior to or at the time of execution of this Agreement.
- (H) DDA is a state agency and is self-insured in accordance with provisions set forth within Section 768.28, Florida Statutes. DDA shall furnish CITY with written verification of liability protection in accordance with state law prior to or at the time of execution of this Agreement.
- (I) All notices and communications hereunder will be deemed given upon receipt by personal delivery, overnight courier, fax or e-mail or upon the 3rd day following mailing by registered or certified mail, return receipt requested, and either delivered or addressed to the addresses set forth herein.
- (J) This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings or agreements, written or verbal, between the parties.
- (K) This Agreement may not be assigned by any party, except that DDA may assign this Agreement and payments due hereunder as security or collateral in connection with the financing or construction of the Wave or with obligations in connection therewith, including the SIB Loan.
- (L) In the event any provision of this Agreement shall be held invalid or unenforceable for any reason, such holding shall not invalidate or render unenforceable any other provision hereof.
- (M) In connection with any dispute hereunder, all parties waive any right to a trial by jury in connection therewith.
- (N) Each party agrees that remedies for any breach hereof include damages, specific performance, injunctive relief and other equitable remedies, that no bond shall be required in connection therewith and that the prevailing party shall be entitled to recover attorneys' fees and costs.

**IN WITNESS WHEREOF**, the parties have set their hands and seals the day and year first written above.

**CITY OF FORT LAUDERDALE, FLORIDA**

(SEAL)  
ATTEST:

By \_\_\_\_\_  
John P. "Jack" Seiler, Mayor

\_\_\_\_\_  
City Clerk

BY \_\_\_\_\_  
Lee R. Feldman, City Manager

Approved as to form:

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

**DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY  
OF FORT LAUDERDALE, FLORIDA**

(SEAL)

By \_\_\_\_\_

ATTEST:

\_\_\_\_\_

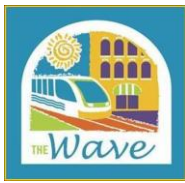
**Exhibit A - SIB Loan Application**

**Exhibit B - SIB Loan Agreement**

**Copy to be Added when Negotiations are Completed**

# **EXHIBIT A**

## **SIB Loan Application**

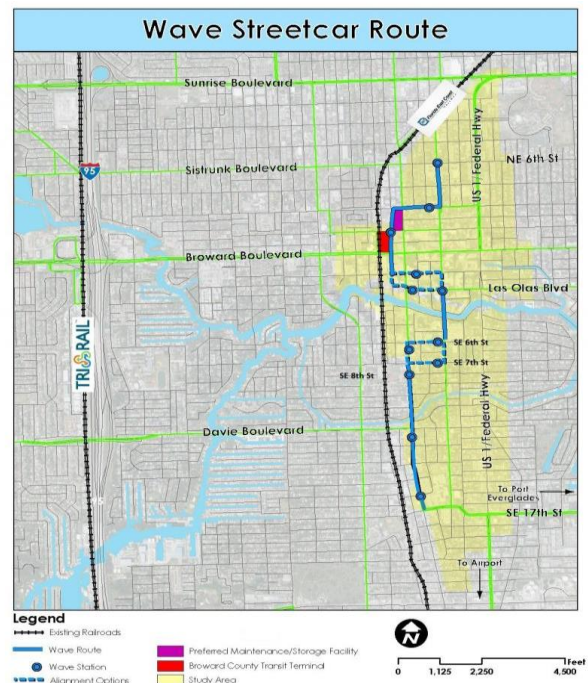


## Wave SIB Loan Application Executive Summary

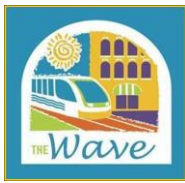
The Wave Streetcar (herein referred to as “the Project”) is a 2.7 mile streetcar system that will serve as a local circulator in Downtown Fort Lauderdale and will make connections to existing and planned regional systems. The Project seeks to create a livable community by integrating land use with economic development and transportation while being environmentally sustainable.

The Project is a private (DDA) public (local) public (state) public (Federal) partnership composed of the Downtown Development Authority of Fort Lauderdale (DDA), the City of Fort Lauderdale, Broward County, Broward Metropolitan Planning Organization (MPO), the South Florida Regional Transportation Authority (SFRTA), the Florida Department of Transportation (FDOT), and the United States Department of Transportation (US DOT).

The Alternative Analysis (AA) and Environmental Assessment (EA) began in 2005. During the AA process, there was strong public support to extend the project boundaries to 17th Street to link up to the local hospital district. The study area was extended down to the Hospital. In 2008, a locally preferred alternative (LPA) was endorsed by Broward County, the City of Fort Lauderdale, and the DDA. The route extends from Sistrunk/6th St on the North to SE 17th St on the South as shown on the route map below.



In **June 2013**, the Program Management Consultant (PMC) was hired and started surveying the streets along the route and will complete a 30% design by early 2014. Meetings will start with the community on final station locations and design of the stations, too. It is anticipated the Project would be in major engineering and construction in 2014 and open to commuters in 2016.



**Project Ownership and Funding** - Broward County committed to be the owner and operator of the system and to fund the annual operations net of the annual revenues for the system. A funding partnership of the City of Fort Lauderdale, Broward MPO, FDOT, and USDOT have committed capital contributions for the project as shown in the table below with the lone exception of a FTA Small Starts Full Funding Grant which the Project Team expects to receive no later than June 2014. The final closing item to move the project forward is a State Infrastructure Bank Loan to advance the Special Assessment portion of the capital funding plan which is highlighted in the funding table below. The Special Assessment was enacted by the City of Fort Lauderdale on July 9, 2013. The SFRTA is implementing the development of the Project as the Federal Transit Administration (FTA) project sponsor and manager of design and construction.

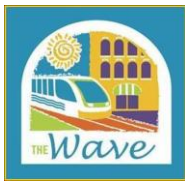
Capital Funding Source	YOE Dollars	% of Total
<b>FEDERAL</b>		
TIGER IV	\$18.00	12.6%
Small Starts	\$49.65	34.8%
Broward MPO	\$3.50	2.5%
<b>STATE AND LOCAL</b>		
FDOT	\$35.73	25.1%
City of Fort Lauderdale	\$10.50	7.4%
Special Assessment District	\$20.59	14.4%
Broward MPO	\$4.62	3.2%
<b>TOTAL</b>	<b>\$142.59</b>	<b>100.0%</b>

**Project Benefits:** Early on in the process, goals and objectives were established for the project covering many areas, to include: mobility, accessibility, connectivity, economic development, land use, equitability, and environmental sustainability. As seen in other cities with streetcar systems, these type of systems help to achieve all of the above. It is expected that the Wave will:

- Create 1,200 construction and related jobs, as well as 50 full-time permanent positions.
- Encourage private investment to bring new housing, shops, restaurants, and retail opportunities (which equals more jobs).
- Connect Downtown's many points of interest and link to the regional transit network.
- Increase foot traffic due to improved pedestrian amenities.
- Direct growth to the urban core and away from our surrounding neighborhoods.
- Serve as a catalyst to advance the planned, regional rail systems.
- Be environmentally sensitive - streetcar powered by electricity, stations by solar power.

**Summary** – The Project is production ready and can move forward in 2014 with a SIB Loan. The DDA is the SIB Loan applicant. The SIB Loan matches the Special Assessment period of 25 years and is backed by the Special Assessment coverage of 1.20 times the loan payments plus a reserve held in escrow equal to one year of annual debt service.





## **Project Details**

The project details are included in the accompanying document which encompasses the Wave Streetcar Small Starts update to the Federal Transit Administration dated September 2013. FDOT District 4 has been a strong partner and is actively engaged in the development of the Project and has the Wave Streetcar Small Starts update in hard copy.

## **Project Status, Roles and Responsibilities, and Funding Plan**

The Project is well developed and “shovel ready” to move forward. A partnership led by the Downtown Development Authority of Fort Lauderdale (DDA) advanced the Project forward through the planning, environmental, and capital funding development project phases. The environmental phase is complete with a final alignment being selected and the Project has received a Finding of No Significant Impact (FONSI) from the Federal Transit Administration. The Project funding plan has received funding commitments from the following project partners:

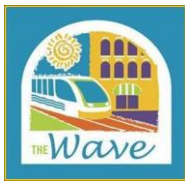
### **Capital Funding Plan**

- City of Fort Lauderdale
  - Land and Cash - \$10.50 million.
  - Special Assessment - \$20.59 million
- Broward Metropolitan Planning Organization - \$8.12 million
- Florida Department of Transportation - \$35.75 million
- United States Department of Transportation
  - TIGER Grant - \$18.00 million

**Operations Funding Plan** - Broward County has agreed to own and operate the Project through Broward County Transit and to be responsible for funding the annual amount needed net of Ridership Fares, Advertising and any other available revenues such as Federal formula grants to pay for the annual operations of the system. Broward County has committed a minimum of \$2.5 million per year to be increased by inflation for the annual operating subsidy for the Project. As noted in the Project Finance Plan this is more than adequate to cover the required annual subsidy.

With the SIB Loan, the Phase 1A portion of the project is fully funded and with the USDOT Small Starts Full Funding Grant Agreement expected no later than June 2014, the overall Project will be fully funded. The SIB Loan will demonstrate to US DOT that all funds are in place to move forward with the project to solidify the award of the Full Funding Grant Agreement for \$49.65 million.

The Project has agreements executed among the Project Partners that secure the above commitments and outline the roles and responsibilities for Project delivery and operations. It also includes the Downtown Development Authority of Fort Lauderdale continuing in their public involvement and outreach role and the role of transit entities including the South Florida



Regional Transportation Authority (SFRTA) and Broward County Transit. The SFRTA is responsible for Project development including serving as the designated applicant with the Federal Transit Administration for capital funding, for engineering and construction, and the purchase and testing of rolling stock. Once construction, system testing and training are complete, SFRTA will turn the Project over to Broward County Transit for operations and maintenance.

### **SIB Loan**

The Downtown Development Authority (DDA) of Fort Lauderdale is the SIB Loan applicant. The City of Fort Lauderdale has authorized the DDA to be the SIB Loan applicant and dedicated the Special Assessment payments direct to the DDA as outlined in the attached letter from the City of Fort Lauderdale. The Broward County Tax Collector will direct the Special Assessment collections to the DDA and the DDA will serve as the Trustee for the Special Assessment and the repayment of the SIB Loan.

The SIB Loan will advance the Special Assessment payments to have funds available for the capital phase of the Project. The Special Assessment was adopted by the City of Fort Lauderdale by Resolution on July 9, 2013. The Special Assessment is a set rate based on the types of property included in the “district/zone” being assessed that are beneficiaries of the Project. The accompanying Special Assessment evaluation report provides more details on the Special Assessment.

The SIB Loan is proposed for a term of 25 years at a 3% rate of interest, with two years of deferrals and 23 years of level annual payments. This is reflected in the accompanying Project Finance Plan in the sheet titled “SIB Debt Service.”

### **Special Assessment Process**

The City of Fort Lauderdale adopted the Special Assessment and the Broward County Property Appraiser and Tax Collector will assess and collect the Special Assessment through the normal property tax process on an annual basis. The Special Assessment began in fiscal year 2013-14 and has a term of 25 years as outlined in the Resolution. The Special Assessment collections begin in November 2013 as property owners take advantage of the discount provided on the payments (4% discount in November, 3% in December, 2% in January, 1% in February and full payment due in March per Florida law).

If property owners do not pay by March each year the Tax Collector will “sell tax certificates” beginning in April of each year where investors “purchase the property tax due” thus paying the property tax/special assessment to the Tax Collector and the investor receives interest on their “investment” when the property tax is paid by the property owner. The interest paid on the tax certificate is generally higher than market rates which entice investors to purchase the tax certificates helping to ensure timely payment of property taxes/special assessments. In the unlikely event the property owner does not pay the property taxes over an extended period of



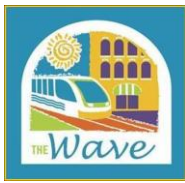
time the Tax Collector may “sell” the property via bids or auction to pay the amounts due on tax certificates or in the unlikely event tax certificates are not sold to pay the taxes due.

The Special Assessment may only be accessed in the required amounts to meet the City of Fort Lauderdale’s pledge of capital contributions to the Project. Amounts are being accessed to meet the required covenants of the SIB Loan as outlined below. The SIB Loan structure is provided where the DDA and the City of Fort Lauderdale will monitor the actual collections in prior years and adjust the assessments to ensure the required covenants are maintained on an ongoing basis. In addition, the DDA and the City of Fort Lauderdale has outlined flexibility in the SIB Loan structure that will allow any amounts collected in excess of the required covenants to be either used as “coverage” in subsequent fiscal years or to prepay SIB Loan principal amounts to ensure that amounts being access over the life of the period are balanced to the capital contribution commitments of the City of Fort Lauderdale.

### **SIB Loan Pledge**

While the property tax/special assessment process has proven reliable for local governments to ensure payment of property taxes/special assessments, the DDA has developed the following SIB pledge “package” to ensure repayment of the SIB Loan.

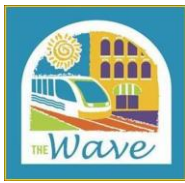
- The SIB Loan is the senior lien for the Special Assessment for the Project.
- The Net Revenues from the Special Assessment will maintain a 1.20 times minimum coverage of the SIB Loan annual payment. The coverage shown in the SIB Finance Plan shows 1.26 times during the period of the SIB Loan.
- A Debt Service Reserve will be accumulated over the first three years of the Special Assessment equal to one year of SIB Loan payments.
  - FDOT may draw upon the Debt Service Reserve Escrow Account should there be a shortfall in annual payment from the Special Assessment.
  - Any interest earned on the Debt Service Reserve Escrow Account will remain in the Account during the term of the SIB Loan.
  - The DDA will replenish (from the Special Assessment Reserve) any amounts drawn by FDOT from the Debt Serve Reserve Escrow Account to ensure the minimum balance of the Debt Service Reserve Escrow Account is maintained equal to one year of SIB Loan payment.
  - The Debt Service Reserve will make the final annual payment on the SIB Loan.
- Additional safety factors:
  - The Special Assessment forecast assumes:
    - All discounts plus one percent (5% total) is taken by the property owner on the Special Assessments as a “safety factor” in the calculation of the forecasted Net Revenues.
    - Governmental entities will be exempt and not assessed/collected.
  - Amounts after payment of the SIB Loan and other required payments will be deposited into a Special Assessment Reserve account maintained by the DDA. In the first five years of the Special Assessment collections, the DDA may use part



of these funds to assist with any cost overruns during the capital phase of the Project. However, the DDA will maintain minimum balances in the Special Assessment Reserve as follows:

- At least \$750,000 starting in fiscal year 2015-16 and each year thereafter until the final two years of the SIB Loan payments when the amount will be reduced to \$430,000 one year prior to the final SIB Loan payment and to \$100,000 in the year of the final SIB Loan payment.
- These funds will be available to assist the DDA in paying the SIB Loan annual payment or to replenish the Debt Service Reserve should any funds be used in any given year to pay the SIB Loan payment other than the final SIB Loan payment. Any amounts used for such purposes shall be restored into the Special Assessment Reserve minimum balance from the next available funds paid to the Special Assessment Reserve in subsequent years.
- The DDA may designate an amount to “Carryover” to the following year that is in excess of the Minimum Reserve of \$750,000 as “coverage” for the SIB Loan payment not to exceed \$500,000 in any given year other than the final two years of the SIB Loan payments. Any amounts that are included in the “Carryover” may not be used for any other purposes and shall remain the Special Assessment Reserve Account and be available as needed to pay the regular SIB Loan payment in that year if needed. An example of this approach is shown in the SIB Finance Model.
- The DDA may designate an amount to “Pay Additional SIB Loan Principal” in any given year that is in excess of the Minimum Reserve of \$750,000 and must designate this amount in a transmittal to the FDOT that certifies the following:
  - This amount is to “Pay Additional SIB Loan Principal”
  - The Debt Service Reserve is fully funded.
  - The Minimum Coverage of 1.20 times SIB Loan Debt Service for the current year is met as required.
  - The amount used for to “Pay Additional SIB Loan Principal” is needed or pledged for any other required uses and is in excess of the Minimum Reserve requirement for the Special Assessment Reserve.
  - The amount is not counted as “Carryover” for purposes of the required “Coverage” calculation and covenant.
- Under the Special Assessment authorizing Resolution, the Special Assessment funds may only be used for the Project capital costs.

This overall credit structure has been established to provide a solid source for payment of the SIB Loan from the Special Assessment revenue stream.



## **Timely Project Delivery**

The Wave Streetcar Project received a FONSI from FTA and the project is currently in engineering with the Program Management Consultant moving to 30% plans in the Spring of 2014. The current delivery approach is Design-Bid-Build with the Project to be completed in late 2016.

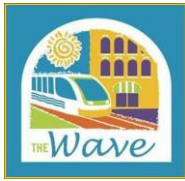
To stay on schedule, the DDA would like to close the SIB Loan in early Spring 2014 to provide FTA with a complete funding plan to finalize the Small Starts Full Funding Grant Award. This will keep the Project on schedule for service operation in late 2016.

## **Summary**

In reviewing the SIB Loan guidelines, the project has already achieved the majority of the SIB Loan requirements including:

- The Project is a priority of the Broward MPO and was included in the Cost Feasible Section of the 2035 LRTP
- The environmental work was completed in accordance with FDOT and FTA requirements and has achieved a FONSI from FTA.
- The Project is “Federal eligible” and is being implemented in accordance with FTA requirements for a Small Starts award.
- Preliminary Engineering is underway and being conducted in accordance with FDOT and FTA requirements.
- The Program Management Consultant was selected in accordance with FDOT and FTA requirements.
- Any required land acquisition will be acquired in accordance with FDOT and FTA requirements. The City of Fort Lauderdale is responsible for providing land for the maintenance facility.
- Construction will be implemented in accordance with FDOT and FTA requirements for transit projects.
- Project cost estimates are current within the last six months.
- Revenue estimates for the Special Assessment are current within the last six months. The Special Assessment was adopted by the City of Fort Lauderdale on July 9, 2013. The forecast is supported by an independent study by Government Services Group, dated April 2013, which is included in the package.
- The Project Finance Plan reflects a project that is fully funded for Phase 1A with the SIB Loan and the complete project with the Small Starts Full Funding Grant Agreement expected no later than June 2014.
  - Contingencies are built into the Project Capital Finance Plan.
  - Contingencies are also built into the repayment of the SIB Loan.
- The Project provides major economic development opportunities and also promotes development in the corridor of the Project.
- The SIB Loan allows the Project to move ahead in a timely manner.

Exhibit 1  
14-0381



- The Project is a private-public-public-public partnership that is an example of strong private and local, state and Federal government cooperation and partnering.
- The Project will be electric driven, stations will be solar powered and the fare collection system will be integrated with the Broward transit collection system.
- The Project will promote and provide public transportation in Downtown Fort Lauderdale thus reducing car travel and enhancing the environment.
- The SIB Loan forms 14.4% of the overall Project Capital Finance Plan.

**Let's Make the Wave Streetcar a reality!**