

STATE INFRASTRUCTURE BANK AMENDED AND RESTATED LOAN AGREEMENT

CFDA Number: 20.507

DUNS: 80-939-7102

FINANCIAL PROJECT Number: 435202-1

CONTRACT Number:

THIS STATE INFRASTRUCTURE BANK AMENDED AND RESTATED LOAN AGREEMENT, is entered into between the **STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida ("Department"), the **DOWNTOWN DEVELOPMENT AUTHORITY OF FORT LAUDERDALE, FLORIDA**, a body politic and corporate and an agency of the City of Fort Lauderdale as established by the laws of the State of Florida ("Borrower"), and the **CITY OF FORT LAUDERDALE**, a municipal corporation organized and existing under the laws of the State of Florida ("City").

RECITALS

- A. The Department has established a federally-funded State Infrastructure Bank ("SIB") in accordance with the provisions of 23 U.S.C. Section 610 and a State Infrastructure Bank Cooperative Agreement between the Department, the Federal Highway Administration, the Federal Transit Administration, and the Federal Railroad Administration, effective July 28, 1999 (the "Cooperative Agreement").
- B. Under 23 U.S.C. Section 610, the Cooperative Agreement, and Sections 339.08(1)(d),(g), and (h), Florida Statutes, the Department may make loans or provide other forms of credit assistance to a public or private entity to carry out transportation projects eligible for assistance under 23 U.S.C. Section 610.
- C. The Borrower has applied for a SIB loan for a capital improvement project.
- D. The Department has determined that the project meets the requirements for a SIB loan.
- E. This Amended and Restated Loan Agreement wholly amends and replaces the Loan Agreement between the Department, the Borrower, the City, and the South Florida Regional Transportation Authority (the "SFRTA") dated as of January 6, 2015 (the "Original Agreement"), to remove the SFRTA as a party and provide for design and construction of the Project by the Department.

AGREEMENT

In consideration of the Department making the loan to the Borrower, in the principal amount and pursuant to the covenants expressed in this Agreement, and intending to be legally bound by this Agreement, the Department and the Borrower agree as follows:

ARTICLE I – DEFINITIONS

1.01 WORDS AND TERMS.

In addition to the words and terms elsewhere defined in this Agreement, the following words and terms shall have the meanings set forth below. Terms used in this Agreement not defined below or elsewhere in this Agreement, but defined in the Project Agreement, shall have the meanings given in the Project Agreement.

(1) "Agreement" or "Loan Agreement" shall mean this loan agreement and all exhibits and schedules attached hereto.

(2) "Agreement Date" means the date on which this agreement is executed by the last party to sign.

(3) "Authorized Representative" means the official or officials of the Borrower or the City, as the context requires, authorized by ordinance or resolution to sign documents associated with the Loan.

(4) "Borrower" means the Downtown Development Authority of Fort Lauderdale (also identified as the "DDA") who is responsible as the Borrower to serve as administrator for the Loan and also is responsible for the repayment of the Loan.

(5) "Borrower Administrative Fees" means the DDA Administrative Fees as that term is defined in the Wave Assessment Agreement.

(6) "City" means the City of Fort Lauderdale who is responsible for assessing the Wave Assessments and for providing the Net Wave Assessments receipts to the Borrower in accordance with the Wave Assessment Agreement. The City shall become the Borrower should the Borrower cease to exist as provided in section 2.02 (1) of this Agreement.

(7) "County" means Broward County who will own the Project and is responsible for operating the Project in accordance with the terms of the Project Agreement.

(8) "Disbursement" means each disbursement of any portion of the principal amount of the Loan on behalf of or to the Borrower (in the aggregate, "Disbursements").

(9) "Financing Rate" means the charges, expressed as a percent per annum, imposed on the unpaid principal of the Loan.

(10) "Fiscal Year" means the State fiscal year period commencing on July 1 of each year and ending on June 30 of the succeeding year.

(11) "Loan" means the loan made to the Borrower pursuant to this Agreement in the initial principal amount of Nineteen Million Four Hundred Ninety Thousand and 00/100 Dollars (\$19,490,000.00).

(12) "Loan Application" means the completed form which provides all information required to support obtaining the Loan.

(13) "Loan Payment" means the loan payment due from the Borrower.

(14) "Net Wave Assessments" means the funds transferred from the City to the Borrower to be deposited into the Wave Assessment Account in accordance with the Wave Assessment Agreement.

(15) "Pledged Revenues" means the specific revenues pledged as security for repayment of the Loan, which are the Net Wave Assessments and any amounts on deposit in the Wave Assessment Account, the Wave Reserve Account, the Wave Rolling Coverage Reserve Account, and the Wave Disbursement Account.

(16) "Project" means the state capital outlay project financed by this Loan, consisting of the transit circulator, 5.4 mile (2.7 mile in each direction) modern streetcar known as The Wave Streetcar, as more fully described in the Project Agreement, as it may be amended from time to time, and the summary description attached as Exhibit A (which shall be deemed to be automatically amended to conform to the description of the Project in the Project Agreement as it is amended from time to time). The Project will be designed and constructed by the Department in accordance with the Project Agreement.

(17) "Project Agreement" means the agreement between the Department and the County dated June 14, 2016, as amended from time to time, under the terms of which the Department has agreed to design and construct the Project.

(18) "Project Assumption Agreement" means the agreement between the Department and the SFRTA dated August 26, 2016, as amended from time to time, under the terms of which the Department has agreed to assume certain obligations of the SFRTA to design and construct the Project.

(19) "Reserve Requirement" means an amount equal to the total Loan Payments due in the next Fiscal Year, required to be held in escrow as further described in Section 6.04 of this Agreement.

(20) "State" means the State of Florida.

(21) "State Infrastructure Bank" or "SIB" means the federally-funded State Infrastructure Bank created pursuant to the Cooperative Agreement.

(22) "Wave Assessments" means the non-ad valorem property assessments imposed by the City pursuant to City Ordinance C-13-14 and City Resolution Nos. 13-95 and 13-131, together with payments in lieu of assessments. Copies of the ordinance and resolutions are attached as Exhibit B.

(23) "Wave Assessment Agreement" means the Wave Assessment Interlocal Agreement, dated April 15, 2014, as amended November 19, 2014 and _____, 2017, between the Borrower and the City, a copy of which is attached as Exhibit C.

(24) "Wave Assessment Reimbursement" means the use of Wave Assessments to reimburse the Borrower and the City for prior costs for the planning, environmental study, feasibility studies, Wave Assessment fees and other related direct Wave Streetcar direct expenses to be paid from cash from the Wave Assessments by the Borrower in Fiscal Years 2013-14, 2014-2015, and 2015-2016 as permitted in section 2(D)(6) of the Wave Assessment Agreement, not to exceed a cumulative total of \$915,000.

(25) "Wave Partnership Agreement" means the WAVE Modern Streetcar Partnership Agreement dated April 16, 2013, as amended January 28, 2014, and as may be amended and supplemented in the future, entered into among the County, the Broward Metropolitan Planning Organization, the City, the DDA, and the SFRTA.

(26) "Wave Reserve Account" means an interest bearing escrow account established at the Florida State Treasury for the benefit of the Department under agreement with the Borrower, from which the Department may draw funds as provided in Section 6.04 of this Agreement. The Borrower shall deposit funds into the Wave Reserve Account by no later than the end of Fiscal Year 2017-18 and during each Fiscal Year thereafter such that on June 30, 2017, and by June 30 of each following year, the account balance shall equal or exceed the total Loan Payment due in the following Fiscal Year, in accordance with Section 6.04 of this Agreement.

(27) "Wave Rolling Coverage Account" means an interest bearing account established by the Borrower. The Borrower may deposit funds in the Wave Rolling Coverage Account by the end of a Fiscal Year and count these funds toward the coverage requirement stated in Section 2.01(16) of this Agreement. Funds deposited in the Wave Rolling Coverage Account must remain on deposit for the entire Fiscal Year in order to be counted toward the coverage requirement.

1.02 CORRELATIVE WORDS.

Words of the masculine gender include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, the singular includes the plural and the word "person" includes departments and associations, including public bodies, as well as natural persons.

ARTICLE II - WARRANTIES, REPRESENTATIONS, AND COVENANTS

2.01 GENERAL WARRANTIES, REPRESENTATIONS, AND COVENANTS OF THE BORROWER.

The Borrower warrants, represents, and covenants that:

(1) The Borrower 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 the Borrower to provide the necessary funds for payment of the Loan.

(2) This Agreement has been duly authorized, executed, and delivered by the Borrower and constitutes a valid and legally binding obligation of the Borrower, enforceable against the Borrower in accordance with the terms hereof.

(3) The Borrower 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.

(4) 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 the Borrower's knowledge, threatened, which seeks to restrain or enjoin the Borrower from entering into or complying with this Agreement.

(5) The Borrower's execution of this Agreement and compliance with the terms of this Agreement will not result in a default by the Borrower under the terms of any contract, bond, or financing arrangement to which the Borrower is a party.

(6) All Borrower representations to the Department, pursuant to the Loan Application and this Agreement, were and are true and accurate as of the date the Loan Application and this Agreement were each executed by the Borrower. The financial information delivered by the Borrower 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 the Borrower, or in the collection of the Pledged Revenues. The Borrower shall comply with all applicable State and Federal laws, rules, and regulations. To the extent that any assurance, representation, or covenant requires a future action, the Borrower shall take such action as is necessary for compliance.

(7) The Borrower has the authority to pledge the Pledged Revenues as security for repayment of the Loan and no election or referendum is required to make the pledge of the Pledged Revenues valid and legally enforceable.

(8) The Borrower shall adhere to accepted governmental accounting principles established by the Governmental Accounting Standards Board.

(9) Pursuant to Section 216.347 of the Florida Statutes, the Borrower shall not use the Loan proceeds for the purpose of lobbying the Florida Legislature, the Judicial Branch, or a State agency.

(10) The Borrower shall submit to the Department such data, reports, records, contracts and other documents as the Department may request in order to ascertain the performance by the Borrower of its obligations under this Agreement.

(11) The Borrower covenants that this Agreement is entered into for the purpose of designing, constructing, or acquiring the Project which will in all events serve a public purpose.

(12) Upon completion of the Project, the Project will be owned and operated by the County pursuant to the Wave Partnership Agreement.

(13) In the event the anticipated Pledged Revenues are shown by the Borrower's annual budget to be insufficient to make the Loan Payment for such fiscal year when due and the Wave Reserve Account is not adequate to make the Loan Payment when due, the Borrower shall include in such budget other legally available funds which will be sufficient, together with the Pledged Revenues, to make the Loan Payments. Such other legally available funds shall be budgeted in the regular annual governmental budget and designated for the purpose provided by this paragraph, and the Borrower shall collect such funds for application as provided herein. The Borrower shall notify the Department immediately in writing of any such budgeting of other legally available funds. Nothing in this covenant shall be construed as creating a pledge, lien, or charge upon any such other legally available funds; requiring the Borrower to levy or appropriate ad valorem tax revenues; or preventing the Borrower from pledging to the payment of any bonds or other obligations all or any part of such other legally available funds.

(14) The Borrower shall establish the following accounts and segregate funds as required by this Agreement and the Wave Assessment Agreement:

(a) Wave Assessment Account.

(b) Wave Reserve Account. This account is to be established by the Department via escrow agreement with the Borrower for an escrow account and held in the State Treasury for the benefit of the Department to be available to the Department if needed as further described in Section 6.04.

(c) Wave Rolling Coverage Account.

(15) The Borrower shall maintain all Net Wave Assessments received from the City in the Wave Assessment Account created under the Wave Assessment Agreement. These funds shall be available for the payment of Borrower Administrative Fees; Loan Payments; and establishment and maintenance of the Wave Reserve Account and the Wave Rolling Coverage Account. Pursuant to the terms of the Original Agreement, Net Wave Assessments have been applied to satisfy the Wave Assessment Reimbursement in Fiscal Years 2013-14, 2014-15, and

2015-16. The Wave Assessment Reimbursement is complete as of the execution of this Amended and Restated Loan Agreement.

(16) During each Fiscal Year, the Borrower shall deposit into the Wave Rolling Coverage Account, from available Net Wave Assessments after all other payments and deposits required under the terms of the Wave Assessment Agreement, funds that, together with the Net Wave Assessment expected for the following Fiscal Year, will be sufficient to provide for a 1.2 times coverage of the Loan Payment due for that following fiscal year.

(17) The Borrower shall not agree to any amendment of the Wave Assessment Agreement during the term of this Agreement without the Department's prior written consent.

2.02 GENERAL WARRANTIES, REPRESENTATIONS, AND COVENANTS OF THE CITY.

The City warrants, represents, and covenants that:

(1) The 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 the City to assume the role of the Borrower of the Loan in the event the Borrower is dissolved or otherwise ceases to exist, whether by action of the Borrower, otherwise by law, or by operation of Chapter 2005-346, Laws of Florida. In the event the Borrower is dissolved or otherwise ceases to exist, whether by action of the Borrower, otherwise by law, or by operation of Chapter 2005-346, Laws of Florida, the City shall continue to assess the Wave Assessments, continue to collect such taxes as were previously legally imposed by the Borrower pursuant to Chapter 2005-346, Laws of Florida, as the same may be amended, recodified, or reenacted by the Florida Legislature from time to time, and apply such funds to repayment of the Loan. Under such circumstances, the City shall not be generally liable for repayment of the Loan, but shall only be required to make Loan Payments from the sources expressly provided for in this Agreement.

(2) This Agreement has been duly authorized, executed, and delivered by the City and constitutes a valid and legally binding obligation of the City, enforceable against the City in accordance with the terms hereof.

(3) The 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.

(4) 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 the City's knowledge,

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

(5) The City's execution of this Agreement and compliance with the terms of this Agreement will not result in a default by the City under the terms of any contract, bond, or financing arrangement to which the City is a party.

(6) The City has the authority to assess and collect the Wave Assessments and to transfer the Net Wave Assessments to the Borrower for payment of the Loan and no election or referendum is required to make the assessment and collection of the Wave Assessment by the City valid and legally enforceable.

(7) The City has the authority to pledge the Pledged Revenues as security for repayment of the Loan, as provided herein, and no election or referendum is required to make the pledge of the Pledged Revenues valid and legally enforceable.

(8) The City shall submit to the Department such data, reports, records, contracts and other documents as the Department may request in order to ascertain the performance by the City of its obligations under this Agreement.

(9) The City shall not agree to any amendment of the Wave Assessment Agreement during the term of this Agreement without the Department's prior written consent.

(10) During the term of this Agreement, the City shall assess and receive the Wave Assessment in accordance with its ordinances and resolutions pursuant to which the Wave Assessment was created and imposed, including, but not limited to City Ordinance C-13-14 and City Resolutions Nos. 13-95 and 13-131, and shall provide the Net Wave Assessments to the Borrower for payment of the Loan in accordance with the Wave Assessment Agreement. The City shall impose the Wave Assessments in the amount necessary, in combination with the amounts on deposit in the Wave Rolling Coverage Account for each Fiscal Year, to provide for a 1.2 times coverage of the Loan Payment for that Fiscal Year.

(11) During the term of this Agreement, without the Department's prior written consent, the City shall not repeal or amend its ordinances and resolutions pursuant to which the Wave Assessments are assessed and collected, including, but not limited to City Ordinance C-13-14 and City Resolution Nos. 13-95 and 13-131. The City shall ensure the amount of annual Wave Assessments assessed is adequate to meet all requirements of this Agreement.

(12) During the term of this Agreement the City shall assess an amount annually based on input from the Borrower to the extent required to provide for a combination of the Net Wave Assessment and the Wave Rolling Coverage Account for each Fiscal Year to provide for a 1.2 times coverage of the Loan Payment for that Fiscal Year.

2.03 LEGAL AUTHORIZATION.

Upon signing this Agreement, the Borrower's legal counsel shall express the opinion subject to laws affecting the rights of creditors generally, that:

- (1) This Agreement has been duly authorized by the Borrower and shall constitute a valid and legal obligation of the Borrower enforceable in accordance with its terms upon execution by all parties; and
- (2) This Agreement specifies the revenues pledged for repayment of the Loan, the pledge is valid and enforceable, and no election or referendum is required to make the pledge of the Pledge Revenues valid and legally enforceable.
- (3) The covenant by the Borrower to budget and appropriate amounts of Wave Assessment revenues of the Borrower expressed in this Agreement constitutes a valid and legal obligation of the Borrower enforceable in accordance with the terms of this Agreement upon execution by both parties, and no election or referendum is required to make that covenant by the Borrower valid and legally enforceable.

Upon signing this Agreement, the City's legal counsel shall express the opinion subject to laws affecting the rights of creditors generally, that:

- (4) This Agreement has been duly authorized by the City and shall constitute a valid and legal obligation of the City enforceable in accordance with its terms upon execution by all parties; and
- (5) The City has the authority to assess the Wave Assessments, to transfer the Net Wave Assessments received to the Borrower for repayment of the Loan, and no election or referendum is required to make the assessment and collection of the Wave Assessment by the City valid and legally enforceable.
- (6) In the event the Borrower is dissolved or otherwise ceases to exist, whether by action of the Borrower, otherwise by law, or by operation of Chapter 2005-346, Laws of Florida, the City has the authority to continue to assess the Wave Assessments and assume the role of the Borrower for any other revenues from taxes legally imposed by the Borrower pursuant to Chapter 2005-346, Laws of Florida, and upon the dissolution or termination of the Borrower to assume the role of the Borrower under this Agreement to pay such amounts due on the Loan to the Department in accordance with the schedule identified in Exhibit E (as it may be amended in accordance with this Agreement) from the Net Wave Assessments and other available revenues from taxes legally imposed by the Borrower pursuant to Chapter 2005-346, Laws of Florida.

ARTICLE III – THE LOAN

3.01 PRINCIPAL AMOUNT OF LOAN.

The Department agrees to lend to the Borrower, and the Borrower agrees to repay the Department the Loan at the times, in the amounts, and in the manner specified in this Agreement. The principal amount of the Loan as of any date shall consist of the aggregate Disbursements, plus interest that has accrued and been added to the principal amount of the Loan, less the aggregate principal component of all Loan Payments made, all as of such date.

3.02 FINANCING RATE.

Beginning on the date of the first Disbursement, interest shall accrue on the principal amount of the Loan at the Financing Rate. The Financing Rate is 3.0% per annum, compounded annually, using an actual-days-elapsed/365 day counting convention, as indicated by the Disbursement/Payment Schedule attached hereto as Exhibit D.

3.03 LOAN DISBURSEMENTS.

The Department shall make and receive Disbursements of the Loan for payment of Project costs incurred by the Department in accordance with the Project Agreement. Disbursements shall be made at such times and in such amounts as are required to fund payments to the Department's contractor for progress on the Project. As the Department incurs Project Costs to design and construct the Project, the Department will pay the costs from the mix of funds available to the Department under the Project Agreement, the Project Assumption Agreement, the TIGER Grant held by SFRTA, the Project Construction Grant Agreement, and this Agreement. Disbursements of the Loan will be made monthly in amounts sufficient to fund a prorata share of the non-federal share of the Project Costs then payable (the prorata share of the Loan will be determined by comparing the remaining undisbursed amount of the Loan to the total non-federal funds then available to the Department to pay the non-federal share of Project Costs (not including Project Cost Overruns) under the Project Agreement and the Project Assumption Agreement).

The Department may, in its sole and absolute discretion, amend the Loan Disbursement/Repayment Schedule attached hereto as Exhibit D to take into account unexpected events or reasonable adjustments to the financing of the Project, including, but not limited to, increases or decreases in the Disbursement amounts and acceleration or delays in the construction of the Project. Under no circumstances shall the sum of the Disbursements to exceed \$19,490,000.00. The Department's obligation to fund any Disbursement is subject to funds being made available by an appropriation made pursuant to Florida law.

The Department will have no obligation to request or make any Disbursement or continue with design, construction, or other implementation of the Project under this Agreement in the event that the Department has notified the Borrower that an Event of Default has occurred under this, any other agreement between the Borrower and the Department, the Project Agreement, or the Project Assumption Agreement, or if the Department, in its sole discretion, determines that events have occurred which substantially diminish the likelihood that the Borrower will timely

and fully honor its obligations under this Agreement or any other agreement between the Department and the Borrower relating to the Project. Any waiver of this provision by Disbursement following an Event of Default by the Borrower under the terms of this Agreement, or any other agreement between the Borrower and the Department relating to the Project, will not constitute a continuing waiver of this provision and the Department may refuse to make further Disbursements without any liability to the Borrower whatsoever. Nothing in this Agreement shall be construed to require the Department to design or construct the Project except in accordance with, and subject to the conditions of, the Project Agreement and the Project Assumption Agreement.

Should the Department fail to fund any Disbursement due to the lack of an appropriation made pursuant to Florida law, the Payment Schedule in Exhibit D shall be adjusted to take into account the Department's failure to fund the Disbursement. In such event, the Borrower, the City, or both, may elect to terminate this Agreement and in such event, the Borrower and the City shall be relieved from any future financial obligations to the Department under this Agreement, except for the Borrower's obligation (and City's limited obligation expressed herein) to repay Disbursements made prior to termination, with interest. Also, for the purpose of clarity, in such event the pledge and assignment of the Pledged Revenues set forth in Article IV of this Agreement shall be interpreted to apply only to such amount of the Net Wave Assessments as are necessary under Section 6.04 to make Loan Payments under the Payment Schedule in Exhibit D, as adjusted to reflect the Department's failure to fund a Disbursement due to the lack of an appropriation made pursuant to Florida law. The Borrower and City shall in all other respects be free to use, reassign, and re-pledge any Net Wave Assessment Revenues not required by Section 6.04 to make the payments set forth in Exhibit E for the purposes set forth in City Ordinance C-13-14 and City Resolution Nos. 13-95 and 13-131.

3.04 LOAN PAYMENTS.

Loan Payments shall be made at the time and in the amounts stated in the Loan Disbursement/Payment Schedule attached as Exhibit D. The Department may, in its sole and absolute discretion, adjust the scheduled Payment of the Loan provided in the Disbursement/Payment Schedule to take into account the adjustments permitted by Section 3.03. Loan Payments shall be credited first to interest accrued on the principal amount of the Loan, if any, then to principal. The Borrower may prepay the Loan in full, or in part, without penalty.

3.05 LIMITED PAYMENT OBLIGATION OF THE CITY.

In the event the Borrower is dissolved or otherwise ceases to exist, whether by action of the Borrower, otherwise by law, or by operation of Chapter 2005-346, Laws of Florida, the City has the authority to assess the Wave Assessments and assume the role of the Borrower for any other revenues legally imposed by the Borrower pursuant to Chapter 2005-346, Laws of Florida, and upon the dissolution or termination of the Borrower shall: (i) assume the role of the Borrower under this Agreement; (ii) until the Loan is repaid in full, assess the Wave Assessments and collect such other taxes or fees legally imposed by the Borrower pursuant to

Chapter 2005-346, Laws of Florida; and (iii) pay such amounts due on the Loan to the Department in accordance with the schedule identified in Exhibit D (as it may be amended in accordance with this Agreement), from the Net Wave Assessments and other available revenues from taxes or fees legally imposed by the Borrower pursuant to Chapter 2005-346, Laws of Florida. Except for such limited obligations, and the specific covenants of the City expressed in section 2.02 of this Agreement, the City shall have no liability under this Agreement.

ARTICLE IV – SECURITY

4.01 PLEDGES TO THE DEPARTMENT.

The Borrower and the City pledge and assign the Pledged Revenues to secure payment of the Loan. Neither the Borrower nor the City shall take any action with respect to the Pledged Revenues that would be inconsistent with this pledge. The pledge of the Pledged Revenues shall be valid and binding as of the Agreement Date. The lien of the Department on the Pledged Revenues will be prior and superior to any other pledge, lien, charge, or encumbrance.

4.02 ADDITIONAL DEBT OBLIGATIONS.

Neither the City nor the Borrower may issue additional debt obligations with a lien on the Pledged Revenues without the Department's consent.

4.03 COLLECTION OF PLEDGED REVENUES.

Neither the City nor the Borrower shall take any action to impair the assessment and collection of the Pledged Revenues.

ARTICLE V – THE PROJECT

5.01 PROJECT.

The Department shall commence and complete the Project in accordance with the Project Agreement and Project Assumption Agreement. The Borrower will pay a portion of the costs of the Project through Disbursement of the Loan to the Department.

5.02 PROJECT COMPLETION.

In addition to the proceeds of this Loan, the Borrower covenants that it has obtained, or will obtain, sufficient monies from other sources to meet all of its obligations under any other agreement to contribute funds for construction and placing the Project in operation. The Department shall not be required to contribute any funds toward the Project in excess of its obligations under the Project Agreement and shall not be required to approve any additional financing to the Borrower or the City in connection with the Project.

5.03 USE AND MAINTENANCE OF PROJECT.

The Project Agreement requires the County to operate and maintain the Project facilities and equipment in good working order after Project Completion. The Department shall have no responsibility for the costs of operation or maintenance of the Project. The Borrower agrees that the Project facility and equipment will be used to provide or support public transportation for the period of the useful life of such facility and equipment as determined in accordance with general accounting principles.

5.04 PROHIBITION ON ENCUMBRANCES

Except for the transfer of the Project to the County as contemplated by the Project Agreement, the Borrower and the City are prohibited from selling, leasing, or disposing of any part of the Project which would materially adversely affect their ability to meet their respective obligations under this Agreement so long as this Agreement, including any amendment, is in effect, unless the written consent of the Department is first obtained.

5.05 ENVIRONMENTAL POLLUTION.

Because the Project is being implemented by the Department, the Borrower does not expect to perform any work on the Project. Execution of this Agreement constitutes a certification by the Borrower that if the Borrower performs any work on the Project, it will be carried out in conformance with all applicable environmental regulations including the securing of any applicable permits. If the Borrower performs any work on the Project, the Borrower will be solely responsible for any liability arising from such work 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. Without limiting the generality of the foregoing, in connection with the Project, the Borrower will not use any facilities that are in violation of the Clean Air Act or Clean Water Act, will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities", will report the use of prohibited facilities to the Federal Transit Administration and the Regional U.S. EPA Office, and shall comply with Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other requirements of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 - 7671q, and Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 - 1377.

ARTICLE VI - DEFAULTS AND REMEDIES

6.01 EVENTS OF DEFAULT.

The occurrence of any of the following events will be an event of default:

(1) Failure of the Borrower to make a Loan Payment when due, if the balance on deposit in the Wave Reserve Account is then inadequate to make the Loan Payment.

(2) Failure of the Borrower to maintain the Wave Reserve Account in accordance with section 6.04.

(3) The making of any warranty, representation or other statement by the Borrower or the City contained in this Agreement or in any document, certificate or information furnished in compliance with, or in reference to, this Agreement, that is determined to be false or misleading.

(4) Entry of an order or decree appointing a receiver for any part of the Project or the Pledged Revenues, with the acquiescence of the Borrower or the City; or if such an order or decree is entered without the consent or acquiescence of the Borrower or the City, the failure thereafter by the Borrower or the City to obtain an order or decree vacating, discharging, or staying the appointment within 60 days.

(5) The initiation of any proceeding, with the acquiescence of the Borrower or the City, for the purpose of effecting a composition between the Borrower or the City and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are payable from Pledged Revenues.

(6) The initiation of any bankruptcy, insolvency, or other similar proceeding by the Borrower or the City under federal or state bankruptcy or insolvency law now or hereafter in effect; or the initiation of any bankruptcy, insolvency, or other similar proceeding against the Borrower, or the City under federal or state bankruptcy or insolvency law now or hereafter in effect, if the Borrower or the City (as applicable) does not obtain an order dismissing the proceeding within 60 days after filing.

(7) Any failure by the Borrower or the City to comply with the material provisions of the Interlocal Agreement between the Borrower, the City, and the County allocating funding responsibility for the local share of Project Capital Cost Overruns.

(8) Any other failure by the Borrower or the City to comply with the material provisions of this Agreement or failure in the performance or observance of any of the covenants or actions required by this Agreement in any material respects (a "General Non-compliance Default"), if the failure is not cured to the reasonable satisfaction of the Department within 60 days after notice of the occurrence of the General Non-compliance Default by the Department to the Borrower and the City. If, within the time period provided in the previous sentence, the General Non-compliance Default is not cured to the satisfaction of the Department in the Department's reasonable discretion, then the General Non-compliance Default shall be deemed to be a default of this Agreement as of the date of the General Non-compliance Default. An Event of Default defined in subsections (1) through (7) of this section shall not be considered a General Non-compliance Default.

6.02 REMEDIES.

Upon any event of default, the Department may pursue any available remedy at law or in equity, including:

(1) By mandamus or other proceeding at law or in equity, cause the Borrower and the City to remit to the Department Pledged Revenues sufficient to satisfy their payment obligations under this Agreement.

(2) By action or suit in equity require the Borrower and the City to account for the receipt, use, application, or disposition of the Pledged Revenues.

(3) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Department.

(4) By certifying to the Auditor General and the Chief Financial Officer delinquency on Loan Payments, the Department may provide for the payment to the Department of the delinquent amount, a penalty, and the cost to handle and process the debt, from any unobligated funds due to the Borrower (or the City if the Loan has not been paid in full upon any termination or dissolution of the Borrower) under any revenue or tax sharing fund established by the State, except as otherwise provided by the State Constitution. A penalty may be imposed in an amount not to exceed an interest rate of 18 percent per annum on the amount due.

(5) By notifying financial market credit rating agencies and potential creditors of the event of default.

(6) By suing for payment of amounts due, or becoming due, with interest on overdue payments together with all costs of collection, including attorneys' fees.

(7) By accelerating the payment schedule or increasing the Financing Rate on the unpaid principal of the Loan to as much as 1.667 times the Financing Rate for a default under Subsection 6.01(1).

In addition to pursuing one or more of the above remedies, upon an event of default, the Department may, by providing 60 days advance written notice to the Borrower and the City elect to terminate this Agreement, and the Department shall have no further obligation or commitment under this Agreement. Any partial Loan Payments shall be allocated first to interest and second to principal.

In the event this Agreement is terminated by the Department due to a default by the Borrower, the City, or both, the Department shall have all remedies at law and equity against the defaulting party or parties for any costs, payments or damages it incurs as a result of such termination. The City and the Borrower recognize that in the event of a default by the City, the Borrower, or both, that causes the Department to exercise its remedy of termination, the Department could be placed in default of the Project Construction Grant Agreement and other

contracts related to the Project. The City and Borrower further recognize that the Federal government may demand the return of all Federal funds provided to the Department for the Project and that the Department may be subject to other costs and damages due to the termination of this Agreement. If the Department is required to return payments to the Federal government, is required to make any other payments, or both, as a result of such default, including, but not limited to, payments for contract termination costs, judgments for default on contracts, or settlement costs, such payments shall be considered damages recoverable by the Department, as the case may be, from the defaulting party or parties. The remedies provided for above are in addition to the remedies provided to the Department under the Project Agreement.

6.03 REMEDIES NOT EXCLUSIVE; DELAY AND WAIVER.

No remedy conferred upon or reserved to the Department by this Article is exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy. No delay or omission by the Department to exercise any right or power accruing as a result of an event of default shall impair any such right or power or shall be construed to be a waiver of any such default, and every such right and power may be exercised as often as may be deemed expedient. No waiver of any default under this Agreement shall extend to or affect any subsequent event of default, whether of the same or different provision of this Agreement, or shall impair consequent rights or remedies.

6.04 WAVE ASSESSMENT ACCOUNT, WAVE RESERVE ACCOUNT AND WAVE ROLLING COVERAGE ACCOUNT

(1) The Borrower shall deposit all Net Wave Assessments received from the City into the Wave Assessment Account. The Borrower may make payments to the Borrower for Borrower Administrative Fees from the Wave Assessment Account in accordance with the Wave Assessment Agreement.

(2) The Department and the Borrower shall establish the Wave Reserve Account by entering into a Memorandum of Agreement with the State of Florida, Department of Financial Services, Division of Treasury ("DFS"), under which DFS will hold deposits into the Wave Reserve Account to be disbursed as provided in this Agreement. The Wave Reserve Account shall be an interest bearing account that earns interest at the rate set by DFS in accordance with law.

(A) In each Fiscal Year the Borrower shall deposit such amounts into the Wave Reserve Account as are necessary to ensure that the amount on deposit in the Wave Reserve Account as of the end of each Fiscal Year equals the total Loan Payment due in the next Fiscal Year.

(B) In the event the Department has to draw on an amount from the Wave Reserve Account to make all or part of a Loan Payment the Borrower shall, within six months make sufficient deposits to replenish the Wave Reserve Account for the amounts drawn by the Department to make the Loan Payment.

(C) The Wave Reserve Account shall be utilized for the last Loan Payment in accordance with the calculation in subsection (4) below.

(3) The Borrower shall establish the Wave Rolling Coverage Account. The Borrower may deposit funds in the Wave Rolling Coverage Account by the end of a Fiscal Year and count these funds toward the coverage requirement stated in Section 2.01(16) of this Agreement. Funds deposited in the Wave Rolling Coverage Account must remain on deposit for the entire Fiscal Year in order to be counted toward the coverage requirement.

(4) The Borrower may pay remaining principal amounts on the Loan ahead of the schedule for Loan Payments in Exhibit D. In the event the Borrower pays principal amounts on the Loan ahead of the schedule in Exhibit D, the Borrower shall monitor the amount of principal owed on the Loan compared to the balances in the Wave Assessment Account, Wave Rolling Coverage Account and the Wave Reserve Account and work with the Department to close out the Loan when these balances collectively equal or exceed the remaining principal amount on the Loan in any given Fiscal Year.

ARTICLE VIII - GENERAL PROVISIONS

7.01 DISCHARGE OF OBLIGATIONS.

All payments required to be made under this Agreement shall be cumulative and any deficiencies in any Fiscal Year shall be added to the payments due in the succeeding Fiscal Year and all Fiscal Years thereafter until fully paid. Loan Payments shall continue to be secured by this Agreement until all of the payments required are fully paid to the Department. Notwithstanding any provision of this Agreement to the contrary, the Borrower (or the City if the Loan has not been paid in full upon any termination or dissolution of the Borrower) may prepay this Loan only upon the express written consent of the Department, which consent shall not be withheld if such prepayment, in the judgment of the Department and the State of Florida Division of Bond Finance, will not adversely impact the Department's ability to comply with covenants relating to obligations secured by such Loan.

7.02 ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

The Borrower and the City acknowledge that the Loan and all payments of principal and interest may be pledged and assigned by the Department as security for the payment of principal, of premium, if any, and interest on bonds that may be issued by the Department to fund the SIB and consent to such pledge and assignment. The Department and the State of Florida Division of Bond Finance (the "Division") may further pledge or assign all or any part of this Agreement without the prior consent of the Borrower or the City after written notification to the Borrower and the City. The Borrower and the City shall not assign their rights and obligations under this Agreement without the prior written consent of the Department.

7.03 AMENDMENT OF AGREEMENT.

This Agreement may be amended in writing, except that no amendment shall be permitted which is inconsistent with any applicable State or Federal law. This Agreement may be amended after all construction contracts are executed to re-establish the Project cost, Project schedule, and Loan amount.

7.04 ANNULMENT OF AGREEMENT.

The Department may unilaterally annul this Agreement if the Project Agreement is terminated for any reason. If the Department unilaterally annuls this Agreement, the Department will provide written notification to the Borrower and the City.

7.05 SUSPENSION AND TERMINATION.

If the commencement, prosecution, or timely completion of the Project is rendered improbable, infeasible, impossible, or illegal, or if any federal agency providing federal financial assistance to the Project suspends or terminates federal financial assistance to the Project, by written notice to the Borrower and the City, the Department may 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 at its option, the Department may terminate any or all of its remaining obligations under this Agreement.

Upon receipt of any termination or suspension notice, the Borrower shall repay the SIB according to the provisions of the Agreement, or as otherwise agreed upon, in writing, by the Department and the Borrower. The closing out of federal financial participation in the Project or the reduction or elimination of local support for this Project shall not constitute a waiver of the Borrower's obligation to repay the Loan.

The Department reserves the right to unilaterally cancel this Agreement for refusal by the Borrower or the City to allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement.

7.06 SEVERABILITY CLAUSE.

If any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.07 APPROPRIATION.

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

The provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated verbatim: "(a) 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."

7.08 MONITORING PROCEDURES, AUDIT REPORTS, AND RECORD RETENTION.

The administration of resources awarded through the Department to the Borrower by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of Federal awards or limit the authority of any State agency inspector general, the State of Florida Auditor General or any other State official. The Borrower shall comply with all audit and audit reporting requirements as specified below:

(1) In addition to reviews of audits conducted in accordance with OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to Federal awards provided through the Department by this Agreement. By entering into this Agreement, the Borrower agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Borrower further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO) or State of Florida Auditor General.

(2) The Borrower, a non-Federal entity as defined by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as defined by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, as a subrecipient of a Federal award awarded by the Department through this Agreement is subject to the following requirements:

(a) In the event the Borrower expends a total amount of Federal awards equal to or in excess of the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements,

for fiscal years beginning on or after December 26, 2014, the Borrower must have a Federal single or program-specific audit for such fiscal year conducted in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. Exhibit E to this Agreement provides the required Federal award identification information needed by the Borrower to further comply with the requirements of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and the requirements of 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. In determining Federal awards expended in a fiscal year, the Borrower must consider all sources of Federal awards based on when the activity related to the Federal award occurs, including the Federal award provided through the Department by this Agreement. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. An audit conducted by the State of Florida Auditor General in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, will meet the requirements of this part.

(b) In connection with the audit requirements, the Borrower shall fulfill the requirements relative to the auditee responsibilities as provided in OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as provided in 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014.

(c) In the event the Borrower expends less than the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, in Federal awards, the Borrower is exempt from Federal audit requirements for that fiscal year. However, the Borrower must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Borrower's audit period for each applicable audit year. In the event the Borrower expends less than the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, in Federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from the Borrower's resources obtained from other than Federal entities).

(d) The Borrower must electronically submit to the Federal Audit Clearinghouse (FAC) at <https://harvester.census.gov/facweb/> the audit reporting package as required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as

required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and for audits required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, and this Agreement. However, the Department requires a copy of the audit reporting package also be submitted to FDOTSingleAudit@dot.state.fl.us within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period as required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014.

(e) Within six months of acceptance of the audit report by the FAC, the Department will review the Borrower’s audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the Federal award provided through the Department by this Agreement. If the Borrower fails to have an audit conducted in accordance with OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include, but are not limited to, the following:

1. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department;
2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
3. Wholly or partly suspend or terminate the Federal award;
4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and Federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the Federal awarding agency);
5. Withhold further Federal awards for the Project or program;
6. Take other remedies that may be legally available.

(f) As a condition of receiving this Federal award, the Borrower shall permit the Department, or its designee, the CFO or State of Florida Auditor General access to the Borrower’s records including financial statements, the independent auditor’s working papers and project records as necessary. Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.

(g) The Department’s contact information for requirements under this section is as follows:

Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0450
FDOTSingleAudit@dot.state.fl.us

(3) The Borrower shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department, or its designee, the CFO or State of Florida Auditor General access to such records upon request. The Borrower shall ensure that the audit working papers are made available to the Department, or its designee, the CFO, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued unless extended in writing by the Department. The Borrower shall further permit access to all Project records in its possession or control by the Secretary of the United States Department of Transportation and the Comptroller General of the United States, or their designees.

7.09 PROGRESS REPORTS.

If the Borrower expends any part of a Disbursement directly on the Project, the Borrower shall provide the Department's Office of Comptroller semi-annual progress reports on "program and financial activities" that occur each year. The report will be signed or submitted electronically in accordance with Chapter 668, Florida Statutes, by an Authorized Representative. The following program information shall be included: program accomplishments (specific action taken to implement approved objectives/activities) and percent of accomplishments for each in terms of percentage completed; problems delaying implementation; and revised Project schedules if activities are not conforming to approved Project schedules as contained in the application. The following financial information shall be included: beginning fund balance; amount of expenditures; ending fund balance; interest earned to date; and the amount and percent of funds being contributed to the Project from other sources. The semi-annual progress report is available on the SIB website at <http://www.dot.state.fl.us/officeofcomptroller/PFO/sib.shtm>.

7.10 THIRD PARTY AGREEMENTS.

Prior to execution of this Agreement by the Department, the Borrower and the City shall not incur any liability for consultant services, construction, or purchase of commodities to any third party with respect to the Project that they intend to or will fund through a Disbursement. The Loan does not constitute a commitment, guarantee, or obligation on the part of the United States to any third party, nor shall any third party have any right against the United States for payment solely by virtue of the contributions of Federal funds into the Florida SIB.

7.11 COMPLIANCE WITH CONSULTANTS' COMPETITIVE NEGOTIATION ACT.

It is understood and agreed by the parties that participation by the Department in a project that involves a consultant contract for engineering, architecture or surveying services, is contingent on compliance in full with provisions of Chapter 287, Florida Statutes, Consultants Competitive Negotiation Act.

7.12 DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY AND OBLIGATION.

It is the policy of the Department that disadvantaged business enterprises as defined in 49 CFR Part 23, as amended, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with funds disbursed by the Department under this Agreement.

7.13 DISCRIMINATORY VENDOR.

Pursuant to Section 287.134(3)(a), Florida Statutes, if the Borrower or the City expends any part of a Disbursement directly on the Project, the Borrower or the City shall include the following statement in all bid solicitations relating to the Project:

"Pursuant to Section 287.134(2)(a), 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, proposals, or replies 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."

7.14 EQUAL EMPLOYMENT OPPORTUNITY.

In connection with the carrying out of any project, the Borrower and the City shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin.

7.15 PROHIBITED INTERESTS AND ACTS.

Neither the Borrower, the City, nor any of their contractors, subcontractors, consultants, or subconsultants shall enter into any contract with one another, or arrangement in connection with the Project or any property included or planned to be included in the Project, which violates any applicable provision of Chapter 112, Florida Statutes, relating to conflicts of interest and prohibited transactions. The Borrower and the City shall further diligently abide by all provisions of Florida law regulating each of them with respect to procurement, contracting, and ethics. The provisions of this subsection shall not be applicable to any agreement between the parties and their fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

Debarment and Suspension: Because the Project is being implemented by the Department, the Borrower does not expect to enter into any arrangement to participate in the development or implementation of the Project with any third party. If the Borrower does, it shall not enter into any arrangement to participate in the development or implementation of the Project with any person or entity that is debarred or suspended except as authorized by applicable Federal law and regulations. If required by applicable Federal law and regulations, the Borrower will review the U.S. GSA System of Award Management at <https://www.sam.gov>. The Borrower shall include the requirements of this subsection in each of its contracts related to the Project and shall require its contractors and consultants to include similar requirements in each of their contracts related to the Project.

Because the Project is being implemented by the Department, the Borrower does not expect to enter into any contract with a private entity in connection with the Project. If the Borrower does enter into such a contract, it shall include a provision in each contract subsequent to the date hereof it enters into with a private entity in connection with the Project by which the Borrower's contractor agrees that it and its employees that perform any work on the Project shall not, during the term of this Agreement, engage in severe forms of trafficking in persons, procure a commercial sex act, or use forced labor in the performance of work on the Project.

7.16 NO OBLIGATION TO THIRD PARTIES.

Except to the extent otherwise provided in this Agreement, neither the Department nor the Borrower, or the City shall be obligated or liable hereunder to any person or entity not a party to this Agreement.

7.17 BONUS OR COMMISSION.

By execution of the Agreement the Borrower and the City represent that it has not paid, is not obligated to pay, and agrees not to pay, any bonus or commission for the purpose of obtaining the Department's approval of its application for the Loan.

7.18 INDEMNITY.

To the extent allowed by law, the Borrower shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damages, cost, charge, or expense arising out of any act, error, omission by the Borrower, its agents, employees, contractors and/or subcontractors in connection with the planning, engineering, administrative, and construction activities financed by the Loan. Neither the Borrower, its agents, employees, contractors and/or subcontractors will be liable under this paragraph for any claim, loss, damages, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department, or any of its officers, agents, or employees.

If the Department receives notice of claim for damages for which the Borrower may be responsible under this paragraph, the Department will immediately forward the claim to the

Borrower. The Department's failure to promptly notify the Borrower of a claim will not act as a waiver of any right herein.

7.19 THIRD PARTY BENEFICIARY

To the extent this Agreement confers upon or grants to the Division any right, remedy, or claim hereunder, the Division is recognized as being a third party beneficiary of this Agreement and may enforce any such right, remedy, or claim given or granted by the terms of this Agreement.

7.20 ENTIRE AGREEMENT.

The Loan Application executed by the Borrower, all exhibits, attachments and schedules attached to the Loan Application, and this Agreement ("the Agreement Documents") contain the entire agreement between the parties and incorporate and supercede all prior negotiations, correspondence, conversations, agreements or understandings relating to the Loan, and the parties hereto agree that there are no commitments, agreements or understandings concerning the Loan that are not contained in the Agreement Documents. This Agreement expressly supersedes and replaces the Loan Agreement for the Project between the Department, the Borrower, the City, and the SFRTA dated as of January 6, 2015. No deviation from the terms of the Agreement Documents shall be predicated upon any prior representation or agreements whether oral or written. No modification, amendment or alteration in the terms and conditions contained in the Agreement Documents shall be effective unless contained in a written document executed by the parties. The foregoing notwithstanding, this Agreement shall not modify, alter or negate any of the terms of the Wave Partnership Agreement.

In the event of conflict between the terms and conditions of the Agreement Documents: (i) the terms and conditions contained in the body of this Agreement prevail over conflicting terms and conditions contained in any exhibits, schedules and attachments attached to this Agreement; (ii) the terms and conditions contained in the body of the Loan Application prevail over any conflicting terms and conditions contained in any exhibits, schedules and attachments attached to the Loan Application; and (iii) the terms and conditions of the Agreement, including all exhibits, schedules and attachments hereto, prevail over conflicting terms and conditions contained in the Loan Application and any exhibits, schedules and attachments to the Loan Application.

7.21 NOTICES.

Any notice, demand, request or other instrument which is required to be given under this Agreement in writing shall be delivered to all parties at the following addresses:

If to the Department: Florida Department of Transportation
SIB Program Manager

Office of Comptroller – Project Finance
605 Suwannee Street, MS #10
Tallahassee, Florida 32399-0450

If to Borrower: Downtown Development Authority
305 South Andrews Avenue, Suite 301
Fort Lauderdale, Florida 33301
Attn: Executive Director

If to the City: City of Fort Lauderdale
City Hall
100 North Andrews Avenue
Fort Lauderdale, Florida 33301
Attn: City Manager

7.22 E-VERIFY.

The Borrower shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

All persons employed by the Borrower during the term of this Agreement to perform employment duties within Florida; and

All persons, including subcontractors, assigned by the Borrower to perform work pursuant to this Agreement.

7.23 EXECUTION OF AGREEMENT.

This Agreement may be executed in counterparts, which together shall constitute one agreement.

The parties have executed this Agreement on the date(s) below.

[SIGNATURE PAGES FOLLOW ON THE NEXT PAGES]

STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION

DOWNTOWN DEVELOPMENT
AUTHORITY OF FORT LAUDERDALE,
FLORIDA

By: _____

By: _____

Jenni Morejon, Executive Director

Date: _____

Date: _____

Legal Review (Department)

Legal Review (Downtown Development
Authority of Fort Lauderdale, Florida)

I

By signing below, I express the opinions
stated in Section 2.04, entitled Legal
Authorization

CITY OF FORT LAUDERDALE

By: _____
Lee R. Feldman, City Manager

Date: _____

Legal Review (City)
By signing below, I express the opinions
stated in Section 2.04, entitled
Legal Authorization

EXHIBIT “A” PROJECT DESCRIPTION

PROJECT NAME:

The Fort Lauderdale Wave Streetcar

PROJECT LOCATION:

Downtown Fort Lauderdale, Broward County
Fort Lauderdale, Florida 33301
Congressional Districts 20, 22 & 23

The project area is generally bounded by Federal Highway (US 1) on the east, SE 17th Street on the south, the Florida East Coast (FEC) Railway (FEC)/NW 7th Avenue on the west, and the FEC Railroad/Sunrise Boulevard to the north.

PROJECT DESCRIPTION:

Description of Work:

The Wave Streetcar system will operate at-grade on a fixed rail embedded in the street, sharing the existing roadway right-of-way with vehicular traffic, and will be powered by an overhead contact wire system throughout most of the alignment. The alignment is approximately 2.8 miles in length with two fixed rail guideways, one in each direction. The streetcar vehicles will also be powered by an onboard energy storage system (OESS) for a segment of the alignment that crosses the New River over the existing SE 3rd Avenue bascule bridge.

The Wave Phase 1 revenue service alignment extends from the southern terminus at S 16th Street and S Andrews Avenue to NE 6th Street between N Andrews Avenue and NE 3rd Avenue, primarily utilizing Andrews Avenue, SE 3rd Avenue and Brickell Avenue for north/south movement. The alignment utilizes SE 18th Street, SE 6th Street, Las Olas Boulevard, S 2nd Street, N 4th Street, and NE 6th Street for east/ west movement. The Wave Phase 1 requires five (5) modern streetcar vehicles with OESS capability; four (4) vehicles for peak service and one (1) spare.

The project includes guideway, traction power, overhead contact system (OCS), train control, communications, civil, structural, roadway, streetcar vehicles, and a Vehicle Maintenance and Storage Facility (VMSF) located on SW 1st Avenue between SW 18th Street and SW 18th Court, adjacent to the Florida East Coast (FEC) Railroad. The project also includes testing, commissioning, training, and safety certification required for a fully functional streetcar system.

Guideway and Trackwork:

An embedded track slab will be the standard for the mainline track. A reinforced concrete track slab will provide the foundation for this form of track construction. The design of the track slab

will be based on automotive vehicle loadings, streetcar vehicles, and soil conditions. Embedded track shall be installed wherever the guideway is shared with rubber tired vehicles, either in mixed traffic or in locations where only emergency and service vehicles will be permitted to travel. All tracks shall be designed in accordance with the current Transit Requirements, included as an attachment to the RFP. The Work includes all drainage required to comply with the permit requirements for water quality and quantity. Track drains will be provided in paved track areas to properly drain the rail flangeways, the pavement surface between the rails, and at track switch locations.

Track work is required at the new VMSF. The yard track work will be constructed with embedded track and will consider its access to/ from the mainline track.

The term “special trackwork” designates the trackwork units necessary where tracks converge, diverge, or cross one another. Special trackwork includes turnouts, diamond crossings, crossovers, and expansion joints. A reinforced concrete tub lined with electric isolation material will be constructed for all special trackwork.

Structures:

The Work includes the design and construction of bridge retrofitting within the project limits. The embedded track within bridge retrofitting shall be designed in accordance with the Concept Drawings and Transit Requirements included as an attachment to the RFP.

The construction of the guideway across the SE 3rd Avenue Bridge over the New River requires structural, mechanical, and electrical modifications to the movable span of the bridge and other modifications to the approach spans of the bridge from the north and south. The bridge is comprised of seven spans including pre-stressed concrete spans, steel flanking spans, and a movable steel twin leaf Scherzer rolling lift bridge span with an open grid steel deck. The movable span and the approach spans will be retrofitted for the introduction of the Streetcar. This will require replacement of girders/ beams on the bridge and construction of a concrete deck on the new girders/ beams with the streetcar embedded in that deck.

Stations:

The Work includes the design and construction of thirteen (13) streetcar station stops throughout the alignment, which include eight (8) curbside platforms and five (5) median platforms, and provide level boarding access to the floor of the streetcar. The station platforms are proposed to be not less than 80 feet long, from 10 to 15 feet wide, and have a ramp at one or both ends, depending on the adjacent conditions. Each station stop will have a shelter, benches, public address, passenger information systems, passenger assistance telephone, closed-circuit television, ticket vending machines, trash receptacles, bike racks and other site furnishings. Layover and rest room facilities will be available at the southern terminus stop at S 16th Street and S Andrews Avenue.

Communications/ Supervisory Control And Data Acquisition (SCADA):

The communications system will provide the necessary functions to support the operational

requirements of the streetcar system. The communications systems will include public address, passenger information systems, passenger assistance telephone, internet protocol video (IPV) HD camera system with PTZ (pan, tilt, zoom), remote monitoring capabilities, and recording equipment. A SCADA system will also be provided to allow for monitoring and control of traction power substations (including intrusion detection), communications equipment houses and cases, fire/ life safety equipment, train control components, public address, public information equipment, and other elements.

Signal and Route Control:

Where the streetcar operates in mixed traffic, streetcar movements will be controlled by the traffic signal system. This includes interlocking protection at all control points for trains leaving the VMSF, a train-to-wayside communications (TWC) system, and a traffic signal controller that will communicate with the guideway proximity loops. The streetcar will be equipped with train-to-wayside communications systems that will activate special traffic signals and routing. In areas of on-street running, special streetcar signals will be provided at specific intersections and locations to allow the streetcar to proceed through the intersection or switch lanes independent of auto traffic. These signals will be displayed by wayside streetcar traffic signal controllers when activated by the streetcar train-to-wayside communications system. The train-to-wayside controller will have a provision for the manual setting of predetermined routes. The train-to-wayside controller will then proceed to activate and set wayside powered track switch machines appropriate for the route. Manual switch control will also be possible.

Vehicle Maintenance and Storage Facility:

The Work includes a Vehicle Maintenance and Storage Facility (VMSF) on the property identified as Site K adjacent to the Florida East Coast corridor. The VMSF will perform daily and routine inspections, maintenance, on-car repairs, and interior/ exterior cleaning of the streetcars. The facility will also serve as a storage and component change-out location. The facility is intended as a light maintenance facility with minor component rebuild, truck overhaul and minor machine shop capabilities. Major machine shop work and sheet metal work may be performed at another location as an outsourced function. The VMSF will house the following functions:

- streetcar storage;
- train operator report area;
- operator and maintenance training;
- streetcar service and inspection;
- streetcar interior and exterior cleaning;
- streetcar air-conditioning, current collector and resistor unit repair;
- fare collection (FC) equipment repair, storage and inspection;
- traction electrification system (TES) service and inspection;
- TES overhead service and inspection;
- facilities maintenance;
- system wide parts storage;
- streetcar operations administration;

- streetcar maintenance administration;
- central control;
- electronic component repair;
- communications equipment repair, storage and inspection;
- storage of streetcar maintenance-of-way (MOW) materials;
- car wash; and
- LAN room for train control and communications.

Traction Power Supply and Distribution:

Traction electrification is provided via 750 VDC traction power sub-stations (TPSS) transmitting electric energy from its source to the vehicles. The vehicles will be propelled by electric traction motors. Energy to drive these motors will be supplied to the vehicles by rectifier substations located along the wayside through a system of distribution cables, switches and an OCS installed above each track. A pantograph will be mounted on each vehicle to serve as the interface between the vehicle and the OCS and function as the collector of electrical current for the vehicles. The running rails of each track, bonds, and cabling complete the path of electrical current back to the substation. The sections of the system between the stations, before and after the New River, will be without OCS. Vehicles will travel in these two sections using on-board storage batteries.

Vehicles:

The Work includes the design, manufacture, delivery, and testing of five (5) streetcar vehicles. The Work also includes the design and integration of all vehicle systems, as defined in the RFP, such that all specified requirements are achieved without conflict or error within or between systems.

Each vehicle shall be a double articulated, modern urban streetcar with contemporary styling, with the following characteristics:

- At least a three-section vehicle, with the carbody sections configured as A1-C1-B1.
- Not less than 50% low floor. Carbody section C1 shall be low floor.
- Carbody section C1 shall have at least two double wide doorways per side.
- Capable of bi-directional operation, with a fully functional cab at each end. Operating control and performance shall be equal from both cabs.
- Designed for single unit operation with provisions for towing a non-operable Vehicle.
- Heated and air conditioned consistent with the Fort Lauderdale, Florida climate and the Technical Specifications.
- Design shall incorporate the OESS, i.e. a battery and/or capacitor drive system, which shall provide capability for wireless operation in accordance with the Technical Specifications.

EXHIBIT “B”

City Ordinance C-13-14 and City Resolution Nos. 13-95 and 13-131

EXHIBIT “C”

**Wave Assessment Interlocal Agreement
as amended _____, 20__**

EXHIBIT “D” **LOAN DISBURSEMENT/REPAYMENT SCHEDULE**

Downtown Development Authority of Ft. Lauderdale Wave Streetcar - Loan 1										
State Fiscal Year	Date	Beginning Balance	Estimated/Actual Disbursement	Capitalized Interest	Interest Accrued at 3.00%	Balance Including Interest	Repayment to Principal	Repayment to Interest	Total Repayment	Ending Balance
2017/18		\$0.00	\$9,745,000.00	\$0.00	\$0.00	\$9,745,000.00	\$0.00	\$0.00	\$0.00	\$9,745,000.00
		\$9,745,000.00	\$9,745,000.00	\$292,350.00	\$292,350.00	\$19,782,350.00	\$0.00	\$0.00	\$0.00	\$19,782,350.00
2018/19	10/1/2018	\$19,782,350.00	\$0.00	\$0.00	\$593,470.50	\$20,375,820.50	\$627,617.50	\$593,470.50	\$1,221,088.00	\$19,154,732.50
2019/20	10/1/2019	\$19,154,732.50	\$0.00	\$0.00	\$574,641.98	\$19,729,374.48	\$646,446.03	\$574,641.98	\$1,221,088.00	\$18,508,286.48
2020/21	10/1/2020	\$18,508,286.48	\$0.00	\$0.00	\$555,248.59	\$19,063,535.07	\$665,839.41	\$555,248.59	\$1,221,088.00	\$17,842,447.07
2021/22	10/1/2021	\$17,842,447.07	\$0.00	\$0.00	\$535,273.41	\$18,377,720.48	\$685,814.59	\$535,273.41	\$1,221,088.00	\$17,156,632.48
2022/23	10/1/2022	\$17,156,632.48	\$0.00	\$0.00	\$514,698.97	\$17,671,331.46	\$706,389.03	\$514,698.97	\$1,221,088.00	\$16,450,243.46
2023/24	10/1/2023	\$16,450,243.46	\$0.00	\$0.00	\$493,507.30	\$16,943,750.76	\$727,580.70	\$493,507.30	\$1,221,088.00	\$15,722,662.76
2024/25	10/1/2024	\$15,722,662.76	\$0.00	\$0.00	\$471,679.88	\$16,194,342.64	\$749,408.12	\$471,679.88	\$1,221,088.00	\$14,973,254.64
2025/26	10/1/2025	\$14,973,254.64	\$0.00	\$0.00	\$449,197.64	\$15,422,452.28	\$771,890.36	\$449,197.64	\$1,221,088.00	\$14,201,364.28
2026/27	10/1/2026	\$14,201,364.28	\$0.00	\$0.00	\$426,040.93	\$14,627,405.21	\$795,047.07	\$426,040.93	\$1,221,088.00	\$13,406,317.21
2027/28	10/1/2027	\$13,406,317.21	\$0.00	\$0.00	\$402,189.52	\$13,808,506.73	\$818,898.48	\$402,189.52	\$1,221,088.00	\$12,587,418.73
2028/29	10/1/2028	\$12,587,418.73	\$0.00	\$0.00	\$377,622.56	\$12,965,041.29	\$843,465.44	\$377,622.56	\$1,221,088.00	\$11,743,953.29
2029/30	10/1/2029	\$11,743,953.29	\$0.00	\$0.00	\$352,318.60	\$12,096,271.89	\$868,769.40	\$352,318.60	\$1,221,088.00	\$10,875,183.89
2030/31	10/1/2030	\$10,875,183.89	\$0.00	\$0.00	\$326,255.52	\$11,201,439.40	\$894,832.48	\$326,255.52	\$1,221,088.00	\$9,980,351.40
2031/32	10/1/2031	\$9,980,351.40	\$0.00	\$0.00	\$299,410.54	\$10,279,761.95	\$921,677.46	\$299,410.54	\$1,221,088.00	\$9,058,673.95
2032/33	10/1/2032	\$9,058,673.95	\$0.00	\$0.00	\$271,760.22	\$9,330,434.16	\$949,327.78	\$271,760.22	\$1,221,088.00	\$8,109,346.16
2033/34	10/1/2033	\$8,109,346.16	\$0.00	\$0.00	\$243,280.38	\$8,352,626.55	\$977,807.62	\$243,280.38	\$1,221,088.00	\$7,131,538.55
2034/35	10/1/2034	\$7,131,538.55	\$0.00	\$0.00	\$213,946.16	\$7,345,484.71	\$1,007,141.84	\$213,946.16	\$1,221,088.00	\$6,124,396.71
2035/36	10/1/2035	\$6,124,396.71	\$0.00	\$0.00	\$183,731.90	\$6,308,128.61	\$1,037,356.10	\$183,731.90	\$1,221,088.00	\$5,087,040.61
2036/37	10/1/2036	\$5,087,040.61	\$0.00	\$0.00	\$152,611.22	\$5,239,651.82	\$1,068,476.78	\$152,611.22	\$1,221,088.00	\$4,018,563.82
2037/38	10/1/2037	\$4,018,563.82	\$0.00	\$0.00	\$120,556.91	\$4,139,120.74	\$1,100,531.09	\$120,556.91	\$1,221,088.00	\$2,918,032.74
2038/39	10/1/2038	\$2,918,032.74	\$0.00	\$0.00	\$87,540.98	\$3,005,573.72	\$1,133,547.02	\$87,540.98	\$1,221,088.00	\$1,784,485.72
2039/40	10/1/2039	\$1,784,485.72	\$0.00	\$0.00	\$53,534.57	\$1,838,020.29	\$1,167,553.43	\$53,534.57	\$1,221,088.00	\$616,932.29
2040/41	10/1/2040	\$616,932.29	\$0.00	\$0.00	\$18,507.97	\$635,440.26	\$616,932.29	\$18,507.97	\$635,440.26	\$0.00
			\$19,490,000.00	\$292,350.00	\$8,009,376.26			\$19,490,000.00	\$7,717,026.26	\$27,499,376.26
Interest begins accruing with the first disbursement and will accrue and compound annually each October 1 thereafter, until loan is completely repaid.										
These calculations assume the following disbursement dates:										
FY 2018	\$19,490,000.00									
If disbursements are made on dates other than those above, the interest calculations will be modified and this schedule updated according.										
Total Loan Amount	\$19,490,000.00									
Total Interest	\$8,009,376.26									
Total Repayments	\$27,499,376.26									

Remit Payment to:

Mailing Address:

Florida Department of Transportation
Office of the Comptroller
605 Suwannee Street, MS #10
Tallahassee, FL 32399-0450

Note on Payment for "FDOT SIB Loan - 435202-1

**EXHIBIT “E”
FEDERAL FINANCIAL ASSISTANCE (SINGLE AUDIT ACT)**

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

CFDA No.: 20.507

CFDA Title:

***Award Amount:** \$19,490,000

Awarding Agency: Florida Department of Transportation

Indirect Cost Rate:

****Award is for R&D:**

*The federal award amount may change with supplemental agreements

**Research and Development as defined at §200.87, 2 CFR Part 200

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE SUBJECT TO THE FOLLOWING AUDIT REQUIREMENTS:

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles & Audit Requirements for Federal Awards

www.ecfr.gov

OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*

www.whitehouse.gov/omb/circulars

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT MAY ALSO BE SUBJECT TO THE FOLLOWING:

OMB Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments*

www.whitehouse.gov/omb/circulars

23 USC Chapter 6: Infrastructure Finance

uscode.house.gov/browse.xhtml

TEA-21, Title I – Federal-Aid Highways – Section 1511: State Infrastructure Bank Pilot Program

www.fhwa.dot.gov/tea21/h2400.htm

Title III – Miscellaneous Highway Provisions – Section 350: State Infrastructure Bank Pilot Program

www.fhwa.dot.gov/legsregs/title3.html

23 USC Chapter 1 – Section 129: Toll roads, bridges, tunnels, and ferries

uscode.house.gov/browse.xhtml

AASHTO: Florida SIB Legislation

www.transportation-finance.org

Federal Funding Accountability and Transparency Act (FFATA) Sub-award Reporting System (FSRS)

www.fsrs.gov