

**FLORIDA DEPARTMENT OF TRANSPORTATION - DISTRICT FOUR  
MAINTENANCE MEMORANDUM OF AGREEMENT**

**THIS AGREEMENT**, is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the **DEPARTMENT**, and **Broward County**, a political subdivision existing under the Laws of Florida, hereinafter called the **AGENCY**.

**RECITALS**

A. The **AGENCY** and the **DEPARTMENT** have entered into that certain Wave Project Agreement, dated June 14, 2016 (the "Project Agreement"), under the terms of which the **DEPARTMENT** has agreed to design and construct the 2.8 mile modern streetcar known as The Wave Streetcar, defined as the "Project" in the Project Agreement.

B. The **DEPARTMENT** owns and has jurisdiction over State Road 842 / Broward Blvd and State Road 736 / Davie Blvd.

C. In accordance with the Project Agreement, the **DEPARTMENT** will install portions of the Project within the right-of-way for State Road 842 / Broward Blvd and State Road 736 / Davie Blvd. The portions of the **DEPARTMENT** right-of-way where a portion of the Project will be located and over which the Project will operate, or to which the **AGENCY** reasonably requires access in order to operate and maintain the Project in accordance with the terms of the Project Agreement are defined as the "Department Real Property" in the Project Agreement.

D. Pursuant to the Project Agreement, the **AGENCY** will maintain the Project, including those portions of the Project located on the Department Real Property.

E. The Project Agreement provides that the **DEPARTMENT** and the **AGENCY** shall enter into a Memorandum of Agreement on mutually agreeable terms, which shall provide the **AGENCY** with written authorization permitting the **AGENCY** to operate and maintain those portions of the Project that occupy Department Real Property, and address the responsibility of the **AGENCY** for maintenance of the Department Real Property, and such other matters as are agreed upon between the parties relating to the **AGENCY'S** use of the Department Real Property.

F. The **AGENCY** by Resolution No. \_\_\_\_\_ dated June 13, 2017, attached hereto and by this reference made a part hereof, has approved this Maintenance Memorandum of Agreement.

**AGREEMENT**

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

1. Terms not defined in this Maintenance Memorandum of Agreement shall have the meanings given in the Project Agreement.

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2. AUTHORIZATION TO OCCUPY DEPARTMENT REAL PROPERTY

Subject to the terms and conditions of this Maintenance Memorandum of Agreement, the **DEPARTMENT** authorizes the **AGENCY** to operate and maintain those portions of the Project constructed by the **DEPARTMENT** that occupy Department Real Property within the right-of-way of State Road 842 / Broward Blvd and State Road 736 / Davie Blvd.

3. MAINTENANCE OF FACILITIES

A. In maintaining the Project as provided in the Project Agreement, the **AGENCY** shall ensure proper harmonization between the Project and the Department's existing and future uses of Department Real Property occupied by the Project, within the Area of Maintenance Responsibility illustrated and described in "**EXHIBIT A**," including all road improvements (the "Project Limits").

- 1) The **AGENCY** shall inspect the portions of the Project located on the Department Real Property at such times as necessary to ensure the proper and safe operation of the Project on the Department Real Property, but in any event on at least a yearly basis.
- 2) For all maintenance or restoration activities on Department Real Property, including the area within the Project Limits, the **AGENCY** shall submit to the **DEPARTMENT** a maintenance plan detailing the means and methods for accomplishing repairs in accordance with all **DEPARTMENT** Standards, Procedures and Specifications. This maintenance plan must be submitted and approved by the **DEPARTMENT** prior to commencing any maintenance or repair activities. The plan should at minimum detail how the **AGENCY** will address the following:
  - a. Provide for continuous traffic control and necessary traffic control devices as required for the safe movement of traffic of vehicular and pedestrian traffic past the location of the structure being repaired for the duration of the repair in accordance with **DEPARTMENT** Standards, Procedures and Specifications.
  - b. Provide for the protection of adjacent surrounding property, real estate, vehicles, pedestrians, attachments to the light poles, or other assets during the preparation and recoating of surfaces.
  - c. Provide for containment of debris or materials used in or resulting from the repair.
- 3) After the maintenance plan is approved, the **AGENCY** shall submit a work plan to the **DEPARTMENT** for approval prior to beginning the repair to be performed detailing:
  - a. The proposed date of the repair

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- b. The location of the repair
  - c. The nature of the repair
  - d. The materials to be used for the repair
  - e. The methods to be used for the repair
- 4) The **AGENCY** shall be solely responsible for any damages to the Department Real Property, any surrounding property, real estate, vehicles, pedestrians, or other persons or things occurring as a result of its operation or maintenance of the Project, at no expense to the **DEPARTMENT**.
- 5) If any portion of the Project located on the Department Real Property is damaged such that any portion is not structurally stable or presents a safety hazard to the public, it shall be repaired to a safe condition in a timely manner.
- B. As provided in the Project Agreement, upon Project Completion, the **AGENCY** shall be responsible for maintenance of the portions of the Project located on the Department Real Property and the area within the Project Limits in accordance with the requirements of the TIGER Grant and the Project Construction Grant Agreement. The **AGENCY** shall maintain the portions of the Project located on the Department Real Property and the area within the Project Limits in accordance with the following Federally and State accepted standards (current editions at the time of execution of this Agreement and any amendments hereafter) and bear all costs related thereto: (a) FDOT Plans Preparation Manual (PPM), (b) Florida Green Book, (c) Standard Specifications for Roadway and Bridge Construction, as amended, (d) FDOT Design Standards and (e) Manual on Uniform Traffic Control Devices (MUTCD). Unless otherwise mutually agreed in writing, improvements constructed as part of the Project on Department Real Property shall be maintained to the same dimensions as originally constructed.
- C. The **AGENCY's** performance under this Agreement may be subject to periodic inspections by the **DEPARTMENT** at the discretion of the **DEPARTMENT**.
- D. Any work impacting traffic flow along State Road 842 / Broward Blvd and State Road 736 / Davie Blvd must be coordinated with the **DEPARTMENT**. Lane closures must be submitted for approval in accordance with **DEPARTMENT** procedures and policies and will meet the goals established in the **DEPARTMENT's** Open Roads Policy.
- E. The **AGENCY** acknowledges that the **DEPARTMENT** has or may be required to issue permits for the installation and maintenance of utilities within the Department Real Property and the adjacent **DEPARTMENT** right-of-way. The **AGENCY** shall cooperate with the **DEPARTMENT** and the owners of any permitted utilities to allow the maintenance, inspection, repair and rehabilitation of any permitted utilities (whether provided by the Department, the State or third parties) in, on, under, across, over or through the Department Real Property, upon reasonable notice in compliance with the Department's rules. The **DEPARTMENT** shall require utility permit holders to

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coordinate their efforts with the **AGENCY** to minimize impacts on the **AGENCY'S** ability to operate and maintain the Project.

F. In the event that **AGENCY** contracts with a third party to operate or maintain the Project within the Project Limits, or to perform any maintenance or restoration activities or other work authorized to be performed pursuant to this Agreement, any contract with such third party shall include the following provisions:

- 1) **AGENCY'S** contractor shall, at all times while performing any work pursuant to the terms of Agreement, keep and maintain in full force and effect a Comprehensive General Liability with minimum limits of \$5,000,000.00 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and Worker's Compensation insurance with minimum limits of \$1,000,000.00 per Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability and Worker's Compensation policy without restrictive endorsements, as filed by the Insurance Services Office and shall name the **DEPARTMENT** as an additional insured. All policies must be endorsed to provide the **DEPARTMENT** with at least thirty (30) days notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of work, copies of renewal policies shall be furnished at least (30) days prior to the date of expiration.
- 2) **AGENCY'S** contractor shall furnish **AGENCY** with Certificates of Insurance of Endorsements evidencing the insurance coverages specified herein prior to the beginning performance of work under this Agreement.

#### 4. NOTICE OF MAINTENANCE DEFICIENCIES

A. If, the **DEPARTMENT** determines that the **AGENCY** is not meeting its maintenance responsibility under this AGREEMENT, the **DEPARTMENT** may issue a written notice that a deficiency or deficiencies exist(s) by sending a certified letter to the **AGENCY**. Thereafter, the **AGENCY** shall have a period of ninety (90) days within which to correct the cited deficiency or deficiencies. If said deficiencies are not corrected within the time period, the **DEPARTMENT** may, upon notice to the **AGENCY**, at its option, pursue one or more or a combination of the following items:

- 1) The **DEPARTMENT** may repair or remove any item or a number of items or replace any item or number of items with the standard **DEPARTMENT** item. Corrective actions will be performed with the **DEPARTMENT** and/or its independent contractor's materials, equipment and personnel. The actual cost for such work will be charged to the **AGENCY**.
- 2) If there is no standard equivalent item or if in the **DEPARTMENT'S** discretion the item is not necessary for the operations of the roadway or the Project, the **DEPARTMENT** may remove the item in its entirety and restore the area to a condition acceptable to the **DEPARTMENT**. Corrective actions will be performed with the **DEPARTMENT** and/or its independent contractor's materials, equipment and personnel. The actual cost for such work will be charged to the **AGENCY**.

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- 3) At the discretion of the **DEPARTMENT**, terminate the Agreement in accordance with Paragraph 7 of this Agreement and remove, by the **DEPARTMENT** or its Contractor's personnel, all of the improvements installed under this Agreement and charge the **AGENCY** the reasonable cost of such removal.

5. FUTURE DEPARTMENT IMPROVEMENTS AND ACTIVITIES

A. Upon mutual agreement of the parties, the Project improvements covered by this Agreement may be altered or adjusted at any time in the future as necessary in order that the adjacent state road, including the Department Real Property, may be widened, altered or otherwise changed to meet with future criteria or planning of the **DEPARTMENT**.

B. The **DEPARTMENT** shall exercise its rights under this section in a reasonable manner so as to limit undue interference with the **AGENCY'S** operation and maintenance of the Project. The **DEPARTMENT** will provide the **AGENCY** with reasonable notice of the **DEPARTMENT'S** intent to perform work on the Department Real Property that might impact the operation of the Project and shall coordinate such work with the **AGENCY** to minimize impact to the Project.

C. Each of the **DEPARTMENT'S** agents, consultants, sub-consultants, contractors, and/or sub-contractors, in any contract for work on the Department Real Property, shall agree to indemnify, defend, save and hold harmless the **AGENCY** from all claims, demands, liabilities, and suits of any nature arising out of, because of or due to any intentional and/or negligent act or occurrence, omission or commission of such agents, consultants, sub-consultants, contractors and/or subcontractors. The **DEPARTMENT** shall provide to the **AGENCY** written evidence of the foregoing upon the request of the **AGENCY**. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the **AGENCY** for its own negligence.

6. FUTURE AGENCY IMPROVEMENTS

The **AGENCY** may construct additional improvements as part of the Project within the Project Limits, subject to the following conditions:

A. Plans for any new improvements shall be subject to approval by the **DEPARTMENT**. The **AGENCY** shall not change or deviate from said plans without written approval by the **DEPARTMENT**.

B. The **AGENCY** shall procure a permit and/or Construction Agreement from the **DEPARTMENT**, as appropriate.

C. All improvements shall be developed and implemented in accordance with the terms of this Agreement and appropriate state safety and roadway design standards.

7. AGREEMENT TERMINATION

This Agreement may be terminated under any of the following conditions:

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- A. By the **DEPARTMENT**, if the **AGENCY** fails to perform its duties under this Agreement, following thirty (30) days written notice to the **AGENCY**.
- B. If mutually agreed to by both parties.

Upon termination, the **AGENCY** shall remove all Project improvements from Department Real Property. If it fails to do so within one hundred eighty (180) days of termination, the **DEPARTMENT** may remove the Project improvements and the **AGENCY** shall reimburse the **DEPARTMENT** for its costs of removal of the improvements and restoration of the Department Real Property to the standard condition.

8. AGREEMENT TERM

The term of this Agreement commences upon execution by all parties. The term of this Agreement shall remain in effect until all portions of the Project are removed from the Department Real Property or until earlier terminated pursuant to Section 7 of this Agreement.

9. LIABILITY REQUIREMENTS

Each of the **AGENCY'S** agents, consultants, sub-consultants, contractors, and/or sub-contractors, in any contract for operation or maintenance of the Project within the Project Limits, or for other work authorized to be performed pursuant to this Agreement, shall agree to indemnify, defend, save and hold harmless the **DEPARTMENT** from all claims, demands, liabilities, and suits of any nature arising out of, because of or due to any intentional and/or negligent act or occurrence, omission or commission of such agents, consultants, sub consultants, contractors and/or subcontractors. The **AGENCY** shall provide to the **DEPARTMENT** written evidence of the foregoing upon the request of the **DEPARTMENT**. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the **DEPARTMENT** for its own negligence

- 10. This writing, together with the Project Agreement, embodies the entire Agreement and understanding between the parties hereto and there are no other Agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. This Agreement is intended to supplement the Project Agreement. If there is a conflict between this agreement and the Project Agreement, the terms of the Project Agreement shall control.

- 11. 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 one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to

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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 TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than one year.

12. DISPUTES

The **DEPARTMENT'S** District 4 Secretary and the **AGENCY's** County Administrator shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution or fulfillment of the service hereunder and the character, quality, amount and value thereof; and their decision upon all claims, questions and disputes shall be final and conclusive upon the parties hereto.

13. ASSIGNMENT

This Agreement may not be assigned or transferred by either party in whole or part without the consent of the **DEPARTMENT** and the **AGENCY**.

14. LAWS GOVERNING

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, THE **DEPARTMENT** AND THE **AGENCY** HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

15. NOTICES

Any and all notices given or required under this Agreement shall be in writing and either personally delivered with receipt acknowledgement or sent by certified mail, return receipt requested. All notices shall be sent to the following addresses.

If to the **DEPARTMENT:**

State of Florida Department of Transportation  
Attention: District Maintenance Engineer  
3400 West Commercial Blvd  
Ft. Lauderdale, FL 33309-3421

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If to the **AGENCY:**

Broward County Transportation Department  
Attention: Director of Transportation  
Government Center West  
1 N. University Drive  
Plantation, FL 33324

With Copies to:

County Attorney  
Governmental Center, Room 423  
115 South Andrews Avenue  
Fort Lauderdale, FL 33301

Director of Rail and Capital Programs  
Broward County Transit  
Government Center West  
1 N. University Drive  
Plantation, FL 33324

16. LIST OF EXHIBITS

Exhibit A: Project Location, Description and Maintenance Limits



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**IN WITNESS OF THE FOREGOING**, the parties hereto have executed this Agreement effective the day and year first above written.

BROWARD COUNTY, FLORIDA

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

\_\_\_\_\_  
County Administrator and the  
Ex Officio Clerk of the Broward County  
Board of County Commissioners

By: \_\_\_\_\_  
Mayor  
\_\_\_\_\_ day of \_\_\_\_\_, 2017

Approval:  
  
Insurance requirements  
Approved by Broward County  
Risk Management Division

Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
Government Center Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Facsimile: (954) 357-7641

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

By: \_\_\_\_\_  
Angela J. Wallace  
Deputy County Attorney

\_\_\_\_\_  
Print Name and Title above

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

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

SEAL

By: \_\_\_\_\_  
Annika E. Ashton  
Assistant County Attorney

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

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

**DEPARTMENT:**

ATTEST:

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Executive Secretary  
(SEAL)

By \_\_\_\_\_

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

Approval as to Form:

By \_\_\_\_\_  
Dawn Raduano, District General Counsel

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





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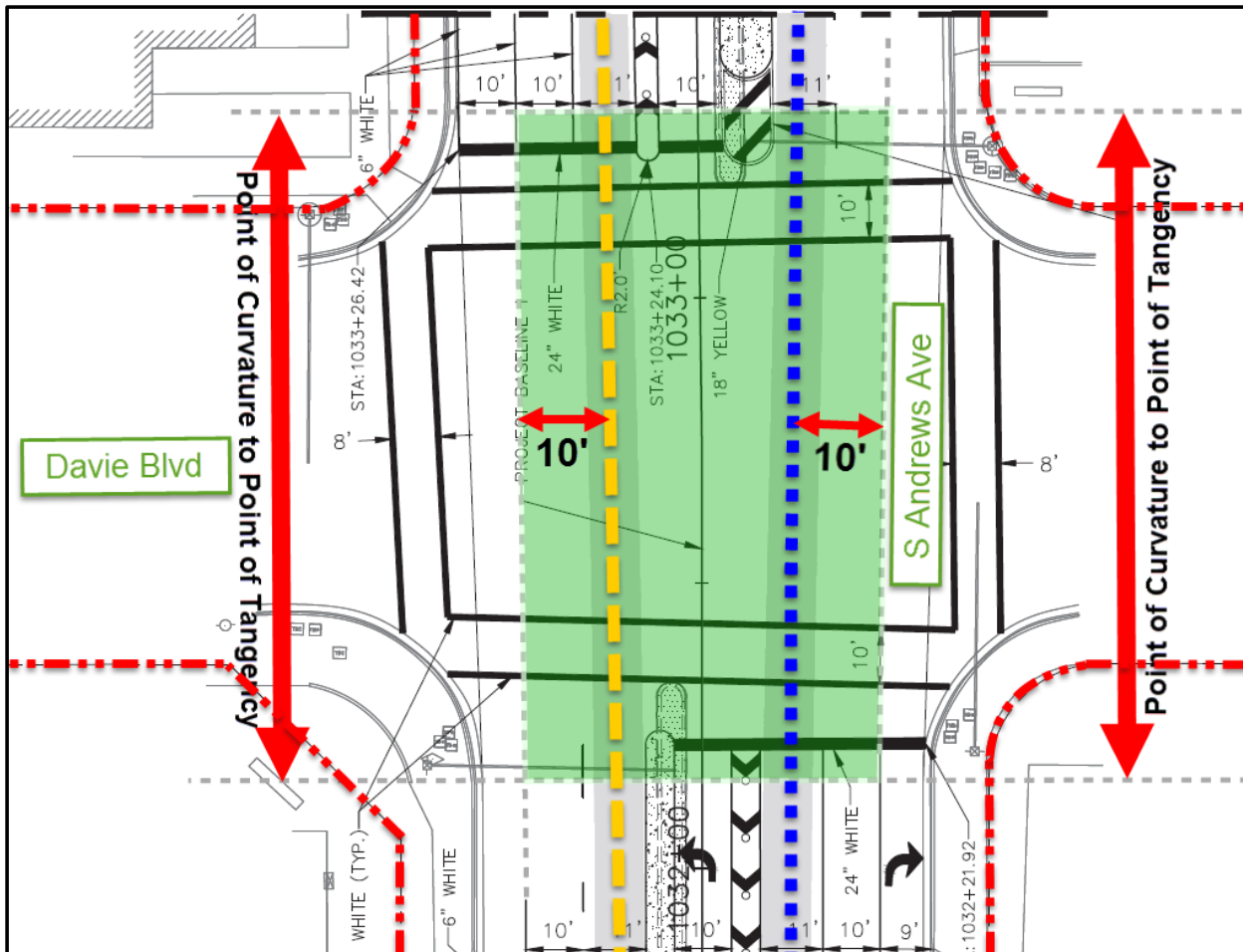
**EXHIBIT A**

**PROJECT LOCATION, DESCRIPTION AND MAINTENANCE LIMITS**

**LEGEND**



-  North-Bound Track
-  South-Bound Track
-  FDOT ROW Line
-  Area of Maint. Resp. by Agency



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### LEGEND



- North-Bound Track
- South-Bound Track
- FDOT ROW Line
- Area of Maint. Resp. by Agency

