

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**STATE INFRASTRUCTURE BANK
LOAN AGREEMENT**

CFDA Number: 20.507

DUNS:

FINANCIAL PROJECT Number:

CONTRACT Number:

THIS STATE INFRASTRUCTURE BANK LOAN AGREEMENT, is entered into between the **STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida ("Department") and **BROWARD COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida ("County").

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 Department has required the County to secure a SIB loan in accordance with the Wave Project Agreement dated June 14, 2016, between the Department and the County regarding the funding, design, construction, operation and maintenance of the 2.8 mile modern streetcar known as The Wave Streetcar.
- D. The Department has determined that the project meets the requirements for a SIB loan.

AGREEMENT

In consideration of the Department making the loan to the County, 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 County 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) "Annual Budget" means the budget, as amended and supplemented from time to time, prepared by the County for each County Fiscal Year in accordance with the laws of the State of Florida.

(4) "Authorized Representative" means the official or officials of the County authorized by ordinance or resolution to sign documents associated with the Loan.

(5) "Balloon Indebtedness" means Debt twenty-five percent (25%) or more of the principal payments of which are due in a single County Fiscal Year, which portion of the principal is not required by the documents pursuant to which such Debt is issued to be amortized by payment or redemption prior to such year.

(6) "County Fiscal Year" means the period commencing on October 1 of each year and continuing through the next succeeding September 30, or such other period as may be prescribed by law.

(7) "Debt" means at any date (without duplication) all of the following to the extent that they are general obligations of the County or are payable in whole or in part from Non-Ad Valorem Revenues: (1) all obligations of the County for borrowed money or evidenced by bonds, debentures, notes or other similar instruments; (2) all obligations of the County to pay the deferred purchase price of property or services, except trade accounts payable under normal trade terms and which arise in the ordinary course of business; (3) all obligations of the County as lessee under capitalized leases; and (4) all indebtedness of borrowers other than the County to the extent guaranteed by, or secured by, Non-Ad Valorem Revenues of the County.

(8) "Disbursement" means each disbursement of any portion of the principal amount of the Loan on behalf of or to the County (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) "Interest Commencement Date" means, for each Disbursement, the thirty first (31th) calendar day after the date of the Disbursement.

(12) "Loan" means the loan made to the County through Disbursements pursuant to this Agreement in the maximum initial principal amount of Thirty Seven Million Two Hundred Sixty Thousand Dollars (\$37,260,000).

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

(14) "Non-Ad Valorem Revenues" means all legally available revenues and taxes of the County derived from any source whatsoever other than ad valorem taxation on property, and which are not restricted by law so as to be unavailable to be applied to pay the Loan Payments and other County debt secured by Non-Ad Valorem Revenues, and to make the other payments, if any, required under the this Loan Agreement.

(15) "Project" means the state capital outlay project financed by this Loan, consisting of the transit circulator, 2.8 mile modern streetcar known as The Wave Streetcar, as more fully described in the Project Agreement, as it may be amended from time to time.

(16) "Project Agreement" means the Wave Project 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.

(17) "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.

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

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

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 COUNTY.

The County warrants, represents, and covenants that:

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

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

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

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

(6) All County representations to the Department, pursuant to the Project Agreement and this Agreement, were and are true and accurate as of the date the Project Agreement and this Agreement were each executed by the County. Since the date of the County's Comprehensive Annual Financial Report for the County Fiscal Year ending September 30, 2015, there has not been any material adverse change in the financial condition or revenues and expenditures of the County. The County 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 County shall take such action as is necessary for compliance.

(7) The County currently receives Non-Ad Valorem Revenues and is legally entitled to covenant to budget and appropriate from such Non-Ad Valorem Revenues amounts necessary to pay the Loan Payments and to make the other payments, if any, required under this Agreement when due. The County's Non-Ad Valorem Revenues are estimated to be sufficient to pay the Loan Payments and to make the other payments, if any, required under this Agreement and to make all other payments required to be made from Non-Ad Valorem Revenues as the same become due.

(8) The County 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 County shall not use the Loan proceeds for the purpose of lobbying the Florida Legislature, the Judicial Branch, or a State agency.

(10) The County 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 County of its obligations under this Agreement.

(11) The County covenants that this Agreement is entered into for the purpose of the Department having immediate access to the County's share of the excess of the total Design-Build

Contract price over the Design-Build Estimate and the County's share of Project Cost Overruns, if any, for the Project in accordance with Sections 4.02(3) and (4) of the Project Agreement, 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 Project Agreement.

2.02. ADDITIONAL PAYMENT AND FINANCIAL COVENANTS OF THE COUNTY.

The County makes the following additional covenants and representations as of the date first above written and such covenants shall continue in full force and effect until the principal and accrued interest on the Loan has been paid in full:

(1) The County has duly approved this Loan Agreement and the covenant to budget and appropriate legally available Non-Ad Valorem Revenues for the payment thereof. The County's approval and execution of this Loan Agreement complies with the provisions of all other agreements by which the County has incurred Debt, including specifically all provisions of such agreements regarding the issuance of additional indebtedness by the County payable from Non-Ad Valorem Revenues.

(2) The County covenants that, so long as the Loan remains unpaid or any amount shall be owed to the Department hereunder, it will appropriate in its Annual Budget, by amendment, if required, Non-Ad Valorem Revenues in amounts sufficient to pay each Loan Payment as each shall become due. In the event that the amount previously budgeted for such purpose is at any time insufficient to pay such amounts, the County covenants to take immediate action to amend its budget so as to budget and appropriate an amount of Non-Ad Valorem Revenues sufficient to pay each such amount to the Department. Such covenants to budget and appropriate from Non-Ad Valorem Revenues shall be cumulative to the extent not paid and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all required payments have been budgeted, appropriated, and actually used to pay such amounts.

(3) Notwithstanding the foregoing, the County does not covenant to maintain any services or programs now provided or maintained by the County which generate Non-Ad Valorem Revenues. Such covenants to budget and appropriate do not create any lien upon or pledge of Non-Ad Valorem Revenues, nor do they preclude the County from pledging in the future Non-Ad Valorem Revenues, so long as the granting of such lien or the making of such pledge will not have the effect of impairing the obligation of the County under this Agreement or of making unavailable sufficient amounts of reasonably anticipated Non-Ad Valorem Revenues required to provide the timely payment of the principal of and interest on the Loan and other payments, if any, required to be made under this Agreement. Such covenant does not require the County to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Department a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the County. Such covenants to budget and appropriate are subject in all respects to the payment of obligations secured by a pledge of Non-Ad Valorem Revenues heretofore or hereafter entered into (including the debt service on bonds and other obligations).

(4) However, the covenants to budget and appropriate in its general Annual Budget or amendments thereto for the purposes and in the manner stated herein shall have the effect of making available for payment of the obligations of the County hereunder the Non-Ad Valorem Revenues of the County, and of placing on the County a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the restrictions of Section 129.07, Florida Statutes, and, to the extent and only to the extent necessary to avoid a violation of Article VII, Section 12 of the Florida Constitution, subject, further, to the payment of services and programs which are for essential government services and programs affecting the health, welfare, and safety of the inhabitants of the County or which are legally mandated by applicable law. The County agrees that its covenant and agreement to budget and appropriate Non-Ad Valorem Revenues shall be deemed entered into for the benefit of the Department and this obligation may be enforced by a court of competent jurisdiction.

(5) Without the prior written consent of the Department, until either this Agreement is terminated upon Project Completion without any Disbursement having been made, as provided in section 5.05, or the Loan has been repaid in full following Project Completion, the County shall not incur any Debt payable from or secured by (1) a lien upon and pledge of all or any specified portion of the Non-Ad Valorem Revenues or (2) a covenant to budget and appropriate from Non-Ad Valorem Revenues (which includes any increases in the outstanding amount under any line of credit or similar arrangement), unless, the average annual Non-Ad Valorem Revenues received by the County for the two prior County Fiscal Years for which audited financial statements are available are equal to at least 1.5 times the existing and projected maximum annual debt service on existing obligations and the proposed obligations payable from or secured by Non-Ad Valorem Revenues calculated as provided in Exhibit "B" hereto. For the purposes of these covenants, maximum annual debt service means the actual maximum annual debt service on all then outstanding and proposed Debt secured by and/or payable from Non-Ad Valorem Revenues. For purposes of determining actual maximum annual debt service, Balloon Indebtedness shall be deemed to be amortized at an annual rate of 15% of the original (or estimated as the case may be) principal amount of such Debt.

(6) The County agrees that it shall deliver to the Department a certificate of compliance with the requirements set forth in the foregoing subsection (5): (i) as soon as practicable after the end of each County Fiscal Year, but no later than the completion of the County's audited financial statements for such Fiscal Year; and (ii) in the case of the issuance of debt payable from the Non-Ad Valorem Revenues, at least 10 days prior to the issuance of such Debt.

(7) The Finance Director of the County shall, at the reasonable request of the Department, discuss the County's financial matters with the Department, or its respective designee.

ARTICLE III – THE LOAN

3.01. PRINCIPAL AMOUNT OF LOAN.

The Department agrees to lend to the County, and the County 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 that have not been repaid as of the Interest Commencement Date for each Disbursement, 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. Interest accrued on a Disbursement that remains unpaid as of the annual anniversary of the Interest Commencement Date for that Disbursement shall be added to the principal amount of the Loan.

3.02. FINANCING RATE.

Beginning on the Interest Commencement Date of a Disbursement, interest shall accrue on the amount of the Disbursement at the Financing Rate. The Financing Rate is 3.0% per annum, compounded annually, using an actual-days-elapsed/365 day counting convention.

3.03. LOAN DISBURSEMENTS.

The Department shall make and receive Disbursements of the Loan for payment of the County's share of the excess of the total Design-Build Contract price over the Design-Build Estimate and the County's share of Project Cost Overruns, if any, in accordance with the Project Agreement. Under no circumstances shall the sum of the Disbursements exceed \$37,260,000. 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 in the event that the Department has notified the County that an event of default has occurred under this Agreement or the Project Agreement. Any waiver of this provision by Disbursement following an event of default by the County under the terms of this Agreement or the Project Agreement will not constitute a continuing waiver of this provision and the Department may refuse to make further Disbursements without any liability to the County 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.

3.04. LOAN PAYMENTS.

The County has advised the Department that it intends to repay all Loan Disbursements prior to the Interest Commencement Date. If a balance remains due on the Loan as of ninety (90) days after Project Completion (as that term is defined in the Project Agreement), the Department and the County will establish a Loan Payment schedule that amortizes the total amount of the Loan then due over a period selected by the County not to exceed twenty (20) years, with equal Loan Payments in an amount sufficient to pay the principal and interest to be due beginning on the first October 1 following Project Completion, and continuing thereafter on October 1 of each year, with a final Loan Payment in the remaining amount of unpaid principal and accrued interest. Loan Payments shall be credited first to interest accrued on the principal amount of the Loan, if any, then to principal. The County may prepay the Loan in full, or in part, without penalty. After repayment of the Loan, including all outstanding principal and interest, the County may request that the Department issue written acknowledgment of the County's full repayment and satisfaction

of the Loan. The Department shall issue such acknowledgment no later than thirty (30) days after the date of the County's request.

ARTICLE IV - DEFAULTS AND REMEDIES

4.01. EVENTS OF DEFAULT.

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

- (1) Failure of the County to make a Loan Payment when due.
- (2) The making of any warranty, representation or other statement by the County contained in this Agreement, the Project 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.
- (3) Entry of an order or decree appointing a receiver for any part of the Project, with the acquiescence of the County; or if such an order or decree is entered without the consent or acquiescence of the County, the failure thereafter by the County to obtain an order or decree vacating, discharging, or staying the appointment within 60 days.
- (4) The initiation of any proceeding, with the acquiescence of the County, for the purpose of effecting a composition between the County 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.
- (5) The initiation of any bankruptcy, insolvency, or other similar proceeding by the County 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 County under federal or state bankruptcy or insolvency law now or hereafter in effect, if the County (as applicable) does not obtain an order dismissing the proceeding within 60 days after filing.
- (6) Any failure by the County to comply with the material provisions of the Project Agreement.
- (7) Any other failure by the County 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 County. 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.

4.02. 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 County to remit to the Department Non-Ad Valorem Revenues sufficient to satisfy its payment obligations under this Agreement.

(2) By action or suit in equity require the County to account for the receipt, use, application, or disposition of the Non-Ad Valorem 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 County 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 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 4.01(1).

(8) By exercising remedies available under the Project Agreement.

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 County elect to terminate the Department's continuing obligations under 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.

For a failure by the County to budget and appropriate sufficient Non-Ad Valorem Revenues to pay the Loan Payments, when due, the Department may, in its sole discretion, also withhold funding from the Department work program in the geographical area of the County, in amounts sufficient to offset the Loan Payments that have not been made.

4.03. 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.

ARTICLE V - GENERAL PROVISIONS

5.01. 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.

5.02. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

The County acknowledges 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 consents 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 County after written notification to the County. The County shall not assign its rights and obligations under this Agreement without the prior written consent of the Department.

5.03. AMENDMENT OF AGREEMENT.

This Agreement may be amended in writing executed by both the Department and the County with same or similar formality to this Agreement, except that no amendment shall be permitted which is inconsistent with any applicable State or Federal law.

5.04. ANNULMENT OF AGREEMENT.

This Agreement will be deemed annulled if the Project Agreement is terminated for any reason prior to any Disbursement.

5.05. SUSPENSION AND TERMINATION.

This Agreement shall terminate if, at the time of Project Completion, no Disbursement of the Loan has been made.

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 County, 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 County shall repay the SIB according to the provisions of the Agreement, or as otherwise agreed upon, in writing, by the Department and the County. 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 County's obligation to repay the Loan.

The Department reserves the right to unilaterally cancel this Agreement for refusal by the County 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.

5.06. 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.

5.07. 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."

5.08. MONITORING PROCEDURES, AUDIT REPORTS, AND RECORD RETENTION.

The administration of resources awarded through the Department to the County 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 County 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 County agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The County 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 County, 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 County 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 County 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 "A" to this Agreement provides the required Federal award identification information needed by the County 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 County 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 County 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 County 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 County is exempt from Federal audit requirements for that fiscal year. However, the County 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 County's audit period for each applicable audit year. In the event the County 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 County's resources obtained from other than Federal entities).

(d) The County 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 County'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 County 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 County shall permit the Department, or its designee, the CFO or State of Florida Auditor General access to the County'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 County 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 County 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 County shall further permit access to all Project records by the Secretary of the United States Department of Transportation and the Comptroller General of the United States, or their designees.

5.09 EQUAL EMPLOYMENT OPPORTUNITY.

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

5.10 PROHIBITED INTERESTS AND ACTS.

Neither the County, nor any of its 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 County shall further diligently abide by all provisions of Florida law regulating it 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: The County 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 County will review the U.S. GSA System of Award Management at <https://www.sam.gov>. The County 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.

The County 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 County'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.

5.11 NO OBLIGATION TO THIRD PARTIES.

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

5.12 BONUS OR COMMISSION.

By execution of the Agreement the County represents 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.

5.13 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.

5.14 ENTIRE AGREEMENT.

This Agreement and the Project 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. 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.

In the event of conflict between the terms and conditions of this Agreement and the terms and conditions contained in any exhibits, schedules and attachments attached to this Agreement, 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.

5.15 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 County: Broward County
Governmental Center, Room 409
115 South Andrews Avenue
Fort Lauderdale, FL 33301
Attention: County Administrator

With a copy to: County Attorney
Governmental Center, Room 423
115 South Andrews Avenue
Fort Lauderdale, FL 33301

5.16 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.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION

By: _____

Legal Review (Department)

Date: _____

COUNTY

ATTEST:

Broward County, by and through
its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor

____ day of _____, 2017

Approved as to form by:

Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____
Annika E. Ashton (Date)
Assistant County Attorney

By _____
Angela J. Wallace (Date)
Deputy County Attorney

EXHIBIT "A"
FEDERAL FINANCIAL ASSISTANCE (SINGLE AUDIT ACT)

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

CFDA No.: 20.507

CFDA Title:

***Award Amount:** \$ 37,260,000

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.fsr.gov

EXHIBIT B

Covenant Compliance Certificate

Non-Ad Valorem Revenues (average of actual receipts over the prior two years) must cover existing and projected maximum annual debt service on Debt secured by such Non-Ad Valorem Revenues by at least 1.50x. This covenant shall be calculated as shown below:

Revenues:

Total Governmental Fund Revenues
Less: Ad Valorem Revenues
Less: Non-Ad Valorem Revenues otherwise pledged(1)

Total Net Non-Ad Valorem Revenues Available

Expenditures:

Essential Expenditures:
General Government
Public Safety
Total Essential and Legally Mandated Expenditures
Less: Essential Expenditures Paid From Ad Valorem Revenues Net of Ad Valorem Debt Service

Adjusted Expenditures

Net Legally Available Non-Ad Valorem Revenues (2 Yr Avg) Existing and Projected Maximum Annual Debt Service Ratio (must be at least 1.50x)

(1) Refers to Non-Ad Valorem Revenues that are pledged to bonded debt that has a prior lien on such Non-Ad Valorem Revenues.

WITNESS my hand this _____ day of _____, 201_

BROWARD COUNTY

Name:
Title: