

AGREEMENT

among

BROWARD COUNTY

and

CITY OF FORT LAUDERDALE

and

DOWNTOWN DEVELOPMENT AUTHORITY
OF THE CITY OF FORT LAUDERDALE

and

BROWARD METROPOLITAN PLANNING ORGANIZATION

and

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

Regarding

TRANSFER OF FUNDS RELATED TO THE WAVE MODERN STREETCAR PROJECT
TO THE FLORIDA DEPARTMENT OF TRANSPORTATION

This Agreement to Transfer Funds Related to the Wave Modern Streetcar Project (“Agreement”) is entered into this _____ day of _____, 2017 by and among: BROWARD COUNTY, a political subdivision of the State of Florida, (“County”), CITY OF FORT LAUDERDALE, a municipal corporation organized and existing under the laws of the State of Florida, (“City”), DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF FORT LAUDERDALE, a body politic and corporate and an agency of the City of Fort Lauderdale (“DDA”), SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY, a body politic and corporate and an agency of the State of Florida created pursuant to Chapter 343, Florida Statutes (“SFRTA”), and BROWARD METROPOLITAN PLANNING ORGANIZATION, created pursuant to Section 339.175, Florida Statutes (“MPO”); (County, City, DDA, SFRTA, and MPO are sometimes collectively referred to as the Parties or individually as Party).

RECITALS

A. The Parties entered into the WAVE Modern Streetcar Partnership Agreement dated April 16, 2013, as amended January 28, 2014 (“Wave Partnership Agreement”) for the planning, finance, design, implementation, project sponsorship,

ownership, operations, and maintenance of the Wave Modern Streetcar Project (“Project”).

B. Pursuant to the Wave Partnership Agreement, SFRTA served as the sponsor of the Project and applied for Project funding from the United States Department of Transportation.

C. The City and SFRTA entered into an agreement dated December 5, 2014 (“Wave City Direct Agreement”) for the City to transfer certain capital funds to SFRTA for the Project.

D. The County and SFRTA entered into an agreement dated June 1, 2015 (“Wave County Direct Agreement”) for the County to fund certain Project improvements.

E. The DDA and SFRTA entered into an agreement dated January 9, 2014 (“Wave DDA Direct Agreement”) for the DDA to provide administrative support and services for the Project.

F. The County and the Florida Department of Transportation (“FDOT”) entered into a Wave Project Agreement dated June 14, 2016 for FDOT and the County to assume certain responsibilities for design, construction, and funding for the Project.

G. The County, City, and the DDA entered into an Interlocal Agreement dated June 15, 2016 allocating funding responsibilities for the local share of capital cost overruns for the Project.

H. On June 25, 2016, the United States Department of Transportation, Office of the Secretary, authorized the transfer of sponsorship for the Project from to SFRTA to FDOT.

I. FDOT and SFRTA entered into a Wave Project Assumption Agreement dated August 26, 2016 for FDOT to become the Project sponsor and assume certain responsibilities for the Project (“Project Assumption Agreement”), as amended by the First Amendment to Wave Project Assumption Agreement dated _____, 2017.

J. The Parties desire to effectuate the transfer of specific funds committed to the Project from SFRTA to FDOT.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Representations: The foregoing recitals are true and correct and by this reference are incorporated herein.

2. Purpose of Agreement: The purpose and intent of this Agreement are to provide for the transfer of the remaining balance of specific funds committed to the Project from SFRTA to FDOT.

3. Funds to be transferred from SFRTA to FDOT:

3.1 County: The County paid One Million Four Hundred Seventy-Six Thousand, Nine Hundred Thirty-Nine Dollars (\$1,476,939) to SFRTA of which SFRTA has expended Five Hundred Forty Nine Thousand Seven Hundred Ninety Dollars (\$549,790) for the Project, leaving a balance in the amount of Nine Hundred Twenty-Seven Thousand, One Hundred Forty-Nine Dollars (\$927, 149) as of June 7, 2017 (the "County Balance"). The County authorizes SFRTA to use the County Balance and to transfer the County Balance to FDOT in accordance with the terms of the Project Assumption Agreement. The County acknowledges that the amount transferred to FDOT may be less than the County Balance if SFRTA has expended funds from the County Balance pursuant to the terms of the Wave County Direct Agreement. SFRTA shall remit such sum to FDOT for payment by FDOT of capital costs of the Project as provided in the Wave Project Agreement, on or promptly after the later of the Approval Date or the Adoption Date (as those terms are defined in the Project Assumption Agreement). Upon transfer of the County Balance to FDOT, SFRTA shall be relieved any further obligations under the Wave County Direct Agreement.

3.2 City: The City paid \$16,044,568 (\$8,500,000 + \$7,544,568) to SFRTA of which SFRTA has expended Six Million Thirty-Seven Thousand Five Hundred Seventy-Four Dollars (\$6,037,574) for the Project, leaving a balance in the amount of Ten Million Six Thousand Nine Hundred Ninety-Four Dollars (\$10,06,994) as of June 8, 2017 (the "City Balance"). The City authorizes SFRTA to use the City Balance and to transfer the City Balance to FDOT in accordance with the terms of the Project Assumption Agreement. The City acknowledges that the amount transferred to FDOT may be less than the City Balance if SFRTA has expended funds from the City Balance pursuant to the terms of the Wave City Direct Agreement. SFRTA shall remit such sum to FDOT for payment by FDOT of capital costs of the Project as provided in the Wave Project Agreement, on or promptly after the later of the Approval Date or the Adoption Date (as those terms are defined in the Project Assumption Agreement). Upon SFRTA's transfer of the City Balance to FDOT, SFRTA shall be relieved any further obligations under the Wave City Direct Agreement

3.3 MPO: The MPO committed Eight Million One Hundred Forty Thousand Dollars (\$8,140,000), available to it from the Federal Transit Administration ("FTA"), Three Million Nine Hundred Eleven Thousand Two Hundred Dollars (\$3,911,200) of which were "flexed" to FTA and Four Million Two Hundred Twenty-Eight Thousand Eight Hundred Dollars (\$4,228,800) of which were "exchanged" with local funds by SFRTA. SFRTA will assign and transfer the remaining balance of funds that the MPO committed to the Project and for which SFRTA has obtained the rights and assigns and transfers any rights it has to the remaining balance of MPO Flex Monies (as that term is defined in the Project Assumption Agreement), to FDOT as outlined in the Project Assumption Agreement.

3.4 DDA SIB Loan: The City, DDA, and SFRTA are parties to a federally-funded State Infrastructure Bank Loan Agreement entered into effective December 5, 2014, pursuant to which FDOT agreed to extend a loan in the initial principal amount of Nineteen Million Four Hundred Ninety Thousand Dollars (\$19,490,000), to be used for capital costs of the Project (“DDA SIB Loan”). No disbursements of the SIB Loan have been made as of the date of this Agreement. The DDA, the City, SFRTA, and FDOT will take action to amend and replace the DDA SIB Loan agreement to remove SFRTA and provide for expenditure of loan proceeds by FDOT as outlined in the Project Assumption Agreement.

3.5 DDA: The DDA, through the City, paid One Million One Hundred Dollars (\$1,100,000) to SFRTA of which SFRTA has expended [_____] Dollars (\$_____) for the Project, leaving a balance in the amount of [_____] Dollars (\$[_____]) as of June 7, 2017 (the “DDA Balance”). The DDA authorizes SFRTA to use the DDA Balance and to transfer the DDA Balance to FDOT in accordance with the terms of the Project Assumption Agreement. SFRTA shall remit such sum to FDOT for payment by FDOT of capital costs of the Project as provided in the Wave Project Agreement, on or promptly after the later of the Approval Date or the Adoption Date (as those terms are defined in the Project Assumption Agreement).

4. Vehicle Maintenance Facility: The Vehicle Maintenance Facility Property (“VMF Property”) is identified as Site K in the Wave City Direct Agreement and was conveyed to SFRTA by the City by Special Warranty Deed dated June 25, 2015. SFRTA conveyed fee title to the VMF Property to FDOT, at no cost to FDOT by Special Warranty Deed dated October 12, 2016. The VMF Property will be transferred to the County as outlined in the Project Assumption Agreement and Wave Project Agreement.

5. Notices: Whenever the Parties desire to give notice to another, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the Party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For 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

For City: City of Fort Lauderdale
City Hall
100 North Andrews Avenue
Fort Lauderdale, FL. 33301
Attention: City Manager

For DDA: Downtown Development Authority of the City of
Fort Lauderdale
305 South Andrews Avenue, Suite 301
Fort Lauderdale, FL 33301
Attention: Executive Director

For SFRTA: South Florida Regional Transportation Authority
800 North West 33rd Street
Pompano Beach, Florida 33064
Attn: Executive Director

With a copy to: South Florida Regional Transportation Authority
800 North West 33rd Street
Pompano Beach, Florida 33064
Attn: General Counsel

For MPO: Broward MPO
Trade Centre South
100 West Cypress Creek Road
8th Floor, Suite 850
Fort Lauderdale, FL. 33309
Attention: Executive Director

6. Binding Effect: Each of the undersigned Parties represent that it has been empowered by its respective Party to enter into this Agreement and to bind such Party to the commitments and undertakings contained herein. The provisions, conditions, terms, and covenants contained herein shall be of a binding effect. The benefits and advantages hereof shall inure to the respective Parties, and the respective successors, and assigns.

7. Default: In the event that any of the Parties fails to timely meet its respective commitment as set forth herein, such Party shall be considered a defaulting Party. The other Parties shall have all remedies available at law and equity against the defaulting Party. The defaulting Party shall be liable for reasonable attorney's fees and costs.

8. Severability: If any part, term, or provision of this Agreement is determined by the courts to be invalid, illegal, or in conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

9. Merger: This document represents the final and complete understanding of the Parties and incorporates, includes, and supersedes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. There are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

10. Joint Preparation: Each Party acknowledges that it has sought and received whatever competent advice and counsel as was necessary for it to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement resulted from the joint effort of all Parties. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties.

11. Counterparts: This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

12. Further Assurance: The Parties shall execute all such further instruments, and agree to take all such further actions that may be reasonably required by any Party to fully effectuate the terms and provisions of this Agreement and the transactions contemplated herein.

13. Modification: No change or modification of this Agreement, or waiver of any of the provisions of the Agreement shall be valid unless in writing and signed by all Parties hereto.

14. Effective Date: This Agreement shall become effective upon full execution by the Parties.

15. Multiple Originals: This Agreement may be executed in two or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

(The remainder of this page is left intentionally blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this AGREEMENT, AMONG BROWARD COUNTY, THE CITY OF FORT LAUDERDALE, THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF FORT LAUDERDALE, THE BROWARD METROPOLITAN PLANNING ORGANIZATION, AND THE SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY, TO TRANSFER FUNDS RELATED TO THE WAVE MODERN STREETCAR PROJECT TO THE FLORIDA DEPARTMENT OF TRANSPORTATION on the respective dates under each signature:

Broward County through its Board of County Commissioners, signing by and through its County Administrator, authorized to execute same by Board action on the _____ day of _____, 2017.

COUNTY

Broward County, by and through
its County Administrator

By _____
Bertha Henry
Broward County Administrator

_____ 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

Angela J. Wallace (Date)
Deputy County Attorne

AJW/AEA
06/10/18

AGREEMENT, AMONG BROWARD COUNTY, THE CITY OF FORT LAUDERDALE, THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF FORT LAUDERDALE, THE BROWARD METROPOLITAN PLANNING ORGANIZATION, AND THE SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY, TO TRANSFER FUNDS RELATED TO THE WAVE MODERN STREETCAR PROJECT TO THE FLORIDA DEPARTMENT OF TRANSPORTATION.

CITY OF FORT LAUDERDALE, through its City Commission, signing by and through its Mayor or Vice-Mayor, authorized to execute the same by Board action on the _____ day of _____, 2017

WITNESSES:

CITY

Signature of Witness

By _____
Mayor

Print of Type Name of Witness

_____ day of _____, 2017.

Signature of Witness

By _____
City Manager

Print or Type Name of Witness

ATTEST:

City Clerk

Approved as to legal form

City Attorney

AGREEMENT, AMONG BROWARD COUNTY, THE CITY OF FORT LAUDERDALE, THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF FORT LAUDERDALE, THE BROWARD METROPOLITAN PLANNING ORGANIZATION, AND THE SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY, TO TRANSFER FUNDS RELATED TO THE WAVE MODERN STREETCAR PROJECT TO THE FLORIDA DEPARTMENT OF TRANSPORTATION.

DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF FORT LAUDERDALE, through its BOARD OF DIRECTORS, signing by and through its Chair or Vice-Chair, authorized to execute the same by Board action on the ____ day of _____, 2017.

WITNESSES:

DDA

Signature of Witness

By _____
Chair

Print of Type Name of Witness

____ day of _____, 2017.

Signature of Witness

Print or Type Name of Witness

Approved as to legal form

AGREEMENT, AMONG BROWARD COUNTY, THE CITY OF FORT LAUDERDALE, THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF FORT LAUDERDALE, THE BROWARD METROPOLITAN PLANNING ORGANIZATION, AND THE SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY, TO TRANSFER FUNDS RELATED TO THE WAVE MODERN STREETCAR PROJECT TO THE FLORIDA DEPARTMENT OF TRANSPORTATION.

BROWARD METROPOLITAN PLANNING ORGANIZATION, through its Board of Directors, signing by and through its Chair or Vice-Chair, authorized to execute the same by Board action on the ____ day of _____, 2017

ATTEST:

BROWARD MPO, by and through its Board of Directors

By: Gregory Stuart, Executive Director

By _____, Chair

____ day of _____, 2017.

Approved as to form by:
Attorney for Broward MPO

By _____
Alan L. Gabriel,
MPO General Counsel

AGREEMENT, AMONG BROWARD COUNTY, THE CITY OF FORT LAUDERDALE, THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF FORT LAUDERDALE, THE BROWARD METROPOLITAN PLANNING ORGANIZATION, AND THE SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY, TO TRANSFER FUNDS RELATED TO THE WAVE MODERN STREETCAR PROJECT TO THE FLORIDA DEPARTMENT OF TRANSPORTATION.

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY, through its governing board, signing by and through its Chair or Vice-Chair, authorized to execute the same by Board action on the ____ day of _____, 2017

SFRTA

By: _____, Chair

ATTEST:

Jack Stephens, Executive Director

APPROVED AS TO FORM:

Teresa J. Moore, General Counsel