

AGREEMENT

between

BROWARD COUNTY

and

CITY OF FORT LAUDERDALE

for

INSTALLATION & MAINTENANCE OF LANDSCAPING

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between

BROWARD COUNTY

and

CITY OF FORT LAUDERDALE

for

INSTALLATION & MAINTENANCE OF LANDSCAPING

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

AND

CITY OF FORT LAUDERDALE, a municipal corporation located in Broward County, Florida, organized and existing under the laws of the state of Florida, hereinafter referred to as "MUNICIPALITY."

WHEREAS, COUNTY has received a Broward Boulevard Livable Mobility Grant ("Grant") and the parties desire to implement a key component of the Grant to increase landscaping along Broward Boulevard for beautification and to improve the comfort of the traveling public; and

WHEREAS, it is of mutual benefits to the residents of COUNTY and MUNICIPALITY to beautify the right-of-way of Broward Boulevard by the installation of landscaping as defined herein; and

WHEREAS, COUNTY has determined that it is cost effective for COUNTY to furnish and install landscaping improvements within the jurisdictional limits of MUNICIPALITY, provided that MUNICIPALITY agrees to maintain the landscaping upon installation; and

WHEREAS, MUNICIPALITY has expressed its desire to maintain the improvements; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, COUNTY and MUNICIPALITY agree as follows:

ARTICLE 1  
DEFINITIONS AND IDENTIFICATIONS

For purposes of this Agreement, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - means this document, Articles 1 through 9, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **Board** - The Broward County Board of County Commissioners.
- 1.3 **Contract Administrator** - The Broward County Administrator, the Director of the Broward County Transportation Department, or the designee of such County Administrator or Director. The primary responsibilities of Contract Administrator are to coordinate and communicate with MUNICIPALITY and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.4 **County Administrator** – The administrative head of COUNTY pursuant to Sections 3.02 and 3.03 of the Broward County Charter.
- 1.5 **County Attorney** - The chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.6 **Department** shall mean the Broward County Transportation Department.
- 1.7 **Landscaping** shall mean living plant materials such as, but not limited to, grasses, trees, or palms, and nonliving durable materials commonly used in environmental design, such as, but not limited to, curbing, rocks, pebbles, sand, paving, decorative pavers, grading, and pump and irrigation systems.

ARTICLE 2  
SCOPE

COUNTY and MUNICIPALITY shall:

- 2.1 COUNTY shall install or cause to be installed Landscaping which is described and located as set forth on Exhibit "A" within the jurisdiction of MUNICIPALITY.

COUNTY shall apply for permits to install Landscaping located in rights-of-way under MUNICIPALITY's or Florida Department of Transportation (FDOT) jurisdiction. Following installation, COUNTY shall provide an as-built drawing to MUNICIPALITY. The installation of Landscaping shall be at no cost to MUNICIPALITY. The Landscaping shall remain the property of COUNTY. If requested by COUNTY, MUNICIPALITY shall provide easement(s) for any Landscaping located on property owned in fee simple by MUNICIPALITY, in a form acceptable to COUNTY prior to the installation of the Landscaping, if requested by COUNTY. In the event an easement is required, COUNTY shall provide a minimum of three months' notice to MUNICIPALITY prior to the scheduled start date of installation.

2.2 MUNICIPALITY agrees to maintain, or cause to be maintained, at its sole cost and expense, the Landscaping set forth on Exhibit "A" in compliance with any and all applicable laws which shall include, but not be limited to, laws and regulations relating to the Americans with Disabilities Act of 1990, as currently enacted or as may be amended from time to time ("ADA"). MUNICIPALITY's maintenance shall be in compliance with FDOT's landscape safety and plant care guidelines and shall include, but not be limited to:

- Maintenance of all installed plants, which means the proper watering and fertilization of all plants and keeping them free as practicable from disease and harmful insects
- Mulching the plant beds
- Keeping landscaping free of weeds
- Mowing the grass to a proper length
- Properly pruning all plants which includes (1) removing dead or diseased parts of plants, or (2) pruning such parts thereof which present a visual hazard or physical obstacle to the use of the right-of-way or for those using the roadway
- Removing or replacing dead or diseased plants in their entirety, or removing or replacing those that fall below original project standards. All plants removed for whatever reason shall be replaced by plants of the same size and grade as specified in the original plans and specifications
- Keeping litter removed from the median, roadway and pedestrian areas where new landscaping material is added

MUNICIPALITY shall maintain the entire irrigation system and its parts in working order according to the original approved plans and specifications, and shall operate said irrigation system according to applicable South Florida Water Management Division regulations. As part of such maintenance responsibility, MUNICIPALITY shall keep the irrigation system in good working order and repair or replace defective or worn out irrigation system parts and equipment, which system parts and equipment shall include, but not be limited to, pumps, pipes, and sprinkler heads. MUNICIPALITY's responsibility to keep the system in good

working order shall include all necessary maintenance, repair, and replacement of any type or nature, including, but not limited to, maintenance, repair, and replacement due to normal wear and tear, acts of God, vandalism, and accidents. MUNICIPALITY shall be responsible for the costs of all utilities relating to the maintenance of the Landscaping which shall include, but not be limited to, the costs of water and electricity.

MUNICIPALITY shall take all necessary steps to maintain the Landscaping in a manner to protect against injury to any person or property. Prior to MUNICIPALITY accepting the above mentioned maintenance responsibilities, MUNICIPALITY shall have the opportunity to inspect each site to verify that the Landscaping was installed in compliance with all applicable laws and is not defective or damaged.

MUNICIPALITY shall be responsible to remedy any and all damage to Landscaping, of whatever kind or nature, including, but not limited to, maintenance, repair, and replacement due to normal wear and tear, acts of God, vandalism, and accidents, and shall return the Landscaping to the specifications set forth on Exhibit "A." In the event that MUNICIPALITY is put on notice that the Landscaping suffered significant damage, MUNICIPALITY shall immediately report the damage to COUNTY and MUNICIPALITY shall immediately take any and all steps reasonably necessary to protect against injury to any person or property. In the event COUNTY is notified that the Landscaping suffered damage, COUNTY shall notify MUNICIPALITY so that MUNICIPALITY can take all reasonable steps necessary to protect against injury to any person or property.

- 2.3 COUNTY and MUNICIPALITY agree and understand that this Agreement does not change the COUNTY road functional classification.
- 2.4 The maintenance obligations of MUNICIPALITY as set forth in this Agreement may be performed by MUNICIPALITY through the use of its employees or MUNICIPALITY may enter into a contract with a third party to perform the services. In the event MUNICIPALITY contracts with a third party, MUNICIPALITY shall remain fully responsible hereunder and shall ensure that its contractor complies at all times with each and every term, condition, duty, and obligation set forth herein.

ARTICLE 3  
TERM AND TERMINATION

- 3.1 The term of this Agreement shall begin on the date it is fully executed by both parties and shall terminate as provided for in Sections 3.2 through 3.6 herein below.
- 3.2 This Agreement may be terminated for cause by COUNTY, through action of the

Board if MUNICIPALITY has not corrected the breach within sixty (60) days of written notice given by COUNTY to MUNICIPALITY setting forth the breach. If MUNICIPALITY corrects the breach within sixty (60) days after written notice of same, to the sole satisfaction of COUNTY, the Agreement shall remain in full force and effect. If such breach is not corrected and improved within sixty (60) days of receipt of notice of breach, COUNTY may terminate the Agreement. Specifically in the case of MUNICIPALITY's requirement to maintain or replace the Landscaping, COUNTY, at the option of Contract Administrator, may cause such breach to be corrected and improved and bill MUNICIPALITY for the costs of such correction and improvement, or terminate this Agreement. If COUNTY opts to correct and improve the breach and bills MUNICIPALITY for same, MUNICIPALITY shall then remit to COUNTY the amount so billed within sixty (60) days of MUNICIPALITY's receipt thereof.

- 3.3 Termination of this Agreement for cause shall include, but not be limited to, failure of MUNICIPALITY to suitably perform the services required by Article 2 herein, failure of MUNICIPALITY to maintain the Landscaping pursuant to the terms of this Agreement, or a failure of MUNICIPALITY to continuously perform the services required by the terms and conditions of this Agreement in a manner calculated to meet or accomplish the objectives set forth herein, notwithstanding whether any such breach was previously waived or cured.
- 3.4 This Agreement may be terminated for convenience by COUNTY upon sixty (60) days' written notice given by COUNTY to MUNICIPALITY. This Agreement may also be terminated by County Administrator upon such notice as County Administrator deems appropriate in the event that County Administrator determines that termination is necessary to protect the public health, safety, or welfare.
- 3.5 In the event this Agreement is terminated for convenience, upon being notified of election to terminate, the parties shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. MUNICIPALITY acknowledges and agrees that Ten Dollars (\$10.00), the adequacy of which is hereby acknowledged by MUNICIPALITY, is given as specific consideration to MUNICIPALITY for COUNTY's right to terminate this Agreement for convenience.
- 3.6 Notice of termination shall be provided in accordance with Article 5, "NOTICES," except that notice of termination by County Administrator, which County Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with Article 5, "NOTICES."

#### ARTICLE 4

## CHANGES IN SCOPE

Any change to the Scope must be accomplished by a written amendment, executed by the parties in accordance with Section 8.15 below.

### ARTICLE 5 NOTICES

Whenever either party desires to give notice to the other, 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 BROWARD COUNTY:

Director, Broward County Transportation Department  
115 Andrews Ave., Room 433  
Fort Lauderdale, Florida 33301

#### FOR MUNICIPALITY:

City Manager  
City of Fort Lauderdale  
100 N. Andrews Ave  
Fort Lauderdale, Florida 33301

### ARTICLE 6 INDEMNIFICATION

- 6.1 Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. MUNICIPALITY is a state agency or political subdivision as defined in Chapter 768.28, Florida Statutes, and agrees to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.
- 6.2 In the event that MUNICIPALITY contracts with a third party to provide the services set forth herein, any contract with such third party shall include the following provisions:
- 6.2.1 MUNICIPALITY's contractor shall at all times hereafter indemnify, hold harmless and, at the County Attorney's option, defend or pay for an

attorney selected by the County Attorney to defend COUNTY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by intentional or negligent act of, or omission of, MUNICIPALITY's contractor, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against COUNTY by reason of any such claim, cause of action or demand, MUNICIPALITY's contractor shall, upon written notice from COUNTY, resist and defend such lawsuit or proceeding by counsel satisfactory to COUNTY or, at COUNTY's option, pay for an attorney selected by County Attorney to defend COUNTY. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement.

- 6.2.2 In order to insure the indemnification obligation, MUNICIPALITY's contractor shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth in Article 7, Section 7.2, in accordance with the terms and conditions required by this Article.
- 6.2.3 The policies referred to in Section 6.2.2 above shall be without any deductible amount and shall be issued by United States Treasury approved companies authorized to do business in the state of Florida, and having agents upon whom service of process may be made in Broward County, Florida.

## ARTICLE 7 INSURANCE

- 7.1 MUNICIPALITY is an entity subject to Section 768.28, Florida Statutes, as may be amended, and MUNICIPALITY shall furnish Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of this Agreement. Additionally, if MUNICIPALITY elects to purchase excess liability coverage, MUNICIPALITY agrees that COUNTY will be furnished with a Certificate of Insurance listing Broward County as certificate holder and as an additional named insured.
- 7.2 In the event that MUNICIPALITY contracts with a third party to provide the services set forth herein, any contract with such third party shall include, at a minimum, the following provisions:



- 7.2.1 Insurance: MUNICIPALITY's contractor shall at all times during the term of this Agreement keep and maintain in full force and effect, at contractor's sole cost and expense, insurance of the types and amounts as set forth on Exhibit "B," a copy of which is attached hereto and incorporated herein by reference as if set forth in full, and shall name COUNTY and Broward County Board of County Commissioners as an additional insured.
- 7.2.2 MUNICIPALITY's contractor shall furnish to Contract Administrator Certificates of Insurance or Endorsements evidencing the insurance coverages specified by this Article prior to beginning the performance of work under this Agreement.
- 7.2.3 Coverage is not to cease and is to remain in full force and effect (subject to cancellation notice) until all performance required of MUNICIPALITY's contractor is completed. All policies must be endorsed to provide COUNTY 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 the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.
- 7.2.4 The policies referred to above shall be without any deductible amount and shall be issued by approved companies authorized to do business in the state of Florida, and having agents upon whom service of process may be made in Broward County, Florida.
- 7.2.5 The foregoing requirements represent minimum coverages that shall be contained in MUNICIPALITY's contracts with a third party. Any additional requirements for professional liability, property/builders risk, installation floater, and environmental or pollution shall be subject to MUNICIPALITY's standard requirements for the Project.

## ARTICLE 8 MISCELLANEOUS

### 8.1 EEO COMPLIANCE

MUNICIPALITY shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. MUNICIPALITY shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by

the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

MUNICIPALITY shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. MUNICIPALITY shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, MUNICIPALITY shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

By execution of this Agreement, MUNICIPALITY represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from MUNICIPALITY all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

## 8.2 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of COUNTY; and, if a copyright is claimed, MUNICIPALITY grants to COUNTY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by MUNICIPALITY, whether finished or unfinished, shall become the property of COUNTY and shall be delivered by MUNICIPALITY to Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to MUNICIPALITY shall be withheld until all documents are received as provided herein.

## 8.3 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records, and accounts of MUNICIPALITY and its subcontractors that are related to this Project. MUNICIPALITY and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of MUNICIPALITY and

its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, MUNICIPALITY or its subcontractor, as applicable, shall make same available at no cost to COUNTY in written form.

MUNICIPALITY and its subcontractors shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY to be applicable to MUNICIPALITY's and its subcontractors' records, MUNICIPALITY and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by MUNICIPALITY or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

MUNICIPALITY shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 8.3.

#### 8.4 PUBLIC ENTITY CRIME ACT

MUNICIPALITY represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to COUNTY, may not submit a bid on a contract with COUNTY for the construction or repair of a public building or public work, may not submit bids on leases of real property to COUNTY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with COUNTY, and may not transact any business with COUNTY in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

In addition to the foregoing, MUNICIPALITY further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether MUNICIPALITY has been placed on the convicted vendor list.

#### 8.5 INDEPENDENT CONTRACTOR

MUNICIPALITY is an independent contractor under this Agreement. Services provided by MUNICIPALITY pursuant to this Agreement shall be subject to the supervision of MUNICIPALITY. In providing such services, neither MUNICIPALITY nor its agents shall act as officers, employees, or agents of COUNTY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to MUNICIPALITY or MUNICIPALITY's agents any authority of any kind to bind COUNTY in any respect whatsoever.

#### 8.6 THIRD PARTY BENEFICIARIES

Neither MUNICIPALITY nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

#### 8.7 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, MUNICIPALITY shall not subcontract any portion of the work required by this Agreement, except as provided. COUNTY may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by MUNICIPALITY of this Agreement or any right or interest herein without COUNTY's written consent.

MUNICIPALITY represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

MUNICIPALITY shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of MUNICIPALITY's performance and all interim and final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

#### 8.8 CONFLICTS

Neither MUNICIPALITY nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with MUNICIPALITY's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

MUNICIPALITY further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding in which he, she, or MUNICIPALITY is not a party, unless compelled by court process. Further, MUNICIPALITY agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of COUNTY in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude MUNICIPALITY or any persons in anyway from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event MUNICIPALITY is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, MUNICIPALITY agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as MUNICIPALITY.

#### 8.9 MATERIALITY AND WAIVER OF BREACH

COUNTY and MUNICIPALITY agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

#### 8.10 COMPLIANCE WITH LAWS

MUNICIPALITY shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

#### 8.11 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective

unless COUNTY or MUNICIPALITY elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

#### 8.12 JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. 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 than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

#### 8.13 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 8 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 8 shall prevail and be given effect.

#### 8.14 JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, MUNICIPALITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

#### 8.15 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and MUNICIPALITY or others delegated authority to or otherwise authorized to execute same on their behalf.

8.16 PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

8.17 PAYABLE INTEREST

8.17.1 Payment of Interest. Except as required by the Broward County Prompt Payment Ordinance, COUNTY shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof MUNICIPALITY waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

8.17.2 Rate of Interest. In any instance where the prohibition or limitations of Section 8.17.1, are determined to be invalid or unenforceable, the annual rate of interest payable by COUNTY under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

8.18 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits "A" and "B" are incorporated into and made a part of this Agreement.

8.19 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

8.20 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

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IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and MUNICIPALITY, signing by and through its \_\_\_\_\_, duly authorized to execute same.

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 \_\_\_\_\_, 20\_\_

Insurance requirements  
approved by Broward County  
Risk Management Division

Approved as to form by  
Office of the County Attorney  
for Broward County, Florida  
JONI ARMSTRONG COFFEY, County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968

By \_\_\_\_\_  
(Date)

By \_\_\_\_\_  
Sharon V. Thorsen (Date)  
Senior Assistant County Attorney

\_\_\_\_\_  
Noel M. Pfeffer, Deputy County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF FORT LAUDERDALE  
FOR INSTALLATION AND MAINTENANCE OF LANDSCAPING

ADOPTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Mayor  
JOHN P. "JACK" SEILER

(CORPORATE SEAL)

ATTEST:

\_\_\_\_\_  
JONDA K. JOSEPH, City Clerk

Approved as to form:

\_\_\_\_\_  
CARRIE L. SARVER  
Assistant City Attorney

**Attachment A: Draft Scope of Services**

**PROJECT SCOPE**

**BROWARD BLVD Median Landscaping Replacement Project**

Proposal Scope is to replace missing landscape material in medians of Broward Boulevard from Andrews Avenue west to State Road 441. Below is an estimate of quantities and cost of plant materials.

**Andrews Avenue west to I-95**

Silver Buttonwoods	170 @ \$7.60	\$ 1,292.00
Red Tip Cocoplum	240 @ \$7.00	\$ 1,680.00
Green Island Ficus	2326 @ \$8.50	\$19,771.00
Foxtail Palms 8' GW*	4 @ \$125.00	\$ 500.00
Royal Palms 8'GW*	10 @ \$280.00	\$ 2,800.00
Ilex "vomita"	140@ \$8.00	\$ 1,120.00

***SUBTOTAL*** ***\$ 27,163.00***

**I-95 west to SR 441**

Silver Buttonwoods	3150 @ \$7.60	\$23,940.00
Green Island Ficus	8290 @ \$8.50	\$70,210.00
Red Tip Cocoplum	5050 @ \$7.00	\$35,350.00
White Geigers	41 @ \$80.00	\$ 3,280.00
Orange Geigers	4 @ \$80.00	\$ 320.00
Royal Palms 8' GW*	4 @ \$180.00	\$ 720.00
Sod (pallets)	2 @ \$130.00	\$ 260.00

***SUBTOTAL*** ***\$ 134,080.00***

**Amenities**

Soil	\$ 5,000.00
Mulch	\$ 10,000.00
Irrigation Repair	\$ 10,000.00

**SUBTOTAL           \$ 25,000.00**

**GRAND TOTAL     \$ 186,243.00**

\*GW – Gray wood (measured from ground level to base of first frond)