

SUBRECIPIENT AGREEMENT

between

BROWARD COUNTY

and

**DOWNTOWN DEVELOPMENT AUTHORITY
OF THE CITY OF FORT LAUDERDALE**

for

**DDA STREETScape FTA EARMARK
PROJECT FL-04-0062**

SUBRECIPIENT AGREEMENT

between

BROWARD COUNTY

and

DOWNTOWN DEVELOPMENT AUTHORITY
OF THE CITY OF FORT LAUDERDALE

for

DDA STREETScape FTA EARMARK
PROJECT ID: FL-04-0062

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

DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF FORT LAUDERDALE, a body politic and corporate and an agency of the City of Fort Lauderdale as established by the laws of the state of Florida, hereinafter referred to as "AUTHORITY."

WHEREAS, COUNTY is a Designated Recipient in the Miami Urbanized Area of federal assistance from the Federal Transit Administration ("FTA"); and

WHEREAS, on February 16, 2004, the City of Fort Lauderdale ("City") requested a Letter of No Prejudice from the Federal Transit Administration, Region IV, to authorize City and AUTHORITY to incur costs for the award of a contract for the construction of the transit/pedestrian access improvements on the Sistrunk/6th Street and 2nd Street corridor projects, which projects included the DDA Streetscape, Project ID: FL-04-0062; and

WHEREAS, the FTA issued a Letter of No Prejudice ("LONP") dated May 17, 2004, granting City's request; and

WHEREAS, City and AUTHORITY, in reliance of the LONP began to incur costs for the projects addressed therein; and

WHEREAS, the City did not submit the streetscape grant application to the FTA for the project(s); and

WHEREAS, COUNTY, based on the Letter of No Prejudice dated May 17, 2004, submitted the application to FTA for the DDA Streetscape, Project ID: FL-04-0062;

WHEREAS, upon application for the discretionary grants provided for under SAFETEA-LU, the COUNTY received pre-award authority for the DDA Streetscape, Project ID: FL-04-0062 and received Earmark ID E2006-BUSP-247 with an Earmark Name of 2nd St/Andrews Ave/3rd St En; and

WHEREAS, COUNTY is responsible for ensuring that AUTHORITY complies with FTA's Section 5309 grant requirements; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, COUNTY and AUTHORITY 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 12, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **Authority** – The Downtown Development Authority of the City of Fort Lauderdale, as an independent taxing district, created by Chapter 65-1541, Laws of Florida, and later amended by Chapters 67-1385, 69-1056, 75-371, 80-501, 85-393, 87-507, 89-431, 92-247, 93-392, 95-531 and 2005-346, Laws of Florida.
- 1.3 **Board** - The Broward County Board of County Commissioners.
- 1.4 **Contract Administrator** - The Broward County Administrator, the Director of the Broward County Transportation Department, or designee of such County Administrator or Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with AUTHORITY 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 the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

- 1.5 **County Administrator** – The administrative head of COUNTY pursuant to Sections 3.02 and 3.03 of the Broward County Charter.
- 1.6 **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.
- 1.7 **Project** - The Project consists of the services described in Article 2.

ARTICLE 2

PURPOSE AND SCOPE

The purpose of this Agreement is to set out the terms and conditions applicable to COUNTY's transfer of FTA Section 5309 grant funds to AUTHORITY, as the subgrantee, for the DDA STREETSCAPE FTA EARMARK PROJECT ID: FL-04-0062, as described in the 5309 grant application submitted to FTA ("DDA STREETSCAPE PROJECT").

ARTICLE 3

GRANT PASS THROUGH REQUIREMENTS

- 3.1 Section 5309 Grant - AUTHORITY agrees to comply with all the terms and conditions set out in Section 5309 grant agreement and the FTA Master Grant Agreement, before COUNTY is obligated to make payment to AUTHORITY. A copy of the Grant agreement executed by COUNTY which sets out the allocation of Section 5309 funds for the DDA STREETSCAPE PROJECT and the FTA Master Grant Agreement is attached hereto as Exhibit "A." AUTHORITY acknowledges that this Master Agreement may be amended by FTA in the future. In consideration for COUNTY's payment to AUTHORITY of the Section 5309 grant funds, AUTHORITY shall perform the DDA STREETSCAPE PROJECT in compliance with each and every applicable term and condition set forth in the Grant Agreement and the FTA Master Grant Agreement.
- 3.2 Grant Obligations – Except for the FTA grant drawdown provisions, AUTHORITY shall perform all of COUNTY's obligations under the Section 5309 grant applicable to AUTHORITY's DDA STREETSCAPE PROJECT, including, but not limited to compliance with requirements relating to, the source of the local share and accounting, records retention and audit provisions, Disadvantaged Business Enterprise (DBE) and competitive procurement. COUNTY may enforce against AUTHORITY any right that FTA may enforce against COUNTY pertaining to the provision of FTA funds to AUTHORITY under the Section 5309 grant.
- 3.3 Federal Requirements – In addition to the obligations set out in each Section 5309 grant, AUTHORITY must comply with any and all laws, statutes, rules,

regulations, circulars, directives, and requirements of the federal and state governments that relate to or in any manner affect the performance of public transit services and/or the DDA STREETSCAPE PROJECT grant funds under this Agreement. These regulations, circulars, and directives include, without limitation, the following: FTA Circular No. 4220.1F "Third Party Contracting Guidelines"; 49 CFR Part 19, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"; Office of Management and Budget Circular A-87, Revised, "Cost Principles Applicable to Grants and Contracts with State and Local Governments"; and any amendments or revisions to the foregoing. Anything in this Agreement to the contrary, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. AUTHORITY shall not perform any act, fail to perform any act, or refuse to comply with any COUNTY requests which would cause COUNTY to be in violation of the FTA terms and conditions.

- 3.4 Progress and Financial Report – AUTHORITY shall prepare a narrative Progress Report and a Financial Status Report on the forms directed by COUNTY describing the progress of the work and expenditures for the DDA STREETSCAPE PROJECT funded under the Section 5309 grant during each of the three-month periods ending on March 31, June 30, September 30, and December 31. The Progress Report must contain the following information: (1) description of the work completed during the prior period; (2) tasks expected to be completed during the next period; (3) explanations of any problems or delays encountered or anticipated; and (4) any other detail that may be requested by COUNTY. The Financial Status Reports must include, at a minimum, the information as described on the form attached as Exhibit "C" and must be accompanied by an invoice and supporting documents. Properly completed Progress and Financial Status Reports must be delivered to COUNTY no later than 15 days prior to the end of each three month period as set forth above. Progress and Financial Status Reports are deliverables under this Agreement and must be reviewed and accepted by COUNTY prior to COUNTY's approval and payment of AUTHORITY's invoices.
- 3.5 Grant Indemnity - AUTHORITY's failure to properly perform COUNTY's obligations under the Section 5309 grant constitutes a material breach of this Agreement. AUTHORITY agrees to indemnify and hold COUNTY harmless from any liability, demand, claim, penalty or any other adverse action resulting from breach by AUTHORITY of any term or condition in the Section 5309 grant, including, without limitation, any demand for return of all or a portion of the FTA Grant Funds or any withholding from or denial to COUNTY of any future FTA grant funds. In the event there are changes made to the Section 5309 grant agreement after execution by COUNTY and FTA, or the execution of this Agreement, the parties agree to amend this Agreement as needed to comply with the changes.

ARTICLE 4

TERM

This Agreement shall be effective as of the date first hereinabove appearing and shall continue in full force and effect until AUTHORITY performs all obligations and responsibilities, with respect to the funds set forth in Exhibit "A" imposed on COUNTY by FTA for receipt of federal funds under the Section 5309 grant for DDA STREETSCAPE PROJECT.

ARTICLE 5

CONSIDERATION AND PAYMENT

- 5.1 Reimbursement of AUTHORITY's expenses for the DDA STREETSCAPE PROJECT funded under the Section 5309 grant shall be subject to the cost principles set forth in the Office of Management and Budget Circular A-87, Revised, "Cost Principles Applicable to Grants and Contracts with State and Local Governments," as well as the applicable provisions of the Section 5309 grant. COUNTY will reimburse AUTHORITY for its expenditures that are allowable under the DDA STREETSCAPE PROJECT grant in the total amount not to exceed the federal share of the DDA STREETSCAPE PROJECT.
- 5.2 Upon receipt of AUTHORITY's properly documented invoice and the required Progress and Financial Status Reports, COUNTY shall pay AUTHORITY the applicable federal share of the invoice within 30 days. AUTHORITY's invoice shall include, at a minimum, evidence that AUTHORITY has paid its local share contribution, payroll records and invoices from AUTHORITY's contractor(s) and proof of payment to contractor(s) to verify that AUTHORITY has incurred the costs set out in its invoice. COUNTY reserves the right to require AUTHORITY to submit additional documentation as needed to verify that AUTHORITY has incurred the costs set out in its invoice and that the amount of the invoice does not exceed the applicable federal share of the allocation of Section 5309 grant funds under the DDA STREETSCAPE PROJECT grant.
- 5.3 If COUNTY disputes any items on an invoice for a reasonable cause, COUNTY may deduct that disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deductions shall be documented to AUTHORITY.
- 5.4 COUNTY's obligation to provide reimbursement to AUTHORITY shall be limited to the availability of funds to COUNTY from FTA which are specifically earmarked for the DDA STREETSCAPE PROJECT. In the event that FTA shall deny any of COUNTY's request for payments relating to DDA STREETSCAPE PROJECT, or if FTA shall request the return of any funds relating to the DDA STREETSCAPE PROJECT that have been previously paid, AUTHORITY shall,

within ten days of receiving notice from COUNTY of FTA's denial or request for return of funds already paid, return to COUNTY the funds that FTA has declined to reimburse or requested to be returned.

5.5 Payment shall be made to AUTHORITY at:

5.6 AUTHORITY shall pay COUNTY a five percent (5%) fee of the DDA STREETSCAPE PROJECT grant award for grant administration, finance, and performance reporting ("Administrative Fee"). COUNTY shall deduct from each invoice submitted pursuant to the provisions of 5.2 herein the Administrative Fee.

ARTICLE 6

INDEMNIFICATION

AUTHORITY 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 attorneys' fees, court costs, and expenses, caused or alleged to be caused by intentional or negligent act of, or omission of, AUTHORITY, 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, AUTHORITY 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. To the extent considered necessary by Contract Administrator and County Attorney, any sums due AUTHORITY under this Agreement may be retained by COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by COUNTY.

AUTHORITY's failure to properly perform COUNTY's obligations under the Section 5309 grant constitutes a material breach of this Agreement.

AUTHORITY agrees to indemnify and hold COUNTY harmless from any liability, demand, claim, penalty or any other adverse action resulting from breach by AUTHORITY of any term or condition in the Section 5309 grant, including, without limitation, any demand for return of all or a portion of the FTA Grant Funds or any withholding from or denial to COUNTY of any future FTA grant funds. In the event there are changes made to the Section 5309 grant agreement after execution by COUNTY and FTA, or the execution of this Agreement, the parties agree to amend this Agreement as needed to comply with the changes.

ARTICLE 7

INSURANCE

- 7.1 To ensure the indemnification obligation contained above, AUTHORITY 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 Sections 7.3, 7.4, 7.5, and 7.6, in accordance with the terms and conditions required by this Article. Each insurance policy shall clearly identify the foregoing indemnification as insured.
- 7.2 Such policy or policies shall be without any deductible amount unless otherwise noted in this Agreement 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. AUTHORITY shall pay all deductible amounts, if any. AUTHORITY shall specifically protect COUNTY and the Broward County Board of County Commissioners by naming COUNTY and the Broward County Board of County Commissioners as additional insureds under the Commercial Liability Policy as well as on any Excess Liability Policy coverage. The official title of the certificate holder is Broward County Board of County Commissioners. This official title shall be used in all insurance documentation.
- 7.3 Professional Liability Insurance. A Professional Liability Insurance Policy shall be provided which shall contain minimum limits of One Million Dollars (\$1,000,000) for each claim. Any deductible amount shall not exceed One Hundred Thousand Dollars (\$100,000) for each occurrence. **AUTHORITY shall notify COUNTY in writing within thirty (30) days of any claim filed or made against its Professional Liability Insurance Policy.**
- 7.4 Commercial Liability Insurance. A Commercial Liability Insurance Policy shall be provided which shall contain minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury liability and property damage liability and shall contain minimum limits of One Million Dollars (\$1,000,000) per aggregate. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial Liability Policy, without

restrictive endorsements, as filed by the Insurance Services Office and must include:

Premises and/or operations.

Independent contractors.

Products and/or Completed Operations for contracts.

Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.

Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

- 7.5 Business Automobile Liability. Business Automobile Liability shall be provided with minimum limits of Five Hundred Thousand Dollars (\$500,000) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Owned Vehicles, if applicable.

Hired and Non-Owned Vehicles, if applicable.

Employers' Non-Ownership, if applicable.

- 7.6 Workers' Compensation Insurance. Workers' Compensation insurance to apply for all employees in compliance with Chapter 440, Florida Statutes, as may be amended from time to time, the "Workers' Compensation Law" of the state of Florida, and all applicable federal laws. In addition, the policy(ies) must include:

Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000) each accident.

If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

- 7.7 AUTHORITY shall furnish to COUNTY's Contract Administrator Certificate of Insurance or endorsements evidencing the insurance coverage specified by this Article within fifteen (15) calendar days after notification of award of the Agreement and attached hereto as Exhibit "B." The required Certificates of Insurance shall name the types of policies provided, refer specifically to this

Agreement, and state that such insurance is as required by this Agreement. The Certificate of Insurance shall be in form similar to and contain the information set forth in Form 00708, to be provided by the COUNTY's Risk Management Division. AUTHORITY's failure to provide to COUNTY the Certificates of Insurance or endorsements evidencing the insurance coverage within fifteen (15) calendar days shall provide the basis for the termination of the Agreement.

- 7.8 Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of AUTHORITY is completed. All policies must be endorsed to provide COUNTY with at least thirty (30) days' notice of expiration, 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.
- 7.9 COUNTY reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements based on insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work or specifications that affect the applicability of coverage. If AUTHORITY uses a subcontractor, AUTHORITY shall ensure that subcontractor names COUNTY as an additional insured.

ARTICLE 8

TERMINATION

- 8.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by COUNTY, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by County Administrator upon such notice as County Administrator deems appropriate under the circumstances in the event County Administrator determines that termination is necessary to protect the public health or safety. The parties agree that if COUNTY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.
- 8.2 This Agreement may be terminated for cause for reasons including, but not limited to, AUTHORITY's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

- 8.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement 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 that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 8.4 In the event this Agreement is terminated for convenience, AUTHORITY shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. AUTHORITY acknowledges and agrees that it has received good, valuable and sufficient consideration from COUNTY, the receipt and adequacy of which are, hereby acknowledged by AUTHORITY, for COUNTY's right to terminate this Agreement for convenience.
- 8.5 In the event this Agreement is terminated for any reason, any amounts due AUTHORITY shall be withheld by COUNTY until all documents are provided to COUNTY pursuant to Section 9.1 of Article 9.

ARTICLE 9

MAINTENANCE OF RECORDS/AUDITS

- 9.1 AUTHORITY shall maintain books, records, documents, and other evidence directly pertinent to work under this Agreement in accordance with generally accepted accounting principles and practices. AUTHORITY shall also maintain for a period of three (3) years from the date of Section 5309 grant close-out the financial information and data used by AUTHORITY in the preparation or support of the proposed or actual costs submitted for reimbursement under this Agreement. AUTHORITY agrees to permit COUNTY, FTA, the U.S. DOT Secretary and the U.S. Comptroller General, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records and to conduct performance and/or financial audits of AUTHORITY books, records and accounts pertaining to the Section 5309 grant expenditures.
- 9.2 AUTHORITY shall be responsible for meeting the audit requirements of the "Single Audit Act Amendments of 1996," 31 U.S.C. Section 7501 et seq., in accordance with OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," the latest OMB A-133 Compliance Supplement for U.S. DOT and any further revision or supplement thereto. AUTHORITY also agrees to obtain any other audits required by the Federal Government. AUTHORITY agrees that these audits will be conducted in accordance with U.S. Government Accountability Office (U.S. GAO) "Government Auditing Standards." Upon COUNTY's request, AUTHORITY must submit a copy of its audit, completed in accordance with the above-described requirements, within 30 days after completion of the audit, but no later than one year after the end of the audit period.

- 9.3 COUNTY shall have the right to audit the books, records, and accounts of AUTHORITY and its subcontractors that are related to this Project. AUTHORITY 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 AUTHORITY 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, AUTHORITY or its subcontractor, as applicable, shall make same available at no cost to COUNTY in written form. Upon request by COUNTY, AUTHORITY shall participate in the Triennial Review and any other federal review relating in any manner to the Agreement.
- 9.4 AUTHORITY and any of its contractors or 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 AUTHORITY's and its subcontractors' records, AUTHORITY 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 AUTHORITY 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.

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

ARTICLE 10

THIRD PARTY OBLIGATIONS

AUTHORITY shall be solely liable to third parties with whom it enters into contracts to effectuate the purposes of the Section 5309 grant for DDA STREETSCAPE PROJECT. AUTHORITY shall pay directly such parties for all amounts due under said arrangements. AUTHORITY shall indemnify, defend, and hold COUNTY harmless from any and all claims and liabilities in any way related to AUTHORITY's contracts with such third parties.

ARTICLE 11

NONDISCRIMINATION

In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 52 U.S.C. Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, Federal transit law, 49 U.S.C. Section 5332, and implementing regulations; AUTHORITY will not discriminate against any employee, applicant for employment, or contractor hired, or any passenger provided transit service because of race, color, religion, national origin, ancestry, sex, age, or disability.

Contract Assurance: Neither AUTHORITY nor any of its contractors or subcontractors may discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. AUTHORITY shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of this US Department of Transportation-assisted Agreement. Failure by AUTHORITY to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or any other remedy allowed by law.

ARTICLE 12

MISCELLANEOUS

12.1 INDEPENDENT CONTRACTOR

AUTHORITY is an independent contractor under this Agreement. Services provided by AUTHORITY pursuant to this Agreement shall be subject to the supervision of AUTHORITY. In providing such services, neither AUTHORITY 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 AUTHORITY or AUTHORITY's agents any authority of any kind to bind COUNTY in any respect whatsoever.

12.2 THIRD PARTY BENEFICIARIES

Neither AUTHORITY 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.

12.3 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 COUNTY:

Director
Transportation Department
3201 West Copans Road
Pompano Beach, FL 33069

FOR AUTHORITY:

12.4 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. The references herein to the Federal Transit Administration or FTA shall include any successor agency or department of the United States Government.

AUTHORITY 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/she will render his/her services.

AUTHORITY shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of AUTHORITY'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.

12.5 CONFLICTS

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

AUTHORITY 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 AUTHORITY is not a party,

unless compelled by court process. Further, AUTHORITY 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 AUTHORITY or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

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

12.6 MATERIALITY AND WAIVER OF BREACH

COUNTY and AUTHORITY agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-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.

12.7 COMPLIANCE WITH LAWS

AUTHORITY 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.

12.8 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 AUTHORITY 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.

12.9 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.

12.10 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 12 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 12 shall prevail and be given effect; provided, however, anything in this Agreement to contrary, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement.

12.11 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, AUTHORITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

12.12 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 AUTHORITY or others delegated authority to or otherwise authorized to execute same on their behalf.

12.13 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.

12.14 PAYABLE INTEREST

12.14.1 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 AUTHORITY 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.

12.14.2. Rate of Interest. In any instance where the prohibition or limitations of Section 12.14.1 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).

12.15 INCORPORATION BY REFERENCE

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

12.16 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he/she is, on the date he/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.

12.17 SUPPLEMENT TO PURCHASE ORDER

AUTHORITY shall comply with the provisions set forth in the Supplement to Purchase Order attached hereto as Exhibit "D" as related to the DDA STREETScape PROJECT.

12.18. 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.

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

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 AUTHORITY, 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
JEFFREY J. NEWTON, 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

SUBRECIPIENT AGREEMENT BETWEEN BROWARD COUNTY AND DOWNTOWN
DEVELOPMENT AUTHORITY OF THE CITY OF FORT LAUDERDAE FOR DDA
STREETSCAPE FTA EARMARK PROJECT FL-04-0062

AUTHORITY:

WITNESSES:

By _____
_____, President
____ day of _____, 20____

(SEAL)

SVT:slw
3/01/09
2/18/09
2/10/09
2/3/09
12/9/08
12/8/08
12/5/08
9/18/08
FTAGrantfundsDDA.doc
07-114.20