

AGREEMENT

Between

BROWARD COUNTY

and

for

TRAFFICWAY BEAUTIFICATION FOR

This is an Agreement made and entered into by and between Broward County, a political subdivision of the State of Florida ("County"),

and

_____, a municipal corporation located in Broward County, Florida, organized and existing under the laws of the State of Florida ("Municipality"), (collectively the "Parties").

WHEREAS, _____ from _____ is a public trafficway ("Trafficway"), classified as a County road and located within the municipal boundaries of Municipality; and

WHEREAS, it is of mutual benefit to the residents of County and Municipality to beautify the Trafficway by installing the landscaping as detailed in Article 2; and

WHEREAS, Municipality has expressed its desire to undertake the beautification of the Trafficway and the continued maintenance of the landscaping and irrigation following completion of the beautification project; and

WHEREAS, County has agreed to permit the beautification of the Trafficway, which is more particularly described in Exhibit "A," attached hereto and incorporated herein (the "Property"), subject to the terms and conditions of this Agreement; and

WHEREAS, Municipality, on the ____ day of _____, 20____, has approved this Agreement, and has authorized the appropriate officers of Municipality to execute this Agreement;

NOW, THEREFORE,

In consideration of the mutual terms, conditions, promises, and covenants hereinafter set forth, County and Municipality agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 **Agreement**: Articles 1 through 8, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Approved Plans**: The construction documents and specifications depicting and defining the Project, including but not limited to the materials to be installed within the Property, all as described in Exhibit "B," attached hereto and incorporated herein.
- 1.3 **Board**: The Board of County Commissioners of Broward County, Florida.
- 1.4 **Broward County Naturescape Program**: A vision for the community that focuses on creating Florida-friendly landscapes that conserve water, protect water quality, and create wildlife habitat, as more thoroughly described at <http://www.broward.org/NaturalResources/NatureScape/Pages/Default.aspx>.
- 1.5 **Contract Administrator**: The Director of the Broward County Highway Construction and Engineering Division, or designee.
- 1.6 **County Administrator**: The administrative head of County appointed by the Board.
- 1.7 **County Attorney**: The chief legal counsel for County appointed by the Board.
- 1.8 **Division**: The Broward County Highway Construction and Engineering Division.
- 1.9 **Florida-Friendly Landscaping Principles**: Using low-maintenance plants and environmentally sustainable practices, as more thoroughly described at <http://www.floridayards.org>.
- 1.10 **Landscape or Landscaping**: Living plant materials such as grasses, ground cover, shrubs, vines, 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, and grading, and pump and irrigation system, as detailed in this Agreement and in the Approved Plans.
- 1.11 **Project**: The beautification of the Property as described in Article 2 and the Approved Plans.
- 1.12 **Property**: That portion of the Trafficway as described in Exhibit "A."

ARTICLE 2. SCOPE OF PARTICIPATION

2.1 Municipality shall:

2.1.1 Before execution of this Agreement, prepare, or cause to be prepared, the Approved Plans. The Approved Plans shall incorporate a minimum fifty percent (50%) native species by plant type (i.e. canopy tree, palm tree, and shrub), shall comply with the Broward County Naturescape Program and Florida-Friendly Landscaping Principles, and shall be reviewed and approved by the Contract Administrator.

2.1.2 Apply to the Division for a permit, or cause application to be made for a permit, for the installation of the Landscaping as set forth in the Approved Plans. Irrigation system portion of the plans shall also be submitted to the South Florida Water Management District ("SFWMD") for issuance of any necessary Water Use Permits. Municipality shall not proceed with installation of the Landscaping authorized by this Agreement until all permits have been issued and permit conditions for commencement of construction have been satisfied.

2.1.3 In accordance with the Approved Plans, applicable provisions of the Broward County Minimum Standards, Florida Department of Transportation standards and specifications, and the Division's and SFWMD's permits, install or cause to be installed the Landscaping on the Property to the Contract Administrator's satisfaction.

2.1.4 Install and maintain, or cause to have installed and maintained, consistent with prudent and well-reasoned installation and maintenance procedures and techniques, all Landscaping within the Property in a manner that will not pose a hazard to persons or vehicles on adjacent property or right of way.

2.1.5 Following completion of the Project, provide the County with signed and sealed certified as-built drawings and warranties for any work performed as set forth in the Approved Plans.

2.1.6 Properly maintain and fertilize all vegetation in accordance with the Broward County Naturescape Program and Florida-Friendly Landscaping Principles; keep all vegetation as free from disease and harmful insects as practicable; properly mulch the vegetation beds, keeping them free from weeds; periodically mow the grass to maintain a neat and proper appearance; prune all plants so as to remove all dead or diseased parts of plants and all parts of plants which present a visual hazard or physical obstacle to the use of the right of way; remove and replace all vegetation which is dead or diseased or which otherwise falls below the initial level of beautification of the Property and keep litter removed from the right of way. Any replacement of vegetation as required herein shall be accomplished by the use of plants of the same grade as specified in the Approved Plans and shall be of the same size as those existing at the time of replacement or with a

mutually agreed upon substitution, subject to review and approval by the Contract Administrator.

2.1.7 Maintain all nonliving durable materials commonly used in environmental design, such as, but not limited to, curbing, rocks, pebbles, sand, paving, decorative pavers, and grading, in good repair.

2.1.8 If installed, maintain the entire pump and irrigation system and all of its parts in working order according to the Approved Plans, and operate said system according to applicable SFMWD regulations and restrictions. As part of such maintenance responsibility, Municipality shall keep the pump and irrigation system in good working order and repair or replace defective or worn out 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.

2.1.9 If the length of the Property or any portion of such length is coterminous with the jurisdictional boundaries of Municipality, Municipality shall coordinate the performance of its maintenance responsibility pursuant to this Agreement with the governmental entity or entities having jurisdiction over the adjacent area. The terms and conditions of such coordination shall be stated in a binding agreement entered into by Municipality and the adjacent governmental entity or entities and shall provide for the division of maintenance responsibility and the costs of maintenance between the Municipality and the adjacent governmental entity or entities.

2.1.10 Not by its use cause damage to the Property.

2.1.11 Provide the County, or its agent, with prompt written notice as set forth in Article 5 of any occurrence, incident, or accident occurring on the Property.

2.2 County, by and through the Contract Administrator, shall:

2.2.1 Upon receipt from Municipality of a completed application for permit and the Approved Plans, review the application for completeness and either reject the application or process the application for issuance of the permit.

2.2.2. Inspect the Project generally, and the installation of the Landscaping specifically, and reject work which does not meet the requirements of the Approved Plans.

2.2.3 After receiving signed and sealed certified as-built drawings, detailing the pertinent information regarding the installation and that the installation is in conformance with the Approved Plans, and a request for a final inspection, perform a final inspection.

2.2.4 Upon receipt of all paperwork and completion of all inspections, notify Municipality as to the status of the Project.

2.2.5 Have no further obligation except as otherwise specifically set forth herein.

2.3 All Landscaping placed upon the Property shall remain the property of Municipality, shall be placed upon the Property at Municipality's risk, and shall not be removed or relocated without the Contract Administrator's express written consent.

2.4 This Agreement does not change the County road functional classification of the Trafficway.

2.5 Municipality's obligations under 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. If Municipality contracts with a third party, Municipality shall remain fully responsible hereunder and shall ensure that the third party complies at all times with each and every term, condition, duty, and obligation set forth herein.

2.6 In the administration of this Agreement, as contrasted with matters of policy, Municipality may rely on the instructions or determinations made by the Contract Administrator, provided, however, that such instructions and determinations do not change the requirements of this Article 2.

ARTICLE 3. COSTS

Municipality shall pay for all costs associated with the design, installation, and continued maintenance, repair, and replacement of the Landscaping, including all electrical energy and other utility charges.

ARTICLE 4. TERM AND TERMINATION

4.1 This Agreement starts on the date it is fully executed by the Parties and continues in perpetuity unless terminated as provided below.

4.2 This Agreement may be terminated for cause by County, through action of the Board, upon thirty (30) days' written notice given by the Contract Administrator to Municipality setting forth the breach. If Municipality corrects the breach within thirty (30) days after written notice, to the Contract Administrator's satisfaction, this Agreement shall remain in full force and effect. If such breach is not corrected within thirty (30) days after written notice, County may terminate this Agreement. Specifically, if Municipality fails to maintain the Property, County, at the option of the Contract Administrator, may cause such breach to be corrected and invoice Municipality for the costs of the correction or terminate this Agreement. If County opts to correct the breach and invoice Municipality for the costs of correction, Municipality shall remit to County the amount invoiced within thirty (30) days of Municipality's receipt of the invoice.

4.3 Cause to terminate this Agreement includes, but is not limited to, Municipality's failure to suitably perform the services required by Article 2, or Municipality's failure to maintain the Landscaping, notwithstanding whether any such breach was previously waived or cured.

4.4 If this Agreement is terminated, Municipality shall remove from the Property, at Municipality's sole expense, any Landscaping and other improvements placed upon it unless the Contract Administrator, in writing, authorizes Municipality to leave any Landscaping or other improvements on the Property. If any Landscaping or other improvements must be removed:

4.4.1 County shall have no obligation to remove, relocate, reinstall, or replace any of the Landscaping or other improvements, or in any way compensate Municipality for any loss resulting from or arising out of the termination of this Agreement.

4.4.2 Municipality shall obtain a Division permit and replace all Landscaping with Bahia sod, and return the Property to a safe condition following removal of any Landscaping or other improvements.

4.4.3 Municipality shall be obligated to repair or pay for any damage to County property resulting from the removal of any Landscaping or other improvements.

4.4.4 If tree mitigation is required as a result of termination, Municipality shall obtain a Broward County Environmental Licensing and Building Permitting Division, Tree Preservation Program license pertaining to Chapter 27, Article XIV, Sections 27-401 through 27-414 of the Broward County Tree Preservation and Abuse Ordinance, as may be amended from time to time, to provide for relocation, removal, and replacement per the tree removal license requirements at Municipality's sole cost and expense.

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 article. For the present, the Parties designate the following:

FOR COUNTY:

Director, Broward County Highway Construction and Engineering Division
One North University Drive, Suite 300B
Plantation, Florida 33324-2038

FOR MUNICIPALITY:

ARTICLE 6. INDEMNIFICATION

6.1 Municipality is an entity subject to Section 768.28, Florida Statutes, as may be amended from time to time, and agrees to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by Municipality to be sued by third parties in any matter arising out of this Agreement or any other contract.

6.2 If 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 Indemnification: Municipality's contractor shall indemnify and hold harmless County, its officers, agents, and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Municipality's contractor and other persons employed or utilized by Municipality's contractor in the performance of this Agreement. These indemnifications shall survive the term of this Agreement. To the extent permitted by law, if any action or proceeding is brought against County by reason of any such claim or demand, Municipality's contractor shall, upon written notice from County, resist and defend such action or proceeding by counsel satisfactory to County.

6.2.2 To the extent permitted by law, the indemnification provided above shall obligate Municipality's contractor to defend, at its own expense, to and through appellate, supplemental, or bankruptcy proceeding, or to provide for such defense, at County's option, any and all claims of liability and all suits and actions of every name and description covered by subsection 6.2.1 above which may be brought against County, whether services were performed by Municipality's contractor or persons employed or utilized by Municipality's contractor.

6.3 The provisions of this article shall survive the termination of this Agreement

ARTICLE 7. INSURANCE

7.1 Municipality shall provide the 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 an additional insured.

7.2 If 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 keep and maintain, at the contractor's sole cost and expense, insurance of the types and minimum amounts as set forth on Exhibit "C," and specifically protect County by naming "Broward County" as an additional insured under the Commercial General Liability Insurance policy as well as any Excess Liability policy.

7.2.2 Municipality's contractor, upon request, shall furnish to the Contract Administrator, Certificates of Insurance and Endorsements evidencing the insurance coverage specified above 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 until all performance required of Municipality's contractor is completed.

ARTICLE 8. MISCELLANEOUS

8.1 Documents. Copies of any and all reports, photographs, surveys, plans, and other data and documents provided or created in connection with this Agreement shall be provided to County at no cost.

8.2 Independent Contractor. Municipality is an independent contractor under this Agreement. In performing under this Agreement, neither Municipality nor its agents shall act as officers, employees, or agents of County. Municipality shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

8.3 Third Party Beneficiaries. Neither Municipality nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge 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.

8.4 Assignment and Performance. Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered by Municipality without the prior written consent of County. If Municipality violates this provision, County shall have the right to immediately terminate this Agreement. Municipality represents that each person and entity that will perform services under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. Municipality agrees that all services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

8.5 Materiality And Waiver of Breach. Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and 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.

8.6 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.

8.7 Severability. If a portion of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

8.8 Joint Preparation. This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.

8.9 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

8.10 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 8 of this Agreement, the provisions contained in Articles 1 through 8 shall prevail and be given effect.

8.11 Law, 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. The Parties agree that the exclusive venue for litigation arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida.

BY ENTERING INTO THIS AGREEMENT, 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. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

8.12 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 Municipality or others delegated authority or otherwise authorized to execute same on their behalf.

8.13 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

8.14 Incorporation By Reference. Any and all Recital or "Whereas" clauses stated above are true and correct and are incorporated by reference. The attached Exhibits "A," "B," and "C" are incorporated into and made a part of this Agreement.

8.15 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.

8.16 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

8.17 Nondiscrimination. No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement.

8.18 Changes to Form Agreement. Municipality represents and warrants that there have been no revisions, alterations, or changes whatsoever to this form Agreement without the prior written consent of the County Attorney's Office. Any unapproved changes shall be deemed a default of this Agreement and of no legal effect.

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 _____, 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
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 _____
Signature (Date)

By _____
(Date)
Assistant County Attorney

Print Name and Title above

(Date)
Deputy County Attorney

07/06/15
HCED Form - Beautification (Muni performs and maintains)_v3Final-20150706

AGREEMENT BETWEEN BROWARD COUNTY AND _____ FOR
TRAFFICWAY BEAUTIFICATION FOR _____
_____.

MUNICIPALITY

ATTEST:

[NAME OF MUNICIPALITY]

Municipal Clerk

By _____
Mayor-Commissioner

(Print/Type Name)

(Print/Type Name)

(SEAL)

____ day of _____, 20____.

Municipal Manager

(Print or Type Name)

APPROVED AS TO FORM:

By _____
Municipal Attorney

****This page is not part of the agreement; it is a page marker, detailing what exhibits should be attached****

Remove this page and insert the following (your exhibits) into the hard-copy of the agreement:

EXHIBIT "A"

(LEGAL DESCRIPTION OF RIGHT-OF-WAY TO BE IMPROVED
OR MAP DEPICTING THE LIMITS)

EXHIBIT "B"

****Sample Only→**

A reduced copy of plans illustrating the Landscaping to be installed within the property described in Exhibit "A" is included herewith. A full-size set of plans are on file with the Broward County Highway Construction and Engineering Division under Project Reference No. _____.

All landscaping shall be properly installed, maintained, and fertilized in accordance with the Broward County Naturescape program and Florida Friendly Landscaping principles.

Broward County Naturescape Program information can be found at:

<http://www.broward.org/NaturalResources/NatureScape/Pages/Default.aspx>

Florida-Friendly Landscaping Principles and information can be found at:

<http://www.floridayards.org>

EXHIBIT "C"

(INSURANCE REQUIREMENTS – referenced in subsection 7.2.1)