

AGREEMENT

Between

BROWARD COUNTY

and

CITY OF CORAL SPRINGS

for

TRAFFICWAY BEAUTIFICATION FOR
WILES ROAD FROM UNIVERSITY DRIVE TO RIVERSIDE DRIVE

This is an Agreement made and entered into by and between BROWARD COUNTY, a political subdivision of the State of Florida ("COUNTY"), and CITY OF CORAL SPRINGS, a municipal corporation located in Broward County, Florida, organized and existing under the laws of the State of Florida ("MUNICIPALITY"), (collectively the "Parties").

WHEREAS, Wiles Road from University Drive to Riverside Drive 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, COUNTY has expressed its desire to participate in the beautification of the Trafficway through installation of the landscaping as detailed in Article 2; and

WHEREAS, MUNICIPALITY has expressed its desire to undertake and continue the ongoing maintenance of the beautification of the Trafficway following installation of landscaping by COUNTY; and

WHEREAS, MUNICIPALITY, on the 5 day of August, 2020, 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, covenants, and payment hereinafter set forth, the Parties 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 Board – The Board of County Commissioners of Broward County, Florida.
- 1.3 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>.
- 1.4 Contract Administrator – The Director of the Broward County Highway Construction and Engineering Division, or designee.
- 1.5 County Administrator – The administrative head of COUNTY appointed by the Board.
- 1.6 County Attorney – The chief legal counsel for COUNTY appointed by the Board.
- 1.7 Division – The Broward County Highway Construction and Engineering Division.
- 1.8 Florida-Friendly Landscaping Principles – Using low-maintenance plants and environmentally sustainable practices, as more thoroughly described at <http://www.floridayards.org>.
- 1.9 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, rocks, pebbles, sand, mounding, decorative pavers, and grading, and pump and irrigation system, as detailed in this Agreement.
- 1.10 Property – That portion of the Trafficway as described in Exhibit "A."
- 1.11 Trafficway Project or Project – The beautification of the Property as described in Article 2.

ARTICLE 2 - SCOPE OF PARTICIPATION

2.1 COUNTY shall:

2.1.1 Prepare, or cause to be prepared, plans and specifications for the Trafficway Project, which shall include Landscaping. Such plans and specifications shall be reviewed and approved by the Contract Administrator and a representative of MUNICIPALITY; provided, however, that MUNICIPALITY shall not unreasonably withhold its approval.

2.1.2 In accordance with the plans and specifications approved by both the Contract Administrator and the MUNICIPALITY (the "Approved Plans"), install, or cause to be installed, as part of the Trafficway Project, Landscaping and other necessary items. Following completion of the Project, COUNTY shall provide to MUNICIPALITY a copy of the as-built drawings and warranties, if any.

2.1.3 Provide watering of the Landscaping installed as part of the Trafficway Project until such time that COUNTY has completed the Project.

2.1.4 Review, approve, and certify, through its Registered Landscape Architect, that the Project has been completed in accordance with the Approved Plans.

2.1.5 Provide written notice to MUNICIPALITY that the Project has been completed.

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

2.2 MUNICIPALITY shall:

2.2.1 Waive or reimburse COUNTY for all municipal permit and inspection fees pertaining to the Trafficway Project.

2.2.2 Upon notice from COUNTY that the Project has been completed, maintain all Landscaping within the Trafficway Project as set forth herein.

2.2.3 If utilities are to be used in the Trafficway Project, take all necessary steps to properly establish the utility account(s) with the MUNICIPALITY's electrical energy and water supplier before the initial energizing of the pump and irrigation systems and pay and continue to pay, commencing upon completion of the Project, all electrical energy and water supplier charges relating to the pump and irrigation systems as such charges arise.

2.2.4 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 Trafficway; remove and replace all vegetation which is dead or diseased or which otherwise falls below the initial level of beautification of the Project and keep litter removed from the Trafficway Project. 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.

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

2.2.6 Maintain the entire pump and irrigation system and all its parts in working order according to the Approved Plans, and operate said system according to applicable South Florida Water Management Division 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. Any modifications, changes, or alterations to the pump and irrigation system shall be reviewed and approved by both the Contract Administrator and MUNICIPALITY.

2.2.7 If the length of the Trafficway 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.

2.3 The Landscaping shall not be removed or relocated, nor modified, changed, or altered, without the express written consent of the Contract Administrator.

2.4 This Agreement does not change the County road functional classification of the Trafficway, and shall not affect COUNTY's responsibility for installation and maintenance of traffic control devices along 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

3.1 COUNTY shall pay for all costs associated with the design and installation of the Project.

3.2 Upon completion of the Project, MUNICIPALITY shall pay for all costs associated with the ongoing maintenance, repair, and replacement of all Landscaping within the Trafficway Project and shall pay all electrical energy and other utility charges relating to the ongoing operation and maintenance of the Landscaping within the Trafficway Project.

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 Landscaping, or any pump and irrigation system installed within the Trafficway Project, 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 maintain the Trafficway's Landscaping, pursuant to the terms of this Agreement, notwithstanding whether any such breach was previously waived or cured.

4.4 This Agreement may be terminated for convenience by COUNTY upon thirty (30) days' written notice given by COUNTY to MUNICIPALITY. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate if the County Administrator determines that termination is necessary to protect the public health or safety.

4.5 If 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.

4.6 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 or safety may be verbal notice which shall be promptly confirmed in writing in accordance with Article 5, "NOTICES."

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
Attn: Richard Tornese, P.E.
One North University Drive, Suite 300B
Plantation, Florida 33324-2038
Email address: rtornese@broward.org

FOR MUNICIPALITY:

Director of Public Works
Attn: Rich Michaud
City of Coral Springs
9551 West Sample Road
Coral Springs, Florida 33065
Email address: rmichaud@coralsprings.org

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, defend against 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 is a governmental entity and is fully responsible for the acts and omissions of its agents or employees, subject to any applicable limitations of Section 768.28, Florida Statutes.

7.2 Upon request by COUNTY, MUNICIPALITY must provide COUNTY with written verification of liability protection that meets or exceeds any requirements of Florida law. If MUNICIPALITY holds any excess liability coverage, MUNICIPALITY must ensure that COUNTY is named as an additional insured and certificate holder under such excess liability policy and provide evidence of same to COUNTY.

7.3 If MUNICIPALITY maintains broader coverage or higher limits than the minimum coverage required under Florida law, COUNTY shall be entitled to such broader coverage and higher limits on a primary and non-contributory basis.

7.4 In the event MUNICIPALITY contracts with a Subcontractor to provide any of the Services set forth herein, MUNICIPALITY shall require that each Subcontractor procure

and maintain insurance coverage that adequately covers each Subcontractor's exposure based on the Services provided by that Subcontractor. MUNICIPALITY must ensure that all such Subcontractors name "Broward County" as an additional insured and certificate holder under the applicable insurance policies. MUNICIPALITY shall not permit any Subcontractor to provide Services until the insurance requirements of the Subcontractor under this section are met. If requested by COUNTY, MUNICIPALITY shall furnish evidence of insurance of all such Subcontractors.

7.5 COUNTY reserves the right to review any and all insurance policies, and to reasonably adjust the limits and/or types of coverage required herein, from time to time throughout the term of this Contract.

7.6 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 Rights In Documents and Work. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement before MUNICIPALITY has received notice from COUNTY that the Project has been completed are and shall remain the property of COUNTY. Any and all reports, photographs, surveys, maintenance records, and other data and documents created by MUNICIPALITY in connection with this Agreement after MUNICIPALITY has received notice from COUNTY that the Project has been completed are and shall remain the property of MUNICIPALITY, and copies of same shall be provided to COUNTY, upon request, at no cost. MUNICIPALITY shall ensure that the requirements of this Section are included in all agreements with third parties relating to this Agreement.

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 Exhibit "A" is 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 CITY OF CORAL SPRINGS, 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
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: 954) 357-7641

By Colleen Pounall Digitally signed by
COLLEEN A. POUNALL
Date: 2020.08.18
09:01:15 -04'00'

Signature (Date)

By GAVIN RYNARD Digitally signed by
GAVIN RYNARD
Date: 2020.08.19
14:12:37 -04'00' 08-19-2020

Gavin Rynard (Date)
Assistant County Attorney

Colleen Pounall Asst. Risk Mgr
Print Name and Title above

By MICHAEL KERR Digitally signed by
MICHAEL KERR
Date: 2020.08.19 14:12:58
-04'00' 08-19-2020

Michael J. Kerr (Date)
Deputy County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF CORAL SPRINGS
FOR TRAFFICWAY BEAUTIFICATION FOR WILES ROAD FROM UNIVERSITY
DRIVE TO RIVERSIDE DRIVE

MUNICIPALITY

ATTEST:

CITY OF CORAL SPRINGS

George Elmer for

Municipal Clerk

Debra Thomas

(Print or Type Name)

(SEAL)

By

Scott Brook
Mayor-Commissioner

Scott Brook

(Print or Type Name)

5 day of August, 2020.

Frank Babinec
Municipal Manager

Frank Babinec

(Print or Type Name)

APPROVED AS TO FORM:

By

/s/Andrew B. Dunkiel

Municipal Attorney

