

AGREEMENT

Between

BROWARD COUNTY

and

CITY OF COCONUT CREEK

for

TRAFFICWAY BEAUTIFICATION FOR  
LYONS ROAD PATTERNED PAVEMENT CROSSWALKS AT THE  
INTERSECTIONS OF NW 6<sup>TH</sup> MANOR, COCONUT CREEK  
PARKWAY, COPANS ROAD, WILES ROAD, WINSTON PARK  
BOULEVARD AND ST. ANDREWS.

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

WHEREAS, Lyons Road from Atlantic Boulevard to Coconut Creek Parkway and Sample Road to the County Line 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 Patterned Pavement Crosswalks (Stamped Asphalt) as detailed in Article 2; and

WHEREAS, COUNTY has expressed its desire to participate in the enhancement and beautification of the Trafficway through installation of the Patterned Pavement Crosswalks as detailed in Article 2; and

WHEREAS, MUNICIPALITY has expressed its desire to undertake and continue the ongoing maintenance of the beautification of the Patterned Pavement Crosswalks within the Trafficway following installation and construction of the crosswalks by Florida Department of Transportation (FDOT) as part of the Lyons Road Mobility Project; 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, 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 Contract Administrator - The Director of the Broward County Highway Construction and Engineering Division, or designee.
- 1.4 County Administrator - The administrative head of COUNTY appointed by the Board.
- 1.5 County Attorney - The chief legal counsel for COUNTY appointed by the Board.
- 1.6 Division - The Broward County Highway Construction and Engineering Division.
- 1.7 Property - That portion of the Trafficway as described in Exhibit "A."
- 1.8 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 In harmony with the Florida Department of Transportation, prepare, or cause to be prepared, plans and specifications for the Lyons Road Mobility 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 Lyons Road Mobility Project, Patterned Pavement Crosswalks (Stamped Asphalt) and other necessary items. Following completion of the Project, COUNTY or FDOT shall provide to MUNICIPALITY a copy of the as-built drawings and warranties, if any.
  - 2.1.3 Review, approve, and certify, through its Licensed Professional Engineer, that the Project has been completed in accordance with the Approved Plans.
  - 2.1.4 Provide written notice to MUNICIPALITY that the Project has been completed.
  - 2.1.5 Not be responsible for repairing or replacing the treatment following any construction activities in the vicinity of the treatment. If in the future the County

performs roadway work which requires removing part of the patterned pavement crosswalk, the County will not restore the patterned pavement crosswalks

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 Lyons Road Mobility Project.

2.2.2 Upon notice from COUNTY or FDOT that the Project has been completed, maintain all Patterned Pavement Crosswalks at Lyons Road at Coconut Creek Parkway, Wiles Road, Copans Road, NW 6<sup>th</sup> Manor, Winston Park Boulevard and St. Andrews within the Lyons Mobility Project as set forth herein.

2.2.3 Maintain all nonliving durable materials commonly used in environmental design, such as, but not limited to, stamped asphalt, pavement markings, sand, mounding, decorative pavers, and grading, in good repair.

2.2.4 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 FDOT shall pay for all costs associated with the design and installation of the Project.

Coconut Creek Patterned Pavement Crosswalks  
(Wiles Rd, NW 6<sup>th</sup> Manor, Copans Road, Winston Park Blvd, and St. Andrews)

3.2 Upon completion of the Project, MUNICIPALITY shall pay for all costs associated with the ongoing maintenance, repair, and replacement of all Patterned Pavement Crosswalks on Lyons Road at the intersection of Coconut Creek Parkway, Wiles Road, Copans Road, NW 6<sup>th</sup> Manor, Winston Park Boulevard, and St. Andrews within the Lyons Road Mobility Project and shall pay all future costs relating to the ongoing operation and maintenance of the Patterned Pavement Crosswalks as described herein within the Lyons Road Mobility 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 Pattered Pavement Crosswalks 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 Crosswalks, 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 Utilities and Engineering  
Attn: Osama Elshami, P.E.  
City of Coconut Creek  
4800 West Copans Road  
Coconut Creek, Florida 33073  
Email address: oelshami@coconutcreek.net

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 "B," 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 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.

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.**

8.11 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.

8.12 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.

8.13 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" and "B" are incorporated into and made a part of this Agreement.

8.14 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.

8.15 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.

8.16 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.

8.17 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.

[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 CITY OF COCONUT CREEK, 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 \_\_\_\_\_  
Signature (Date)

\_\_\_\_\_  
Michael J. Kerr (Date)  
Deputy County Attorney

\_\_\_\_\_  
Print Name and Title above

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF  
COCONUT CREEK FOR TRAFFICWAY BEAUTIFICATION FOR  
LYONS ROAD PATTERNED PAVEMENT CROSSWALKS AT THE  
INTERSECTIONS OF NW 6<sup>TH</sup> MANOR, COCONUT CREEK  
PARKWAY, COPANS ROAD, WILES ROAD, WINSTON PARK  
BOULEVARD AND ST. ANDREWS.

MUNICIPALITY

ATTEST:

\_\_\_\_\_  
Marianne Bowers, Interim City  
Clerk

\_\_\_\_\_  
Karen M. Brooks, City Manager

APPROVED AS TO FORM:

(SEAL)

\_\_\_\_\_  
Terrill C. Pyburn, City Attorney

# Exhibit A

Refer to FDOT plans for the Lyons Road Mobility Project for intersection improvements assigned to Lyons Road at Wiles Road, Copans Road, NW 6<sup>th</sup> Manor, Coconut Creek Parkway, Winston Park Boulevard and St. Andrews maintained on record with the City of Coconut Creek Department of Sustainable Development.

