



## AGREEMENT

Between

BROWARD COUNTY

and

CITY OF OAKLAND PARK

for

### JOINT PARTICIPATION FOR LANDSCAPE AND IRRIGATION IMPROVEMENTS AND MAINTENANCE FOR NW 21<sup>ST</sup> AVENUE FROM OAKLAND PARK BOULEVARD TO PROSPECT ROAD

This is an Agreement, made and entered into by and between BROWARD COUNTY, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "COUNTY," through its Board of County Commissioners and the CITY OF OAKLAND PARK, a municipal corporation located in Broward County, Florida, and organized and existing under the laws of the State of Florida, hereinafter referred to as "CITY."

### RECITALS

A. With the cooperation of COUNTY and CITY, the Florida Department of Transportation ("FDOT") is currently completing improvements that include bike lanes and medians on NW 21<sup>st</sup> Avenue from Oakland Park Boulevard to Prospect Road (the "Project Corridor") as depicted on Exhibit "A," attached hereto.

B. CITY wishes to beautify the Project Corridor.

C. COUNTY has determined that it is a mutual benefit to the residents of COUNTY and CITY to provide landscape and irrigation design services and funding for landscape and irrigation improvements to the Project Corridor (the "Project").

D. CITY has agreed to provide ongoing and perpetual maintenance of the landscape and irrigation improvements in the newly installed medians in the Project Corridor; and

E. CITY, by motion of its governing body adopted on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, has approved the terms of this Agreement and has authorized the appropriate officers of CITY to execute same.

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments herein, the adequacy of which the parties hereby acknowledge, COUNTY and CITY agree as follows:

## ARTICLE 1 - DEFINITIONS

- 1.1 Agreement: shall mean this document, Articles 1 through 8, inclusive. Other terms and conditions are included in the exhibit attached hereto which is expressly incorporated herein by reference.
- 1.2 Board: shall mean the Broward County Board of County Commissioners.
- 1.3 Contract Administrator: shall mean Director of Highway Construction and Engineering Division or designee. The primary responsibilities of the Contract Administrator are to coordinate and communicate with CITY regarding the execution and completion of the Project (as defined below) and the terms and conditions of this Agreement. 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 express terms and conditions of this Agreement.
- 1.4 County Administrator: shall mean the administrative head of COUNTY pursuant to Sections 3.02 and 3.03 of the Broward County Charter.
- 1.5 County Attorney: shall mean the chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.6 Project: shall mean the landscape and irrigation improvements to NW 21<sup>st</sup> Avenue from Oakland Park Boulevard to Prospect Road, as described in Article 2.

## ARTICLE 2-SCOPE OF PARTICIPATION

- 2.1 This Project consists of three tasks. Task One is the landscape and irrigation design services. Task Two is installation of the landscape and irrigation improvements and construction management. Task Three is the ongoing and perpetual maintenance of the landscape and irrigation improvements after installation.
- 2.2 COUNTY shall be responsible for Task One and has already submitted to CITY proposed plans and specifications for the Project. CITY has reviewed and provided comments to COUNTY's proposed plans and specifications and COUNTY shall revise and finalize the plans and deliver them to CITY in final, construction-ready form.
- 2.3 CITY shall be responsible for Task Two and shall bid, construct, and provide construction management for Task Two. CITY shall be responsible for securing the contracts for construction and construction management of the Project pursuant to CITY's competitive solicitation and bidding process and any and all applicable state and federal laws. CITY shall include in the bid solicitation that the selected contractor is required to obtain all necessary permits from COUNTY for all work performed on the Project and CITY shall satisfy

all permit requirements prior to the Project's final acceptance by COUNTY. COUNTY agrees to waive all permitting fees in connection with the Project.

2.3.1 CITY shall be responsible for acquiring any and all rights of way or easements required to implement and complete the Project.

2.3.2 CITY shall be responsible for all Maintenance of Traffic ("MOT") during the Project.

2.3.3 CITY shall be responsible for obtaining any necessary permits and water meters relating to the irrigation improvements. CITY also shall be responsible for the accounting for, and for the payment of all water used to maintain the landscape improvements.

2.3.4 CITY shall provide a warranty for all landscape and irrigation improvements installed in the Project Corridor for a period of one year. Any replacement of trees, shrubs, groundcover or sod by CITY, as required herein, shall be accomplished by the use of similar species of the same grade and size as specified in the original plans submitted by COUNTY or with a mutually agreed upon substitution.

2.3.5 CITY shall submit to COUNTY monthly construction progress reports with the requisite specificity necessary for reimbursement of costs by COUNTY as set forth in Article 3 below.

2.3.6 CITY shall submit to COUNTY, within ninety (90) days of completion of the Project and final payment to any contractor related thereto, a complete Project and financial accounting activity report.

2.4 CITY shall be responsible for Task Three and will be solely responsible for performing the ongoing and perpetual maintenance of the landscape and irrigation improvements after final completion of the Project, including all costs related thereto, as set forth below in Section 2.4.1.

2.4.1 CITY shall properly maintain and fertilize all trees, shrubs, groundcover and sod; keep trees, shrubs, groundcover and sod as free from disease and harmful insects as practicable; properly mulch trees, shrubs and groundcover, keeping them free from weeds; prune trees to keep them structurally sound and to remove any limbs that present a visual hazard or physical obstacle to the use of the Right of Way; remove and replace all trees, shrubs, groundcover and sod that are dead or diseased or which otherwise fall below the initial level of beautification in the Project Corridor; and water all trees, shrubs, groundcover and sod either by truck, if necessary, or through the irrigation improvements for a minimum of two (2) years or until established, whichever is later.

In addition, CITY shall maintain the irrigation improvements in good working order and shall be responsible for any repair and maintenance required.

### ARTICLE 3- COSTS AND REIMBURSEMENT

3.1 COUNTY agrees to pay a maximum amount not-to-exceed of Three Hundred Eighty Thousand Dollars (\$380,000) for Tasks One and Two of the Project. Any and all additional costs or expenses of any type or nature over the maximum amount not-to-exceed shall be

the sole responsibility of CITY.

- 3.2 CITY shall submit monthly billing statements to COUNTY which identify the Project by number, task and name and identify the nature of the work performed and the estimated percentage of work accomplished to date. Such monthly billing statements shall show the costs incurred by CITY for the Project in the month for which the billing statement is being presented in relation to the total cost of the work to be performed as well as the amounts previously paid by COUNTY.

#### ARTICLE 4 - TERM AND TERMINATION

- 4.1 The term of this Agreement shall begin on the date this Agreement is fully executed by both parties and shall continue following the completion of the Project with respect to CITY's ongoing and perpetual obligation to maintain the landscape and irrigation improvements as set forth herein. In the event CITY does not commence construction of the Project within twelve (12) months from the execution date of this Agreement, COUNTY shall be under no obligation to provide funding for the Project and COUNTY shall have the sole option to terminate this Agreement.
- 4.2 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 action of the Board upon not less than thirty (30) days' written notice to CITY. 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 such termination is necessary to protect the public health or safety. The parties agree that if the 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.
- 4.3 Termination of this Agreement for cause shall include, but not be limited to, CITY's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work or services required herein, or failure to continuously perform the work or services required by the terms and conditions of this Agreement in a manner calculated to meet or accomplish the objectives set forth herein, notwithstanding whether any such breach was previously waived or cured.
- 4.4 In the event this Agreement is terminated for convenience by COUNTY, upon being notified of COUNTY's election to terminate, CITY shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. CITY acknowledges and agrees that it has received good, valuable, and sufficient consideration from COUNTY, the receipt and adequacy of which are hereby acknowledged, for COUNTY's right to terminate this Agreement for convenience.
- 4.5 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 or safety may be verbal notice



that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

#### 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 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, Highway Construction and Engineering Division  
Public Works Department. Box B300  
One North University Drive  
Plantation, Florida 33324

**FOR CITY:**

Director of Engineering & Building Services  
5399 N. Dixie Highway, Suite #3  
Oakland Park, Florida 33334

#### ARTICLE 6 - INDEMNIFICATION

- 6.1 CITY and COUNTY are each a state agency or political subdivision as defined in Section 768.28, Florida Statutes, as may be amended from time to time, and each party 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 either party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by CITY or COUNTY to be sued by third parties in any matter arising out of this Agreement or any other contract.
- 6.2 In the event that CITY contracts with a third-party contractor to provide the services set forth herein any contract with such third-party contractor shall include the following provisions:
- 6.2.1 Indemnification: CITY's contractor shall indemnify and hold harmless COUNTY, its officers 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 intentional wrongful conduct of CITY's contractor and other persons employed or utilized by CITY's contractor in the performance of this Agreement. These indemnifications shall survive the term of this Agreement. To the extent permitted by law, in the event that any action or proceeding is brought against COUNTY by reason of any such claim or demand, CITY'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 CITY'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 which may be brought against COUNTY, whether services were performed by CITY, CITY's contractor or persons employed or utilized by CITY's contractor.
- 6.2.3 In order to ensure the indemnification obligation noted above, CITY's contractor shall, at a minimum, provide, pay for, and maintain in force at all times until Project is completed, the insurance coverages set forth in Article 7 in accordance with the terms and conditions required by this Article.

### ARTICLE 7 – INSURANCE

CITY 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.

Upon request by COUNTY, CITY must provide COUNTY with written verification of liability protection that meets or exceeds any requirements of Florida law. If CITY holds any excess liability coverage or maintains broader coverage or coverage with higher limits than the minimum coverage required under Florida law, CITY must ensure that COUNTY is named as an additional insured and certificate holder under such policies and COUNTY shall be entitled to such coverage on a primary and non-contributory basis. The CITY's insurance requirements set forth herein shall remain in full force and effect throughout the term of this Agreement.

In the event CITY contracts with a third-party contractor to provide any of the work performed in connection with the Project, CITY shall require that each such third-party contractor procure and maintain insurance coverage that adequately covers each third-party contractor's exposure based on the work provided by that third-party contractor. CITY must ensure that all such third-party contractors name COUNTY as an additional insured and certificate holder under the applicable insurance policies. CITY shall not permit any third-party contractor to provide any work on the Project until the insurance requirements of the third-party contractor under this section are met. The insurance coverage of any third-party contractor shall not cease and shall remain in full force and effect until all performance required by any such third-party contractor has been completed. If requested by COUNTY, CITY shall furnish evidence of insurance coverage by all such third-party contractors as set forth herein.

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 Agreement.

### ARTICLE 8 - MISCELLANEOUS

## 8.1 DOCUMENTS.

Any and all reports, photographs, surveys, plans, and other data and documents provided or created in connection with this Agreement shall be made available to COUNTY at no cost.

## 8.2 AUDIT RIGHT AND RETENTION OF RECORDS.

COUNTY shall have the right to audit the books, records, and accounts of CITY that are related to this Project. CITY 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 CITY 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, CITY shall make same available at no cost to COUNTY in written form.

CITY 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 or completion of the Project. 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 CITY's records, CITY shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CITY. 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.

## 8.3 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT.

CITY shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. CITY shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CITY shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

- 8.3.1 CITY's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16½), national origin, marital status, physical or mental disability, political affiliation, or any other



factor which cannot be lawfully used as a basis for service delivery.

- 8.3.2 CITY shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in performing any services pursuant to this Agreement.

8.4 INDEPENDENT CONTRACTOR.

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

8.5 THIRD PARTY BENEFICIARIES.

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

8.6 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. CITY represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in this Agreement and to provide and perform such services to COUNTY's satisfaction for the agreed compensation. CITY shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CITY's performance and all interim and final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

8.7 MATERIALITY AND WAIVER OF BREACH.

COUNTY and CITY agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and, that each is, therefore, a material term hereof. COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

8.8 COMPLIANCE WITH LAWS.



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

8.9 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.

8.10 JOINT PREPARATION.

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

8.11 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 this Agreement, the term, statement, requirement, or provision contained in this Agreement shall prevail and be given effect.

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

8.13 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 CITY or others delegated authority to or otherwise authorized to execute same on their behalf.

8.14 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 representations or agreements, whether oral or written.

8.15 INCORPORATION BY REFERENCE.

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

8.16 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.

8.17 MULTIPLE ORIGINALS.

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

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IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: 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 OAKLAND PARK, signing by and through its \_\_\_\_\_, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, through its  
BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
County Administrator and  
Ex-Officio Clerk of the  
Board of County Commissioners  
of Broward County, Florida

By: \_\_\_\_\_  
Mayor

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Government Center, Suite 243  
115 S. Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600

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

By: \_\_\_\_\_  
Jennifer Ragatz (Date)  
Assistant County Attorney



AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF OAKLAND PARK FOR JOINT PARTICIPATION FOR LANDSCAPE AND IRRIGATION IMPROVEMENTS AND MAINTENANCE FOR NW 21<sup>ST</sup> AVENUE FROM OAKLAND PARK BOULEVARD TO PROSPECT ROAD.

CITY

ATTEST:

CITY OF OAKLAND PARK

\_\_\_\_\_  
Renee Shrout, City Clerk (Date)

By:\_\_\_\_\_

Jane F. Bolin, Mayor

\_\_\_\_\_  
David Hebert, City Manager

(SEAL)

\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED AS TO FORM:

By:\_\_\_\_\_  
City Attorney (Date)

EXHIBIT "A"  
PROJECT CORRIDOR IMPROVEMENTS



EXHIBIT 'A'

