

FIRST AMENDMENT  
TO  
AGREEMENT  
BETWEEN  
BROWARD COUNTY  
AND  
TOWN OF SOUTHWEST RANCHES  
FOR  
TRAFFICWAY BEAUTIFICATION FOR GRIFFIN ROAD FROM SOUTHWEST 160<sup>TH</sup>  
AVENUE TO SOUTHWEST 188<sup>TH</sup> AVENUE

2011-052

This is the First Amendment to the Agreement between BROWARD COUNTY, hereinafter referred to as "COUNTY," and TOWN OF SOUTHWEST RANCHES, hereinafter referred to as "MUNICIPALITY."

WHEREAS, on September 12, 2006, COUNTY entered into an Agreement with MUNICIPALITY for trafficway beautification for Griffin Road from Southwest 160<sup>th</sup> Avenue to Southwest 188<sup>th</sup> Avenue including associated drainage retention areas (the "Project"); and

WHEREAS, COUNTY has determined that the number of plants installed along Griffin Road (Project No. 5067) was less than the approved plans and agreement with MUNICIPALITY, and MUNICIPALITY contends that the plantings fail to meet the specifications of the agreement with MUNICIPALITY, and as such COUNTY seeks to provide MUNICIPALITY with the funding associated with the plants that were not installed, for the MUNICIPALITY's use towards the installation of additional plants or the maintenance of the landscaping within the limits of the entire Griffin Road Project; and

WHEREAS, COUNTY and MUNICIPALITY seek to amend the Agreement to provide Eighty-six Thousand Five Hundred Eighty-seven Dollars (\$86,587.00) to MUNICIPALITY, which MUNICIPALITY shall use, in its sole discretion, for the installation of additional plants or for the maintenance of landscaping within the Project; and

WHEREAS, as such COUNTY and MUNICIPALITY also seek to amend the Agreement to provide that in the event any of the installed landscaping becomes difficult to maintain, diseased, sick, or dies, that MUNICIPALITY may, in its sole discretion, replace the vegetation provided that if it is replaced by plant material that the overall Griffin Road Project plantings shall maintain a minimum of Fifty percent (50%) native species; and

WHEREAS, MUNICIPALITY, by resolution of its Town Council adopted on the 28th day of April, 2011, has approved the terms of this Amendment to the Agreement, and has authorized the appropriate municipal officers to execute this Amendment; and

WHEREAS, COUNTY, by action of its Board of County Commissioners on the \_\_\_ day of \_\_\_\_\_, 2011, has approved the terms of this Amendment to the Agreement, and has authorized the appropriate COUNTY officers to execute same; NOW THEREFORE,

IN CONSIDERATION of the mutual terms and conditions, promises and covenants hereinafter set forth, COUNTY and MUNICIPALITY agree as follows:

1. The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties and the recitals contained in the WHEREAS clauses are incorporated herein.
2. Article 1, Definitions and Identifications, of the Agreement is hereby amended, in part, to read as follows:

\* \* \*

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 4.032.10 of the Broward County Charter.

\* \* \*

1.8 Project shall mean the beautification of Griffin Road from Southwest 160<sup>th</sup> Avenue to Southwest 188<sup>th</sup> Avenue, including associated drainage retention areas, as outlined herein.

1.9 Griffin Road Project shall mean Griffin Road from Flamingo Road to Southwest 188<sup>th</sup> Avenue, including associated drainage retention areas.

3. Article 2, Scope of Services, Sections 2.3 and 2.4 of the Agreement are hereby amended, to read as follows:

2.3 Commencing upon providing the MUNICIPALITY with the payment described in Section 3.2, below, and the conveyance of the as-built irrigation plans described in 2.3.3, below (the "MUNICIPALITY's Commencement Date"), MUNICIPALITY shall maintain all landscaping and irrigation within the Trafficway and associated drainage retention areas following acceptance by MUNICIPALITY of beautification provided by COUNTY's contractor as follows:

2.3.1 In the event that utilities are to be utilized in the beautification of the Project, MUNICIPALITY shall take all necessary steps to properly establish the utility account(s) with the MUNICIPALITY's electrical energy, and/or water, and other utility supplier for the Project beautification systems and shall agree to pay all electrical energy, and water, and other

utility charges prior to the initial energizing of the systems and shall continue to pay all such charges relating to the beautification of the Project as such charges arise.

2.3.2 MUNICIPALITY shall properly maintain and fertilize all vegetation; keep all vegetation as free from disease and harmful insects as practicable; properly mulch the vegetation beds, keeping them as free from weeds as practicable; periodically mow the grass in order 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 and at MUNICIPALITY's option ~~or~~ which otherwise falls below the initial level of beautification of the Project; and keep litter removed from the Trafficway Project. In the event any of the installed landscaping becomes difficult to maintain, diseased, sick, or dies, the MUNICIPALITY may, in its sole discretion, replace the vegetation provided that if it is replaced by plant material that the overall Griffin Road Project plantings shall maintain a minimum of Fifty percent (50%) native species within the limits of the Trafficway Project. Any original installation of vegetation as required herein, shall be accomplished by the use of plants of the same grade as specified in the original approved plans and specifications and shall be of the same size as those other living plants existing at the time of original installation. MUNICIPALITY shall notify COUNTY in writing prior to MUNICIPALITY's replacement of any alternative plant material within the Project. COUNTY shall review the notice to confirm that all planting modifications meet basic safety requirements relating to site distance triangles and clear zones. COUNTY, through its Contract Administrator, shall confirm in writing that it has reviewed MUNICIPALITY's notice within ten (10) business days from the receipt of same. The written notice, and approval of the same, may be sent in electronic form.

2.3.3 MUNICIPALITY shall maintain the entire irrigation system and its part in working order according to the ~~original approved~~ as-built plans. As part of such maintenance responsibility, MUNICIPALITY shall keep in good repair, and replace, defective or worn out irrigation system parts and equipment which system parts and equipment shall include, but not limited to, pumps, pipes, and sprinkler heads. MUNICIPALITY's responsibility to keep the system in good repair 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.

2.4 COUNTY and MUNICIPALITY agree and understand that the Trafficway shall remain classified as a county road, ~~and that the beautification systems shall not be moved or relocated without the express written consent of the Contract~~

~~Administrator, following the procedures set forth in Section 2.3.2 above, and that this Agreement shall not affect County's responsibility for installation and maintenance of traffic control signals and devices along the Trafficway.~~

4. Article 3, Costs, of the Agreement is hereby amended to read as follows:

3.1 Commencing upon providing the MUNICIPALITY with the payment described in Section 3.2, below, and the conveyance of the as-built irrigation plans described in 2.3.3, below, MUNICIPALITY shall:

3.1.1 Be responsible for and pay all costs associated with the services required by Article 2, Section 2.3 hereinabove during the term of this Agreement; and

3.1.2 MUNICIPALITY shall Be responsible for and pay all electrical energy and other utility charges relating-related to the maintenance of the landscaping and operation of the irrigation systems used in the Beautification of the Project which is the subject of this Agreement and MUNICIPALITY shall be responsible for all costs associated with revisions to the beautification plans that are requested by MUNICIPALITY.

3.2 COUNTY shall provide MUNICIPALITY with Eighty-six Thousand Five Hundred Eighty-seven Dollars (\$86,587.00) in funding for use by MUNICIPALITY, in MUNICIPALITY's sole discretion, for either the installation of additional landscaping or for the ongoing maintenance of landscaping within the Project.

3.3 Notwithstanding anything to the contrary contained herein, prior to MUNICIPALITY's Commencement Date, each party shall bear its own costs and expenses as those costs and expenses may relate in any way to this Agreement and the installation and maintenance of the Project.

5. Article 4, Term and Termination, Section 4.2 of the Agreement is hereby amended to read as follows:

4.2 This Agreement may be terminated for cause by COUNTY, through action of the Board, upon thirty (30) days' written notice given by COUNTY to MUNICIPALITY setting forth the breach. If MUNICIPALITY; corrects the breach within thirty (30) days after written notice of same, to the satisfaction of COUNTY, ~~theis~~ Agreement shall remain in full force and effect. If such breach is not corrected and improved within thirty (30) days of receipt of notice of breach, COUNTY may terminate ~~theis~~ Agreement. Specifically in the case of MUNICIPALITY's requirement to maintain the beautification systems, COUNTY, at the option of the Contract Administrator, may cause such breach to be corrected and improved and bill MUNICIPALITY for the reasonable costs of such correction and improvement or terminate this Agreement. If COUNTY opts to

correct and improve the breach and bill MUNICIPALITY for same, MUNICIPALITY shall then remit to COUNTY the amount so billed within thirty (30) days of MUNICIPALITY's receipt thereof.

6. Preparation of this First Amendment has been a joint effort of COUNTY and MUNICIPALITY, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.
7. Except as otherwise specifically amended herein, the terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event of a conflict between the terms and conditions of this First Amendment and the terms and conditions set forth in the Agreement, the Parties hereby agree that this document shall control.
8. This First Amendment to the Agreement shall be effective upon execution by the Parties, and may be fully executed in multiple copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

[Remainder of Page Intentionally Left Blank.]

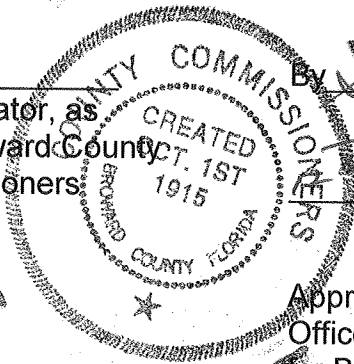
IN WITNESS WHEREOF, the parties hereto have made and executed this First Amendment to the Agreement, on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 3<sup>rd</sup> day of May, 2011, and TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

[Signature]  
Broward County Administrator, as  
Ex-officio Clerk of the Broward County  
Board of County Commissioners



By [Signature]  
Mayor  
\_\_\_\_\_  
day of May, 2011.

Approved as to form by  
Office of the County Attorney  
for Broward County, Florida  
JONI ARMSTRONG COFFEY, County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

Insurance requirements  
approved by Broward County  
Risk Management Division

By [Signature]  
(Date)

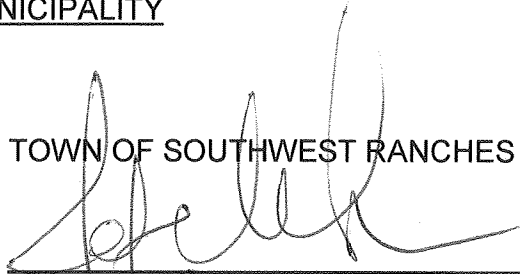
By [Signature]  
Al A. DiCalvo  
Assistant County Attorney

AAD:hb  
07/08/10; 01/18/11; 3/24/11; 4/25/11  
SWRanches-BeautAgmt(GriffinRd-E)\_vFinal-042511.am1.doc

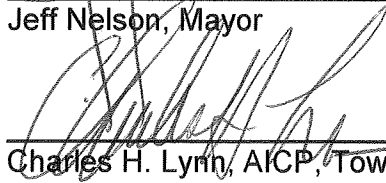
FIRST AMENDMENT TO AGREEMENT BETWEEN BROWARD COUNTY AND TOWN OF SOUTHWEST RANCHES FOR TRAFFICWAY BEAUTIFICATION FOR GRIFFIN ROAD FROM SOUTHWEST 160<sup>TH</sup> AVENUE TO SOUTHWEST 188<sup>TH</sup> AVENUE.

MUNICIPALITY

TOWN OF SOUTHWEST RANCHES



Jeff Nelson, Mayor



Charles H. Lynn, AICP, Town Administrator

28<sup>th</sup> day of April, 2011.

ATTEST:



Debra Doré-Thomas, CMC, Town Clerk

APPROVED AS TO FORM  
AND CORRECTNESS:

By



Keith M. Poliakoff, Town Attorney