

AGREEMENT

Between

BROWARD COUNTY

And

THE CITY OF DANIA BEACH

for

TRAFFICWAY ILLUMINATION FOR

RAVENSWOOD ROAD

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

and

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

WHEREAS, RAVENSWOOD ROAD, from STIRLING ROAD to GRIFFIN ROAD 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 illuminate the Trafficway by installing the lighting system as detailed in Article 2; and

WHEREAS, County has expressed its desire to participate in the illumination of the Trafficway through installation of the lighting system as detailed in Article 2; and

WHEREAS, Municipality has expressed its desire to undertake and continue the ongoing operation and maintenance of the lighting system following completion of the illumination 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, and covenants hereinafter set forth, County and Municipality agree as follows:

#### ARTICLE 1. DEFINITIONS

- 1.1 **Agreement**: Articles 1 through 8, and 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 **Illumination or Lighting or Lighting System**: Light poles, luminaires, cable, conduit, grounding, load centers, pullboxes, conductors, and cable distribution systems.
- 1.8 **Property**: That portion of the Trafficway as described in Exhibit "A."
- 1.9 **Trafficway Project or Project**: The illumination 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. Such plans and specifications shall be reviewed and approved by the Contract Administrator and a representative of the 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, a lighting system along the Trafficway. 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 written notice to Municipality, by and through its Contract Administrator, that the Project has been completed.

2.1.4 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, operate and maintain the Lighting System within the Trafficway Project as set forth herein.

2.2.3 Take all necessary steps to properly establish the utility account(s) with the Municipality's electrical energy supplier before the initial energizing of the Lighting System and pay and continue to pay, commencing upon completion of the Project, all electrical energy charges relating to the Lighting System as such charges arise.

2.2.4 Properly operate and maintain the Lighting System of the Trafficway Project in accordance with the Approved Plans. As part of such maintenance responsibility, Municipality shall keep the Lighting System in good repair and replace defective or worn out Lighting System parts and equipment which system parts and equipment shall include, but not be limited to, poles, luminaires, and circuitry. Municipality's responsibility to keep or cause 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.

2.3 Any relocation, replacement, modification, changes, or alteration of the Lighting System by Municipality shall require the prior submittal of plans by Municipality to the Division and approval by 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 signals and 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 the Lighting System within the Trafficway Project and shall pay all electrical energy and other utility charges relating to the ongoing operation and maintenance of the Lighting System 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 Lighting System, 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 Lighting System 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  
One North University Drive, Suite 300-B  
Plantation, Florida 33324

FOR MUNICIPALITY:

City Manager  
100 W. Daina Beach Blvd.  
Dania Beach, FL 33004

#### **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 the 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 Exhibits "A" and "B" are incorporated into and made a part of this Agreement.

8.15 Representation Of Authority. Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

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

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

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

[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 \_\_\_\_\_, signing by and through its \_\_\_\_\_, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

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

By \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Insurance requirements  
approved by Broward County  
Risk Management Division

Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By \_\_\_\_\_  
Signature (Date)

By \_\_\_\_\_  
(Date)  
Assistant County Attorney

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

\_\_\_\_\_  
(Date)  
Deputy County Attorney

07/06/15  
HCED Form - Illumination (County installs Muni maintains)\_v2Final-20150706

AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF DANIA BEACH FOR TRAFFICWAY ILLUMINATION FOR RAVENSWOOD ROAD BETWEEN STIRLING ROAD AND GRIFFIN ROAD.

MUNICIPALITY

ATTEST:

THE CITY OF DANIA BEACH

\_\_\_\_\_  
Municipal Clerk

By \_\_\_\_\_  
Mayor-Commissioner

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Print or Type Name)

(SEAL)

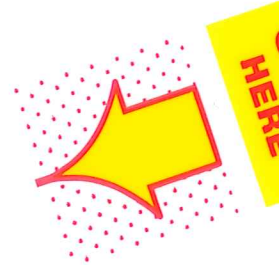
\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Municipal Manager

\_\_\_\_\_  
(Print or Type Name)

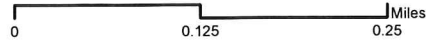
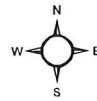
APPROVED AS TO FORM:

By \_\_\_\_\_  
Municipal Attorney

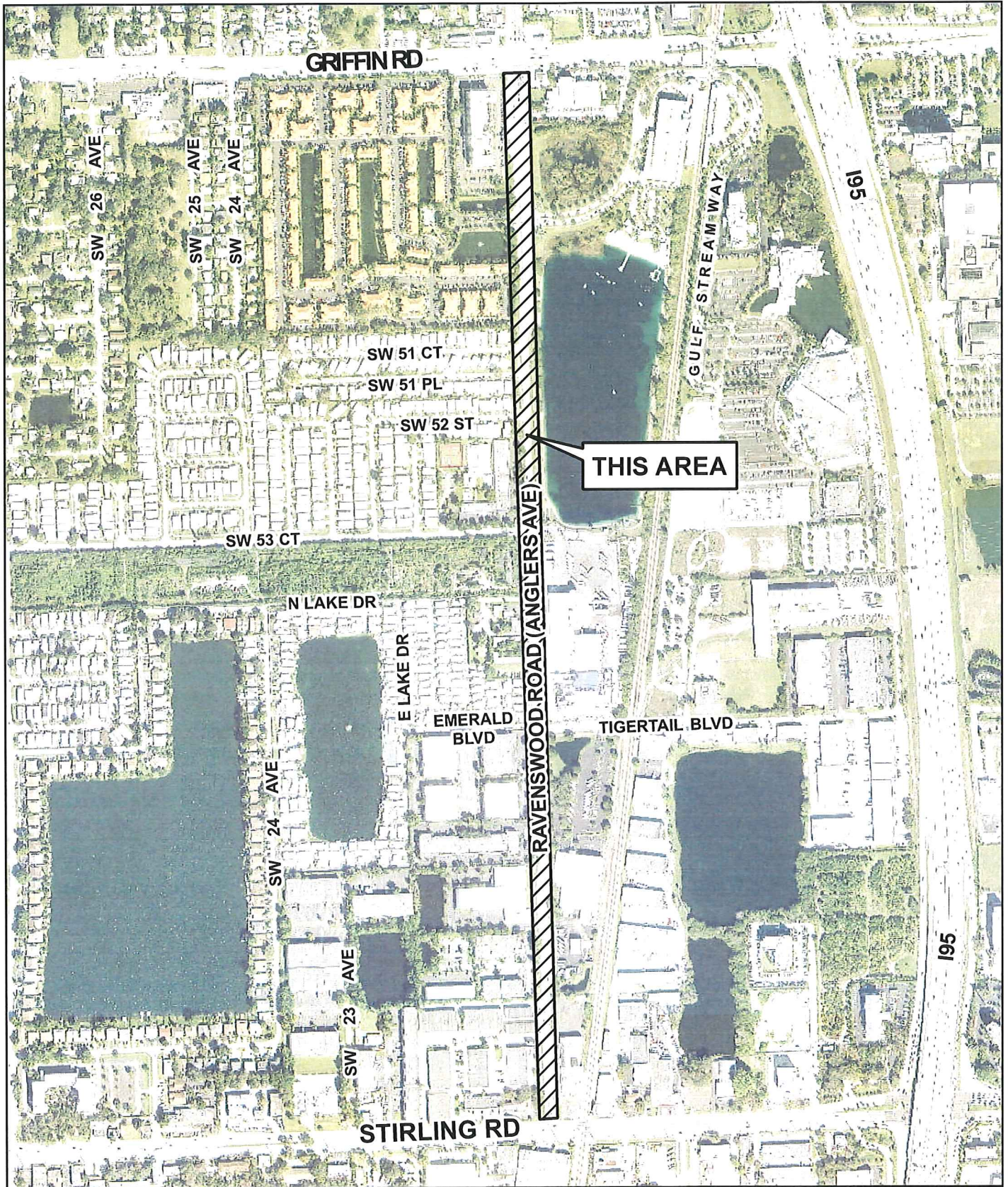


# EXHIBIT "A"

Trafficway Illumination  
for Ravenswood Road  
between  
Stirling Road and Griffin Road



Broward County  
Highway Construction &  
Engineering Division  
8/05/2015



**Exhibit B**

The following coverage is deemed the minimum insurance required for this project. The selected firm must be prepared to provide proof of insurance commensurate with or in excess of this requirement. Any deviation is subject to the approval of Risk Management.

TYPE OF INSURANCE	MINIMUM LIABILITY LIMITS		
		Each Occurrence	Aggregate
<b>COMMERCIAL GENERAL LIABILITY</b> <b>Broad form or equivalent</b> <i>With no exclusions or limitations for:</i> <input checked="" type="checkbox"/> Premises–Operations <input checked="" type="checkbox"/> Explosion, Collapse, Underground Hazards <input checked="" type="checkbox"/> Products/Completed Operations <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other:	Bodily Injury		
	Property Damage		
	Combined single limit Bodily Injury & Property Damage	\$1 mil	\$ 2 mil
	Personal Injury		
<b>BUSINESS AUTO LIABILITY*</b> <b>COMPREHENSIVE FORM</b>  <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Scheduled <input checked="" type="checkbox"/> Any Auto	Bodily Injury (each person)		
	Bodily Injury (each accident)		
	Property Damage		
	Combined single limit Bodily Injury & Property Damage	\$ 500 k	
<b>EXCESS/UMBRELLA LIABILITY</b>  <i>May be used to supplement minimum liability coverage requirements.</i>	Follow form basis or Add'l insd endorsement is required	\$	
<input checked="" type="checkbox"/> <b>WORKERS' COMPENSATION</b>  <input checked="" type="checkbox"/> <b>EMPLOYERS' LIABILITY</b>	Chapter 440 FS  (each accident)	<b>STATUTORY</b>  \$ 500 k	U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water
<input type="checkbox"/> <b>POLLUTION LIABILITY OR ENVIRONMENTAL IMPAIRMENT LIABILITY WITH CLEAN-UP COSTS</b>	(each accident)  Extended coverage period		
<input type="checkbox"/> <b>BUILDER'S RISK (PROPERTY)</b>  <b>"ALL RISK" WITH WIND AND FLOOD</b> Coverage must remain in force until written final acceptance by County.	Maximum Deductible: \$10 k  <b>DED for WIND or WIND &amp; FLOOD not to exceed 5% of completed value</b>  CONTRACTOR IS RESPONSIBLE FOR DEDUCTIBLE		<b>Completed Value form</b>
<input type="checkbox"/> <b>Installation floater "Recommended"</b> Coverage must be "All Risk", completed value. Coverage must remain in force until written final acceptance by County.	Maximum Deductible:  CONTRACTOR IS RESPONSIBLE FOR DEDUCTIBLE	\$10 k	<b>Completed Value form</b>
<small>DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES</small> Dania Beach and Broward County are listed as an additional insured on the general liability policy.			
<b>REFERENCE: Ravenswood Rd Illumination</b>			
<b>CERTIFICATE HOLDER:</b>			
<b>Broward County</b> Charles Quandt, RLA, HCED 1 N. University Drive, 3rd Floor Plantation, FL 33324			