

**AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF COCONUT CREEK
FOR TRAFFICWAY BEAUTIFICATION FOR MARKED PATTERNED PAVEMENT CROSSWALKS
AT THE INTERSECTION OF COPANS ROAD AND LYONS ROAD**

This Agreement ("Agreement") between Broward County, a political subdivision of the State of Florida ("County"), and City of Coconut Creek, a municipal corporation organized and existing under the laws of the State of Florida ("Municipality") (each a "Party" and collectively referred to as the "Parties"), is entered into and effective as of the date this Agreement is fully executed by the Parties (the "Effective Date").

RECITALS

A. Copans Road at the intersection of Lyons Road is a public trafficway, classified as a County road and located within the municipal boundaries of Municipality.

B. It is of mutual benefit to the residents of County and Municipality to beautify the intersection of Copans Road and Lyons Road ("Trafficway") by installing the marked patterned pavement crosswalks defined below and as detailed in Article 2.

C. County is amenable to participating in the enhancement and beautification of the Trafficway through installation of the marked patterned pavement crosswalk.

D. Municipality seeks to undertake and continue the ongoing maintenance and repair of the marked patterned pavement crosswalk following completion of the beautification project as detailed in this Agreement.

E. Municipality has authorized the appropriate municipal officers to execute this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1 **Board** means the Board of County Commissioners of Broward County, Florida.

1.2 **Contract Administrator** means the Director of the Broward County Highway Construction and Engineering Division, or designee.

1.3 **Division** means the Broward County Highway Construction and Engineering Division.

1.4 **Marked Patterned Pavement Crosswalk** means a post-applied surface marking applied to the pavement surface within the crosswalk, as detailed in this Agreement.

1.5 **Project** means the beautification of the Property as described in Article 2.

1.6 **Property** means that portion of the Trafficway as described in Exhibit A.

ARTICLE 2. SCOPE OF PARTICIPATION

2.1 County shall:

2.1.1 Prepare, or cause to be prepared, plans and specifications for the Marked Patterned Pavement Crosswalk. 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 Project, Marked Patterned Pavement Crosswalk and other necessary items. Following completion of the Project, County shall provide to Municipality a copy of the as-built drawings and warranties, if any.

2.1.3 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, by and through its Contract Administrator, that the Project has been completed.

2.1.5 Not be responsible for repairing or replacing the Marked Patterned Pavement Crosswalk following any road construction activities in or near the Property. If in the future County performs roadway work which requires removing any part of the Marked Patterned Pavement Crosswalk, County shall not be required to restore the Marked Patterned Pavement Crosswalk.

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 Project.

2.2.2 Upon notice from County that the Project has been completed, maintain and repair the Marked Patterned Pavement Crosswalk within the Property in accordance with the requirements set forth in Exhibit B.

2.2.3 Provide the Contract Administrator with immediate verbal notice, followed by prompt written notice (in the manner set forth in Article 5 of this Agreement), of any

condition on the Property related to the Project that might present a risk of damage to the Property or adjacent property, or might pose a risk of injury to any person. Municipality shall contact the appropriate emergency services (fire-rescue, police, Florida Power & Light) immediately upon identification of any potential risk or injury to any person, and shall keep a written record of all contact made including the person(s) with whom Municipality has communicated.

2.2.4 Provide the Contract Administrator with immediate verbal notice, followed by prompt written notice (in the manner set forth in Article 5 of this Agreement), of any damage to the Property or any injury to any person on the Property.

2.3 Municipality shall not relocate, replace, modify, or alter any part of the Marked Patterned Pavement Crosswalk without the Contract Administrator's written consent and any required permitting.

2.4 If Municipality takes any action or makes any omission related to the Property or Project that causes or results in alterations or damage to County property, Municipality shall, at its own expense, restore such property to its condition before the alterations or damages. If Municipality fails to make such restoration within thirty (30) calendar days after County's request, County may make the restoration or exercise its rights as provided in Article 4 of this Agreement. If County elects to make the restoration, it will invoice the Municipality for the costs thereof. Municipality shall pay such invoice within thirty (30) calendar days after receipt.

2.5 If Municipality takes any action or makes any omission that causes or results in alterations to the Property (or any materials on the Property), which alterations are not specified in the Approved Plans, Municipality shall, at its own expense, restore the Property to its condition before the alterations were made, or to such condition as approved in writing by the Contract Administrator. If Municipality fails to make such restoration within thirty (30) calendar days after County's request, County may make the restoration or exercise its rights as provided in Article 4 of this Agreement. If County elects to make the restoration, it will invoice the Municipality for the costs thereof. Municipality shall pay such invoice within thirty (30) calendar days after receipt.

2.6 If Municipality takes any action or makes any omission that causes or results in damage to the Property (or any materials on the Property), Municipality shall, at its own expense, repair such damage. If Municipality fails to make such repair within thirty (30) calendar days after County's request, County may make the repair or exercise its rights as provided in Article 4 of this Agreement. If County elects to make the repair, it will invoice Municipality for the costs thereof. Municipality shall pay such invoice within thirty (30) calendar days after receipt.

2.7 This Agreement does not change the functional classification of the Trafficway.

2.8 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.

2.9 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 any and all of the Marked Patterned Pavement Crosswalk within the Property.

ARTICLE 4. TERM AND TERMINATION

4.1 This Agreement shall begin on the Effective Date and continue in perpetuity unless terminated as provided in this article.

4.2 This Agreement may be terminated for cause by County if Municipality breaches any of its obligations under this Agreement and has not corrected the breach within thirty (30) calendar days after receipt of written notice identifying the breach. County may, at the option of the Contract Administrator, cause such breach to be corrected and invoice Municipality for the costs of the correction or may terminate this Agreement. If County opts to correct the breach and invoice Municipality for the costs of correction, Municipality shall pay such invoice within thirty (30) calendar days after receipt. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall, at County's sole election, be deemed a termination for convenience, which shall be effective thirty (30) calendar days after such notice of termination for cause is provided.

4.3 This Agreement may be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in the written notice provided by County to Municipality, which termination date shall not be less than thirty (30) calendar days after the date of such written notice.

4.4 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. Termination under this section shall be effective on the date County provides notice to Municipality of such termination.

4.5 Notice of termination shall be provided in accordance with Article 5 of this Agreement, except that notice of termination by County Administrator, pursuant to Section 4.4 of this Agreement, may be verbal notice that shall be promptly confirmed in writing in accordance with Article 5 of this Agreement.

ARTICLE 5. NOTICES

Unless otherwise stated herein, for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Addresses may be changed by the applicable Party giving notice of such change in accordance with this article.

FOR COUNTY:

Director, Broward County Highway Construction and Engineering Division
1 North University Drive, Suite 300B
Plantation, Florida 33324-2038
Email: rtornese@broward.org

FOR MUNICIPALITY:

Michael Righetti, Senior Project Manager
City of Coconut Creek
4800 W. Copans Road
Coconut Creek, FL 33063
Email: mrighetti@coconutcreek.net

ARTICLE 6. INDEMNIFICATION

6.1 County and Municipality are entities subject to Section 768.28, Florida Statutes, as may be amended from time to time, and agree to be fully responsible for the negligent or wrongful acts and omissions of their respective agents or employees. 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 either Party 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 perform any of Municipality's obligations under this Agreement, Municipality shall enter into a contract with such third party, which contract shall include the following provisions:

Indemnification: Contractor shall indemnify and hold harmless Broward County, and all of Broward County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings,

raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of contractor, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, contractor shall, upon written notice from Broward County, defend each Indemnified Party with counsel satisfactory to Broward County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this paragraph shall survive the expiration or earlier termination of this Agreement.

6.3 The obligations of this article shall survive the expiration or earlier termination of this Agreement

ARTICLE 7. INSURANCE

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

7.2 Within five (5) calendar days after request by County, Municipality must provide County with written verification of liability protection that meets or exceeds any requirements of Florida law. If Municipality holds any excess liability coverage, Municipality must ensure that Broward County is named as an additional insured and certificate holder under such excess liability policy and provide evidence of same to County.

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

7.4 The foregoing requirements shall apply to Municipality's self-insurance, if any.

7.5 If Municipality contracts with one or more third parties to perform any of Municipality's obligations set forth herein, Municipality shall require that each third party procure and maintain insurance coverage that adequately covers the third party's exposure based on the services provided by that third party (and any subcontractors retained by the third party). Municipality must ensure that all such third parties name "Broward County, Florida" as an additional insured and certificate holder under the applicable insurance policies. Municipality shall not permit any third party to provide services required by this Agreement until the insurance requirements of the third party under this section are met. If requested by County, Municipality shall furnish evidence of all insurance required by this section.

7.6 County reserves the right, but not the obligation, to periodically review any and all insurance coverages required by this Agreement 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 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 has no power or 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 in it may be assigned, transferred, or encumbered by Municipality without the prior written consent of County, which consent may be withheld in County's sole discretion. Any assignment, transfer, or encumbrance in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity.

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 will be performed in a skillful and respectful manner, and that the quality of all such services will 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 in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term. County's failure to enforce any provision of this Agreement will not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach will not be deemed a waiver of any subsequent breach and

will not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

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 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter. It may not be modified or terminated except as provided in this Agreement. If any part 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 and will not be construed more strictly against either Party.

8.9 Interpretation. The titles and headings contained in this Agreement are for reference purposes only and do 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 thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated.

8.10 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision within an article or section of this Agreement, the article or section shall prevail and be given effect.

8.11 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement will be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit 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 exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

8.12 Amendments. No modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of the Parties.

8.13 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement 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 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, whether signed physically or electronically, each of which will be deemed to be an original, but all of which, taken together, will 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 Time of the Essence. Time is of the essence for Municipality's performance of all obligations under this Agreement.

[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/Vice-Mayor

___ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By _____
Al A DiCalvo (Date)
Senior Assistant County Attorney

By _____
Michael J. Kerr (Date)
Deputy County Attorney

AAD
CoconutCreek-BA-CopansLyonsRd(PatternedPaveCrosswalk)_v4Final-2023-0224
2/24/23

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF COCONUT CREEK FOR TRAFFICWAY BEAUTIFICATION FOR MARKED PATTERNED PAVEMENT CROSSWALKS AT THE INTERSECTION OF COPANS ROAD AND LYONS ROAD

Municipality

ATTEST:

CITY OF COCONUT CREEK

Joseph J. Kavanagh, City Clerk

By _____
Joshua Rydell, Mayor-Commissioner

(Print Name)

(Print Name)

(SEAL)

____ day of _____, 20____.

Karen M. Brooks, City Manager

(Print Name)

I HEREBY CERTIFY that I have approved this Agreement as to form and legal sufficiency subject to execution by the parties:

By _____
Terrill C. Pyburn, City Attorney

EXHIBIT A

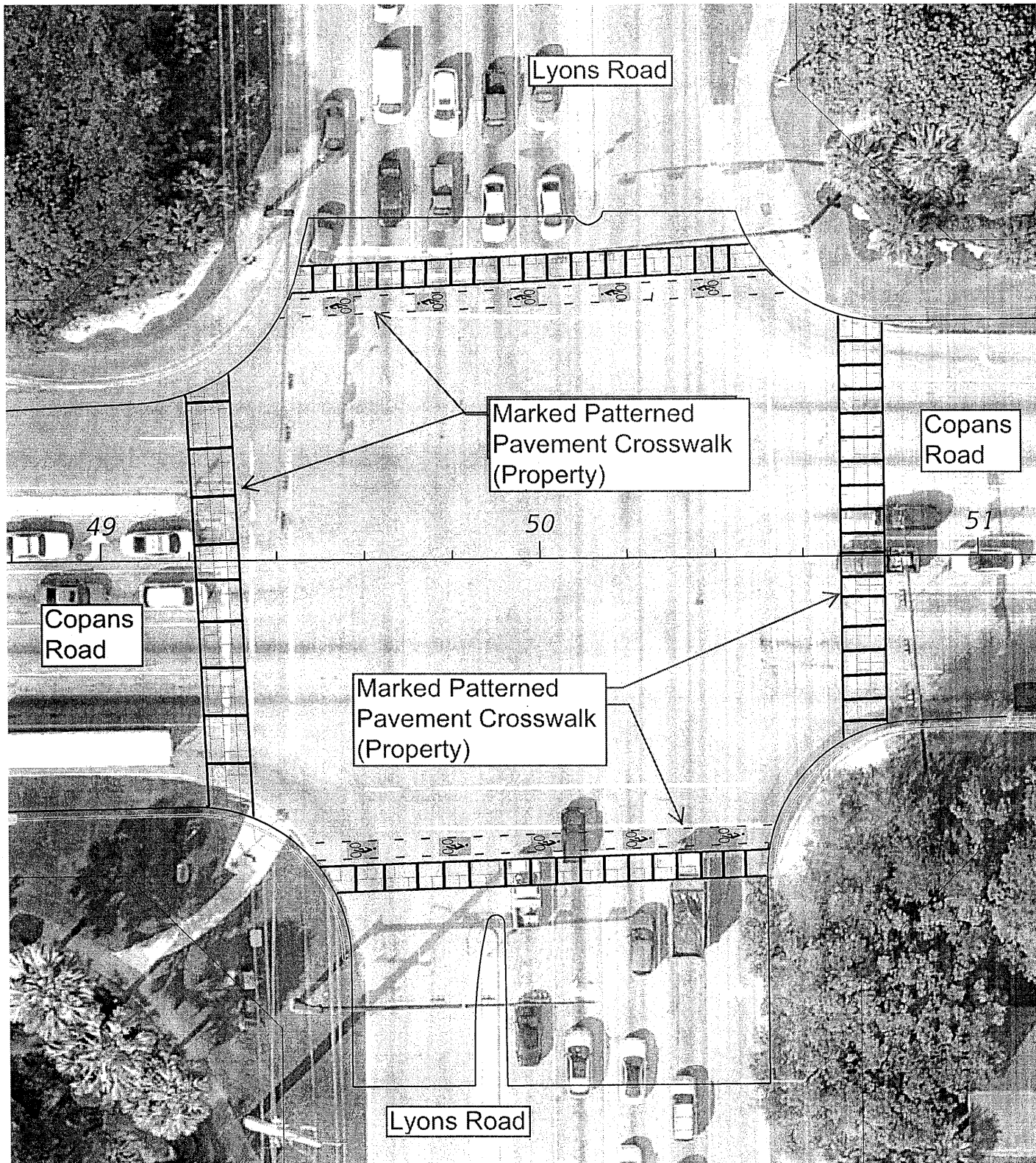


EXHIBIT B

Broward County Highway Construction and Engineering Division Minimum Maintenance Performance Requirements

General Requirements

The specifications herein are the minimum standards and do not prevent the Municipality from performing any additional measures necessary to ensure proper maintenance. The Municipality shall repair and maintain all installed marked patterned pavement crosswalks placed in the Property as follows:

Marked Patterned Pavement Crosswalks

- Repair any damage to marked patterned pavement crosswalk surfaces, including all repair and replacement of materials due to any cause, including but not limited to normal wear and tear, acts of God, vandalism, and accidents.
- Replace all defective materials, as well as any materials that the Contract Administrator determines, in his/her reasonable discretion, should be replaced for safety reasons or because such materials would interfere with any County property or County operations, within twenty-four (24) hours after notification to Municipality, or a reasonable period of time, as determined by the Contract Administrator. If the required work requires specialty materials or labor which are not available within a reasonable period of time, Municipality shall temporarily make such repairs with common materials until the specialty materials or labor can be procured. Time is of the essence in all such repairs to ensure not only safety, but aesthetic compatibility.
- Upon completion of any repairs or replacements, County will review the repairs/replacements at random locations for geometric accuracy. If any of the chosen areas are found to be deficient, Municipality shall correct the entire patterned area at no additional cost to County. Municipality shall repair any damage to any existing features within County Right-of-Way during any repair/replacement procedures within three (3) business days after notification to Municipality.
- Repair, replace, and maintain all marked patterned pavement crosswalk surfaces to meet FDOT Standards and FDOT Specifications 523 and the Americans with Disabilities Act (ADA) compliance, including no tripping hazards.
- Use only patterned pavement products approved for use in vehicular areas, as appropriate, and listed on the FDOT Approved Products List.