

Marden Road Interchange

Why Apopka Needs the Interchange

- The interchange will provide access to Marden Road from and to the John Land Expressway so the area can be developed. Current Exits do not meet Development and end user criteria
- The Interchange will enable the development of commercial services to the immediate area residents where there currently are none (e.g. grocery stores, drug stores, restaurants, and miscellaneous services).

Timeline

May 2012 – First meeting with OOCEA (CFX). CFX Informed us that we need an Interchange Justification Report (IJR) to show the need for an interchange at Marden Rd.

February 2013 – Engaged Dewberry Engineers for the IJR.

January 2014 – IJR was completed and submitted to CFX for comments.

2014 – Engaged in a series of meetings with CFX staff and with their consultants (Atkins and CMH2 Hill).

October 2014 – Received approval from Glenn Pressimone, subject to having CFX board approve an interchange agreement.

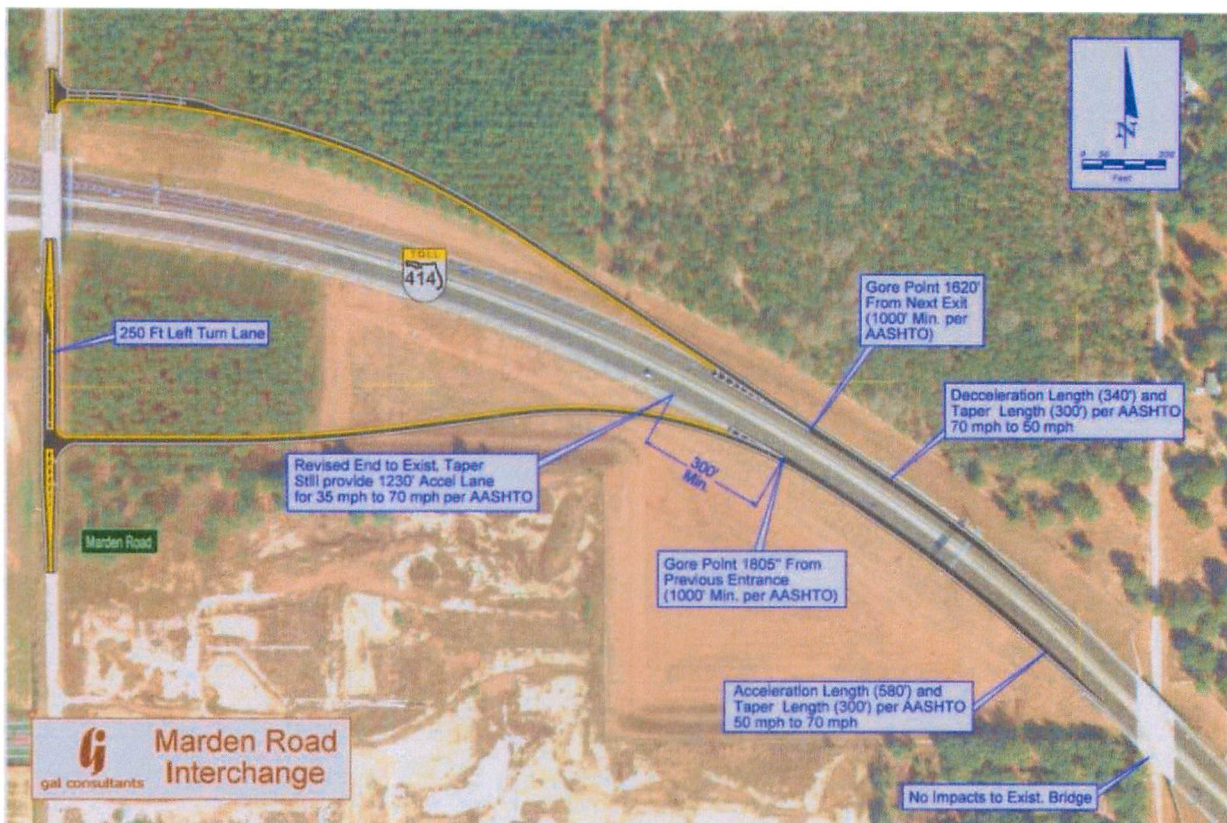
November 2014 – Began working on a Cost Sharing Agreement with City of Apopka to assist funding of interchange.

September 2015 –City of Apopka City Council approved Cost Sharing Agreement.

Aerial Overview of Marden Road Interchange Project Area



Aerial Overview of the Interchange



Constructing the Interchange

The Interchange will be developed by MMI Development including design, engineering, legal, permitting, drainage and retention to complete the interchange to the satisfaction of the Central Florida Expressway Authority.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

October 31, 2014

Mr. Kevin Knudsen, P.E.
Dewberry / Bowyer-Singleton
520 South Magnolia Avenue
Orlando, FL 32801

RE: SR 414 at Marden Road Interchange Justification Report

Dear Mr. Knudsen,

The Central Florida Expressway Authority (Authority) received the final SR 414 at Marden Road Interchange Justification Report (IJR) dated September 2014. The Authority's General Engineering Consultant and Traffic and Revenue Consultant were directed to perform detailed reviews of this submittal to ensure comments provided on previous draft reports were adequately addressed. The reviews have been completed and comments provided by each firm are attached.

It appears that all substantive comments associated with the potential operational impacts to SR 414 resulting from the construction of new ramps at Marden Road are adequately addressed in this final IJR. Therefore, the Authority has determined that the required technical evaluation of the proposed interchange ramps is complete and the results of that evaluation indicate that the forecasted operational impacts to SR 414 would be acceptable.

As discussed during the August 11, 2014 meeting with you and the Applicant, a signed funding agreement between all parties that clearly delineates financial responsibilities is required prior to final approval of the IJR. The Authority looks forward to receiving a draft agreement from the Applicant to begin this final stage of the IJR approval process.

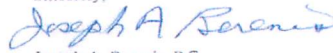
Additionally, if the Applicant decides to advance the proposed interchange ramps at Marden Road after IJR approval, the following conditions will apply:

1. The ramp design must meet all Authority criteria including geometry, drainage, signage, pavement markings, lighting, etc. The Authority will have final review and approval of all construction plans.
2. The proposed westbound exit ramp has the potential to impact private property. Securing the right of way necessary to construct the ramp will be the Applicant's responsibility.

3. The proposed eastbound entrance ramp appears to impact a parcel owned by the Authority. The Applicant may be required to obtain the property necessary to construct the ramp in accordance with the Authority's surplus property guidelines.
4. The proposed eastbound entrance ramp also appears to impact an Authority storm water pond. Further coordination will be required to address permitting requirements associated with any pond impacts.

Please contact myself or Glenn Pressimone, Director of Engineering if you have any questions or need further clarification.

Sincerely,



Joseph A. Berenis, P.E.
Deputy Executive Director

Attachments

cc: G. Pressimone
N. Silva
H. Miller

SR 414 at Marden Road

Interchange Justification Report

Orange County, FL

Prepared by:

GMB Engineers & Planners, Inc.

Orlando, Florida

Association With:

Dewberry/Bowyer-Singleton

Orlando, FL

September 2014

PROFESSIONAL ENGINEER ENDORSEMENT

I hereby certify that I am a registered professional engineer in the State of Florida practicing with GMB Engineers & Planners, Inc., a corporation, authorized to operate as an engineering business, Certification of Authorization No. 00008155, by the State of Florida Department of Professional Regulation, Board of Professional Engineers, and I have prepared or approved the methodology, analysis, conclusions and recommendations hereby reported for:

Project: SR 414 at Marden Road Interchange Justification Report

Location: Orange County, Florida

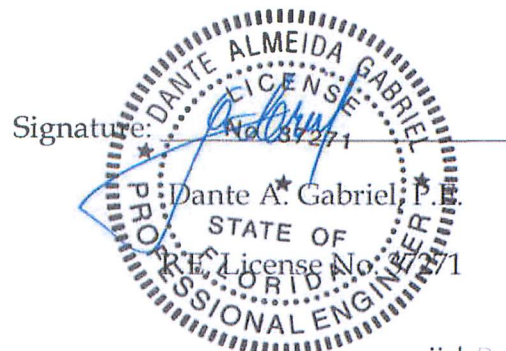
Client: MMI Development a Florida Corporation

I acknowledge that the procedures and references used to develop the results contained in this report are standard to the professional practice of transportation engineering, as applied through professional engineering judgment and practical experience.

Name: Dante A. Gabriel

P.E. Number: 37271

Date: September 08, 2014



Executive Summary

On behalf of the applicant, MMI Development a Florida Corporation, and locally supported by the City of Apopka, GMB Engineers & Planners, Inc. in association with Dewberry/Bowyer-Singleton prepared an Interchange Justification Report (IJR) for the proposed interchange of SR 414 at Marden Road located in the City of Apopka, Orange County. The proposed interchange comprises of an eastbound entrance ramp and a westbound exit ramp of SR 414 with Marden Road.

Traffic data collected for the year 2013 existing conditions were evaluated to establish freeway/ramp junctions, arterial and intersection levels of service (a.m. and p.m. peak hours) operating conditions. Under existing year 2013 conditions, freeway segments and ramp junctions are found to operate at LOS B or better which is a better performance level than the minimum adopted LOS D standard. The roadway segments and study intersections are found to operate at LOS D or better which is also better than the minimum adopted LOS E standard.

The proposed build geometry involves a half diamond interchange at SR 414 and Marden Road providing direct ramp access to and from the east. The surrounding limited access facilities at SR 414, SR 429 and SR 451 retain the existing typical sections and ramp configurations. The freeway segments along SR 414, SR 451, and SR 429 are projected to operate at LOS C or better during the design year conditions. The merge/diverge segments for all the ramp terminals including those for Marden Road are projected to operate at LOS C or better during the design year 2035 conditions.

The request for the proposed SR 414/Marden Road interchange is to improve access to the south part of the City of Apopka that is envisioned to promote over 7,000,000 sq. ft. of institutional, industrial, and office/retail developments, along with over 1600 residential units; without this access to SR 414, trips generated by these future

developments will be circuitous given the limited accessibility due to the confluence of the SR 429/SR 414/SR 451 system interchange and they will rely on existing access at the Ocoee Apopka Road interchange on SR 429 and at the Keene Road interchange with SR 414 which offer indirect and limited accessibility. Florida Hospital announced that it is relocating its downtown Apopka hospital to a larger 38 acre site near the proposed Marden Road interchange. Accompanying this hospital relocation is the expected spin-off of an extensive "Health Village" development of doctor offices, medical plazas and supporting services. Additionally, emergency vehicle access to and from the hospital will be significantly improved with the presence of this proposed interchange.

Based on the evaluation of future traffic operating conditions, the proposed Marden Road interchange will not have an adverse impact on the SR 414 mainline operations or the system-to-system interchange located to the west. The Marden Road interchange provides an alternative access to SR 414 while reducing the concentration of traffic volumes on adjacent interchange ramps at Keene Road and SR 451. The proposed interchange will also improve surrounding roadways by reducing traffic volumes and intersection delay within the study area. This interchange will play a significant role in the traffic distribution needs of the City of Apopka's master development plans for the surrounding area around the confluence of SR 429, SR 414 and SR 451.

The SR 414 mainline traffic flow characteristics in the Build Alternative are comparable with the No-Build Alternative. The proposed interchange provides positive mitigation on the traffic volumes on the parallel facilities. SR 451 and Keene Road exhibit reduction in traffic volumes as expected due to the proposed interchange at Marden Road.

The applicant will be responsible for the full capital cost, including but not limited to design, right-of-way, mitigation and construction. Independent of this

funding commitment, the applicant and the City of Apopka are entertaining supplemental funding sources that may include, but are not limited to, contributions from adjacent and/or benefited property owners and impact fee credits. The current estimated probable cost of the interchange is approximately \$5,000,000.



2301 Maitland Center Parkway, Suite 300
Maitland, FL 32751
tel: 407 660-2552
fax: 407 875-1161

October 17, 2014

Mr. Glenn Pressimone, P.E.
Director of Engineering
Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, FL 32807

RE: Final Comments on Marden Road IJR

Dear Mr. Pressimone:

CDM Smith has reviewed the revised report titled **State Road 414 & Marden Road IJR**, September 2014 and the accompanying letter dated July 30, 2014 from GMB Engineers & Planner, Inc. in this letter, Dante Gabriel describes GMB's response to prior comments from Atkins and CDM Smith.

At this point, the only substantive issue that remains is the degradation in the level of service on Marden Road south of the interchange. The level of service changes from LOS D under No Build conditions to LOS F under Build conditions. While improvements on this road are not the responsibility of the Authority, it seems worthwhile to clearly state that this is the case.

CDM Smith has no further comments on this report. Please let me know if you would like to discuss this or other issues. Best regards,

CDM Smith

A handwritten signature in black ink, reading "Hugh W. Miller, Jr." with a stylized flourish at the end.

Hugh W. Miller, Jr., PhD, PE
Vice President





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October 20, 2014

23 OCT '14 PM 12:45

Glenn M. Pressimone, P.E.
Director of Engineering
Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, FL 32807

Re: State Road 414 and Marden Road, Interchange Justification Report (September 2014)

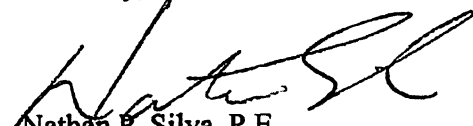
Dear Mr. Pressimone:

Atkins' staff has reviewed the referenced document prepared by GMB Engineers & Planners in association with Dewberry/Bowyer-Singleton as requested. Atkins had reviewed two previous submittals and provided comments. The review of the last submittal (dated May 2014) resulted in two minor comments.

Following a detailed review of the referenced document, it appears all comments have been adequately addressed. As stated previously, there does not appear to be any fatal flaws associated with the engineering characteristics of the proposed interchange ramps and, based on the analysis provide in the IJR, the projected operational impacts to SR 414 resulting from construction of the ramps will be minor.

Please contact me with any questions or if additional clarifications are necessary.

Sincerely,



Nathan P. Silva, P.E.
Program Manager

cc: Joseph A. Berenis, P.E., Deputy Executive Director

MARDEN ROAD INTERCHANGE AGREEMENT

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

and

EMERSON POINT ASSOC., LLLP

and

EMERSON POINT PHASE II, LLC

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EXHIBIT "A" .	PRELIMINARY SKETCH OF INTERCHANGE
EXHIBIT "B" .	CFX'S LETTER OF APPROVAL

MARDEN ROAD INTERCHANGE AGREEMENT

This Marden Road Interchange Agreement ("Agreement") is made and entered into by and between EMERSON POINT ASSOC., LLLP, a Florida limited liability partnership, and EMERSON POINT PHASE II, LLC, a Florida limited liability company (collectively, "Emerson Point"), and the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, an expressway authority established under the laws of the State of Florida (the "Authority").

WITNESSETH:

WHEREAS, Emerson Point is the owner and developer of certain lands located in Orange County, Florida, generally known as the Emerson Point Project (the "Project"); and

WHEREAS, Emerson Point desires to construct a half diamond interchange with associated street improvements at the intersection of Marden Road and SR 414 as depicted on Exhibit "A" attached hereto (the "Interchange")

WHEREAS, Emerson Point has caused to be prepared that certain State Road 414 & Marden Road Interchange Justification Report ("IJR") dated September 2014; and

WHEREAS, the IJR has been reviewed by the Authority and the required technical evaluation of the proposed interchange ramps is complete and the results are stated in CFX's letter of approval which is attached hereto as Exhibit "B"; and

Whereas, the Authority has no objection to the construction of the

Interchange, and will assist Emerson Point in the permitting and approval of the Interchange, as reasonably requested by Emerson Point, but at no cost to Authority, and

WHEREAS, the cost of the Interchange design and development will be paid by Emerson Point and the Authority will not be required to bear any cost or expense in connection therewith, and

WHEREAS, the Interchange will become part of the Authority system (and will be operated by the Authority), and

WHEREAS, Emerson Point intends to engage engineers approved by the Authority to prepare construction plans for the Interchange (the "Construction Plans"); and

WHEREAS, throughout development of the Construction Plans Emerson Point shall submit the same to the Authority for its review, comment and final approval as to the interchange design and other work proposed inside the Authority's limited access right of way, (it being agreed that the Authority is not responsible for approval of plans for the remaining construction of Marden Road improvements or drainage outside of the Authority's right-of-way which shall be reviewed by the City of Apopka); and,

WHEREAS, those items of the Construction Plans subject to the approval of the Authority shall hereinafter be referred to as the "Interchange Plans"); and

WHEREAS, Emerson Point is proposing to construct an Interchange in the form and configuration generally depicted by the attached Exhibit "A" (a reduced version of a portion of the Interchange Plans), subject to the Authority's right to

request a revised geometric design that will be consistent with required sign locations, and

WHEREAS, the Authority has determined from a transportation planning perspective, the construction of the Interchange will not adversely affect SR 414, and

WHEREAS, the Authority and Emerson Point wish to set forth their agreement for the design, permitting, construction, operation and maintenance of the Interchange and to establish criteria for CFX right-of-way use upon the terms and conditions more fully set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises hereof and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Emerson Point and the Authority agree as set forth herein.

1. RECITALS. The above recitals are true and correct and form a material part of this Agreement.

2. INTERCHANGE DESIGN AND PERMITTING.

a. The Engineers. Emerson Point shall engage engineers approved by the Authority to prepare the Interchange Plans (the "Engineers").

b. Construction Documents. Emerson Point and the Engineers shall prepare and provide full, complete plans and specifications and construction bid documents for the Interchange in accordance with the Interchange Plans and all applicable requirements and standards of the Authority. In connection with any disagreement regarding the plans, specifications or construction bid documents, the Authority shall make the final decision based upon its then current practices and

procedures, which decision shall not be subject to revocation or appeal; provided, however, that the Authority shall not unreasonably withhold its approval of such plans, specifications, or construction bid documents.

c. Construction Approvals. All plans, specifications and construction bid and contract documents prepared and submitted with regard to the Interchange Plans shall be subject to final approval by the Authority (the "Construction Approvals"), which final approval shall not be unreasonably withheld by the Authority. The Authority shall approve the Interchange Plans so long as they comply with the current Florida Department of Transportation Standard Specifications for Road and Bridge Construction, as amended or supplemented and the Authority's design criteria. In reviewing such documents the Authority shall take into account whether they are consistent with the Interchange Plans and the Authority's then current practices, procedures and standards. Construction bid documents shall require payment and performance bonds, issued by sureties in amounts and form approved by the Authority and shall specifically name the Authority as a dual obligee. Emerson Point, the Engineers and the Authority shall consult and cooperate as reasonably necessary in all stages of preparation of such plans, specifications and construction bid documents so that the plans, specifications and bid documents: (i) are consistent with the Authority's requirements and standards, and (ii) may be approved without delay.

d. Review Costs. Any fees and costs payable to consultants or other professionals retained by the Authority ("Authority Consultants") incurred by the Authority in connection with the review and approval of the Interchange Plans,

specifications, construction documents and permit applications shall be paid by Emerson Point.

e. Permits. Emerson Point and its Engineers, with the written concurrence of the Authority, shall prepare the permit application and provide the Permit Fee for all local, state and federal permits required for construction of the Interchange. The Authority will be named as the applicant in each of the permit applications and submit the application. The Authority shall have the right to reasonably condition or limit its Construction Approvals if the permits and governmental approvals have requirements which affect in any adverse manner (as reasonably determined by the Authority), other parts of the Central Florida Expressway System. The Authority shall promptly review the permits and approve or disapprove the permits as part of the Construction Approvals.

f. Inspection Services. Emerson Point shall select an engineering firm approved by the Authority, as an engineering/inspection consultant ("CEI") to provide construction, engineering and inspection services during the course of Interchange construction, the cost of which shall be paid directly by Emerson Point. Emerson Point shall, subject to the approval of the Authority, define the scope of services to be included in CEI's contract, which contract shall name the Authority as a third party beneficiary of the CEI's services. The scope of services to be performed by the CEI shall include, but not necessarily be limited to, construction, engineering or inspection services related to those portions of the Interchange Plans approved by the Authority (i.e., any and all work performed within the Authority's Right-of-Way). The scope of services shall also require that the CEI

confirm that any retention ponds that serve the Interchange meet the Authority's requirements. Any change to the design of such ponds shall require Authority approval, such approval not to be unreasonably withheld. Decisions of the CEI which are required to insure that the construction of the Interchange is in accordance with the approved Interchange Plans and Authority design and construction standards (e.g., to conform such construction of the Interchange with the approved Interchange Plans, to take into account unforeseen conditions, changes necessary for public safety, etc.) shall be binding upon the Contractor and Emerson Point, and any CEI requested modification in connection therewith shall be implemented as a change order. Any cost associated with such CEI directed change orders shall be paid solely by Emerson Point.

g. Interference with Authority Operations. If the construction of the Interchange interferes with the Authority's operations, the Authority Director of Construction, or his or her designee, shall decide difficulties and disputes involving construction, maintenance of traffic and maintenance within the Authority's right of way that may occur in connection with or by reason of this Agreement, and the decisions upon all such difficulties and disputes shall be final and conclusive upon the parties hereto.

3. CONSTRUCTION OF THE INTERCHANGE; PAYMENT OF COSTS.

a. General. Emerson Point shall cause the Interchange to be constructed in accordance with this Agreement. Emerson Point agrees to pay, as hereinafter set forth, the Costs in connection with design, permitting and construction of the Interchange. Neither the formation of such a Funding Agency nor

the assignment of any of Emerson Point's obligations hereunder, however, shall operate to relieve Emerson Point of its obligations under this Agreement, including, but not limited to, Emerson Point's obligation to provide payment and performance bonds or other acceptable security to the Authority to assure completion of the Interchange. "Costs" shall be defined as the aggregate of the cost of Interchange facilities and materials depicted or described in the Interchange Plans, specifications, and permits; payment and performance bond premiums (if any); tests; surveys; title insurance; engineering fees; architectural fees, if any; expenses for plans, utility relocation and specifications; Emerson Point's construction management, administrative and legal expenses, and such other expenses as may be necessary or incidental to the design, permitting and construction of the Interchange. Emerson Point shall also pay any Costs arising from change orders and supplemental agreements requested by Emerson Point or required by CEI directive which are necessary to conform the construction of the Interchange to the approved Interchange Plans or permits or which are required for public safety reasons. Other changes solely for the benefit of the Authority shall be paid by the Authority.

b. Construction Bids and Award of Contract.

- i. Promptly upon completion of all plans, specifications, and construction bid documents and approval thereof by the Authority, Emerson Point shall solicit bids to construct the Interchange. Only contractors certified by the FDOT for drainage, paving, and structures shall be

allowed to bid on the Interchange construction. Upon receipt of bids and prior to award of the construction contract, Emerson Point shall advise the Authority in writing of the lowest acceptable bid received for the construction portion of the Costs of the Interchange, together with an estimated amount of other Costs attributable to the Interchange (it being agreed that Emerson Point may elect to accept a bid other than the lowest bid). To the sum of the construction portion of the Costs and the estimated amount of other Costs attributable to the Interchange shall be added a ten percent (10%) contingency. The aggregate of the aforesaid bid, estimate of the other Costs and contingency shall be the Total Construction Costs. The contract to be executed by Emerson Point and the selected contractor shall allow the Authority to assume the benefit of the construction contract if Emerson Point defaults thereunder or under this Agreement.

The foregoing notwithstanding, Emerson Point may, in lieu of soliciting bids to construct the Interchange, elect to enter into negotiations with one or more FDOT certified contractors in order to enter into a Construction Manager at Risk with a Guaranteed Maximum Price

contract arrangement. In addition, Emerson Point shall have the right to elect to terminate such negotiations and thereafter solicit bids to construct the Interchange.

Emerson Point hereby appoints EMERSON MMI-INT, LLC, an affiliated entity, to be the construction manager ("Construction Manager"), and the Construction Manager is hereby approved by the Authority together with fees not to exceed 5% of the Total Construction Costs.

The foregoing notwithstanding, Emerson Point may, in lieu of soliciting bids to construct the Interchange, elect to enter into negotiations with the Engineers, Construction Manager or one or more FDOT certified contractors (or combination thereof) for a design build contract arrangement. In addition, Emerson Point shall have the right to elect to terminate such negotiations and thereafter solicit bids to construct the Interchange.

In the event the construction manager at risk or design build method of delivery is chosen, the parties agree and understand that no construction may commence on any section of the project without final design approval by the Authority.

- ii. After receipt of bids (or in the alternative, (i) after

negotiation of an acceptable Construction Manager at Risk with a Guaranteed Maximum Price arrangement or (ii) a design build project with the Engineers, Construction Manager Contractor (or combination thereof)), Emerson Point may elect to proceed with or refrain from construction of the Interchange described herein. If Emerson Point elects to proceed with construction of the Interchange, it shall do so by delivery to the Authority of the Financial Guarantee. The Financial Guarantee may be in the form of a payment and performance bond or other form of security (such as but not limited to the depositing of funds into an escrow arrangement acceptable to the Authority) acceptable to the Authority. Emerson Point shall have the right to, from time to time, reduce the amount of the Financial Guarantee by the amount of payments Emerson Point makes under the construction contract for the Interchange. Any defense or objection by Emerson Point to disbursement under the Financial Guarantee shall be by separate action, and no claim or demand shall be permitted which might abate the obligation of the issuer of the Financial Guarantee to disburse funds. The purpose of the Financial Guarantee is to assure that

if Emerson Point does not fully complete the Interchange construction, adequate funds will be available to pay all lienors and vendors and either complete construction of the Interchange or restore the Interchange area to its former condition. Emerson Point shall cause the Financial Guarantee to remain in full force and effect until the Interchange construction has been completed, accepted by the Authority, and all Costs associated therewith have been paid. Thirty (30) days prior to the expiry date (if any) of the Financial Guarantee, Emerson Point shall cause the Financial Guarantee to be renewed, failing which the Authority may draw the full amount thereof.

- iii. Emerson Point may also elect (in its sole and absolute discretion) to reject any and all bids, to not enter into a contract with a Construction Manager at Risk, to waive any and all informalities not involving Costs, time or changes in the design of the Interchange, or to negotiate contract terms with the successful bidder and proceed with construction by complying with the requirements above-described and delivering to the Authority the required Financial Guarantee. If Emerson Point elects to reject all bids, Emerson Point may solicit new bids based

either on the same design of the Interchange or upon a redesign of the Interchange approved by the Authority and prepared at the expense of Emerson Point.

The Authority shall review the redesign and, if the redesign is in accordance with the Authority's policies, practices and standards, shall approve the redesign prior to Emerson Point's soliciting new bids based upon the redesign, which approval shall not be unreasonably withheld. Upon receipt of the new bids, Emerson Point may again elect to reject any and all bids, to not enter into a contract with a Construction Manager at Risk, to waive any and all informalities not involving Costs, time or changes in the design of the Interchange, or to negotiate contract terms with the successful bidder and proceed with construction by complying with the requirements above-described and delivering to the Authority the required Financial Guarantee.

- iv. If prior to the start of construction of the Interchange Emerson Point refuses or fails for whatever reason to deliver to the Authority the Financial Guarantee as described above or to notify the Authority it has rejected all bids or has not concluded negotiations with such Construction Manager at Risk, the Authority may, at its

sole option, terminate this Agreement by written notice to Emerson Point, except that Emerson Point's obligation to reimburse the Authority for expenses incurred hereunder shall survive the termination.

c. Payment of Costs.

- i. So long as the Financial Guarantee has been established and remains in place, Emerson Point shall directly fund the Costs attributable to the Interchange. If Emerson Point disputes the accuracy of an invoice it receives for Costs attributable to the Interchange, the invoice payment date shall be tolled until the dispute is resolved in accordance with the procedures specified in the agreement forming the basis for the disputed Costs. To the extent Emerson Point funds the Costs as they come due, the Authority shall not draw on the Financial Guarantee for payment. The Authority shall only draw upon the Financial Guarantee to the extent necessary to pay the Costs incurred by the Authority and not funded by Emerson Point. Any proceeds the Authority receives from drawing upon the Financial Guarantee shall be deposited in a separate interest-bearing account of the Authority. The Authority shall thereafter use such funds for the purposes herein provided. Upon the Authority's

acceptance of the Interchange following completion and payment of all Costs for the interchange (or restoration if the Authority elects not to complete the Interchange), any sums remaining in such account shall forthwith be refunded to Emerson Point, together with any interest accrued thereon.

- ii. If in connection with the construction of the Interchange a lien is filed against the lands or right-of-way of the Authority, within thirty (30) days thereafter Emerson Point shall cause the lien to be removed (by discharge, transfer to security or otherwise). If the lien is not removed within such thirty (30) day period, the Authority may draw upon the Financial Guarantee and satisfy the lien.
- iii. Except in a circumstance where Emerson Point has been declared in default hereunder after expiration of any applicable notice and cure period and pursuant to the terms hereof is precluded by the Authority from continuing construction of the Interchange, if Emerson Point fails to fund Costs as they become due and such failure continues for a period of thirty (30) days after notice thereof by the Authority, the Authority will be permitted to access the Financial Guarantee to the

extent necessary to cover the outstanding invoice and any other Costs incurred by the Authority in connection therewith. In a circumstance where a Emerson Point default results in the Authority's decision to preclude further interchange construction by Emerson Point, the Authority will be entitled to draw upon the entire Financial Guarantee and shall thereafter use the funds obtained from the Financial Guarantee to either restore the Interchange to its original condition, or complete the Interchange in accordance with the Interchange Plans, specifications, contract documents and permits. Drawing upon the Financial Guarantee shall not relieve Emerson Point of its liabilities hereunder, or the obligation to pay the Total Construction Costs to the extent that the funds obtained from the Financial Guarantee are insufficient to satisfy this obligation.

d. Supplemental Agreements. Emerson Point shall pay all Costs arising from supplemental agreements with respect to the Interchange.

e. Completion of Interchange. The Interchange shall not be open and available for public use until substantial completion of construction and final inspection and acceptance by the Authority, as evidenced in writing by the Authority. Concurrent with such acceptance, Emerson Point shall assign to the Authority all contractor representations and warranties associated with the

Interchange construction.

f. Construction Practices. The Interchange shall be constructed in a manner so as to minimize interference with Marden Road Interchange traffic flow, and Emerson Point (and its contractor) shall adhere to all CEI or Authority directives to achieve that result.

4. REIMBURSEMENT TO AUTHORITY OF ADMINISTRATIVE, ENGINEERING AND LEGAL COSTS. Emerson Point shall reimburse the Authority for Authority Consultant expenses incurred by the Authority in connection with the Interchange. Simultaneously with the execution of this Agreement, the Authority has given to Emerson Point an estimate of costs (the "Budget") to be incurred by the Authority between execution of this Agreement, the issuance of the notice to proceed with construction and thereafter to Interchange completion. If Emerson Point elects not to proceed with the construction of the Interchange, the actual costs incurred by the Authority shall nevertheless remain payable to the Authority. If Emerson Point elects to proceed, expenses incurred by the Authority through its consultants related hereto shall be paid by Emerson Point so long as such expenses do not exceed, in the aggregate, the amount of the Budget by more than ten percent (10%). The Authority shall submit invoices to Emerson Point upon design approval and then monthly during the construction period. If Emerson Point disputes any of the invoiced sums, Emerson Point shall notify the Authority in writing before the date payment would ordinarily be due, setting forth the nature of the dispute and the amount disputed. However, all disputed amounts shall nevertheless be promptly paid by Emerson Point notwithstanding the dispute so

long as the amounts set forth on such invoices do not exceed the Budget, prorated to take into account the stage of construction to date, by more than ten percent (10%). Emerson Point may withhold payment of any disputed amount that exceeds such prorated Budget amount, plus ten percent (10%). Failure of Emerson Point to pay any invoiced amounts that do not exceed such prorated Budget amount plus ten percent (10%) within thirty (30) days of receipt of notice of such default shall be a material breach of this Agreement. The parties will negotiate in good faith to resolve any disputed amounts within thirty (30) days following the Authority's receipt of notice from Emerson Point regarding the items and amounts in dispute. If the parties cannot reach agreement on the disputed items or amounts within such thirty (30) day period, Emerson Point shall proceed with construction and defer further discussion relating to the disputed items or amounts until completion of the Interchange. Upon completion of the Interchange, the parties agree to mediate all disputed items and amounts and shall agree in writing as to the identity of the mediator and the rules and procedures of the mediation. The costs and fees reasonably related to any mediation occurring hereunder shall be shared equally by Emerson Point and the Authority. Each party shall bear its own attorneys' fees and costs. If the parties cannot reach agreement about or through mediation, Emerson Point and the Authority shall resolve their differences by binding arbitration in accordance with the provisions of Section 17 of this Agreement.

5. PAYMENT OF OPERATION AND MAINTENANCE OF INTERCHANGE.

Except as set forth in Section 6.d and Section 8 below, or as otherwise herein provided after construction completion and acceptance by the Authority, the

Authority shall be responsible for expenses of operation, maintenance and repair of the Interchange, including but not limited to the cost of utility services such as electrical power provided for the lights within the Expressway Authority limited access right of way.

6. RIGHTS-OF-WAY. Emerson Point shall acquire (at its expense) and shall donate at no cost to the Authority in fee simple, free and clear of all encumbrances (other than easements and other matters of record reasonably approved by the Authority), all rights-of-way deemed necessary by the Authority for the Interchange which are not currently owned by the Authority. In addition, Emerson Point shall grant the Authority a drainage easement for the ditches and ponds as necessary to accommodate the stormwater needs of the Interchange. Pursuant to such easements Emerson Point, a Funding Agency, or the City of Apopka shall be obligated to maintain the ditches and drainage ponds.

a. Conveyance of Right-of-Way. Prior to commencement of construction of the Interchange, Emerson Point shall deliver to the Authority the following documents in connection with the right-of-way owned by Emerson Point necessary for the Interchange:

- i. A special warranty deed or deeds conveying in fee simple the right-of-way to the Authority for the Interchange free and clear of all liens and encumbrances (subject only to easements and other matters of record reasonably approved by the Authority).
To ensure there is no interference with the safe

operation of the Interchange, the Authority reserves the current and future right, after providing prior written notice to Emerson Point of its intended action, to trim or remove at Emerson Point's cost any landscaping, planting or irrigation within the right of way for the Interchange or, if landscaping or plantings on Emerson Point's adjacent property is creating a line of sight problem at the intersection of the Interchange entrance or exit ramps and Marden Road, within such adjacent property, if Emerson Point has not taken the required corrective action within thirty (30) days following receipt of notice from the Authority of the need to take such required corrective action.

- ii. An owner's title insurance policy for the fair market value of the Right of Way issued by a title insurance company approved by the Authority (with no exceptions other than those approved by the Authority) covering the right-of-way and easements being conveyed to the Authority.
- iii. Partial releases with respect to any mortgage or mortgages encumbering such right-of-way and easements.
- v. Off-site drainage easements, if necessary to

accommodate Interchange drainage.

Upon receipt of such documents, the Authority shall record (at its expense) the deeds, licenses and partial releases in the Public Records of Orange County, Florida.

b. Drainage Ponds. In addition to the dedication of the right-of-way for the Interchange Emerson Point shall, prior to commencement of construction, provide the Authority with appropriate drainage easements to the stormwater retention/detention ponds shown on the Interchange Plans as being necessary to accommodate drainage requirements for the Interchange. All fencing or other barriers around the stormwater facilities and ponds and adjacent to the limited access portions of the expressway shall be consistent with the Interchange Plans, and laws applicable at the time of installation

d. Indemnification. Emerson Point shall indemnify, hold harmless and defend the Authority from and against all claims, damages, losses, actions and causes of action or expenses arising out of or resulting from: (i) this Agreement and the activities provided for herein or (ii) due to or arising from any negligent act or omission of Emerson Point, its successors, assigns, their agents or employees and not arising primarily from any negligent act or omission of the Authority. The mutual benefit of this Agreement is the specific consideration for this indemnity. This indemnity shall continue in effect (at all times) until four (4) years following the date on which the Interchange is opened for public use.

9. SIGNAGE. No billboards shall be allowed within the right of way of the

Interchange. No non-Authority signage shall be allowed.

10. UTILITIES. The Interchange Plans incorporate the utility lines which will traverse the Interchange area, including fiber optic cable lines and electricity. Lighting of the Interchange and the approach areas to the Interchange shall be provided in accordance with the Interchange Plans.

11. SUCCESSORS AND ASSIGNS. At Emerson Point's election, this Agreement may be assigned by Emerson Point to a duly formed Funding Agency or City of Apopka. Upon the Authority's receipt of written notice that the Agreement has been assigned to a Funding Agency or City of Apopka and the Funding Agency (or City of Apopka) has accepted the assignment, all of Emerson Point's obligations under this Agreement shall also be the obligations of the Funding Agency or City of Apopka and this Agreement shall be deemed to be an Interlocal Agreement between the Authority and the Funding Agency or City of Apopka. However, such an assignment shall not relieve Emerson Point of its obligations hereunder, and thereafter Emerson Point shall be jointly and severally liable hereunder. At all times prior to the date on which this Agreement is assigned to a duly formed Funding Agency or City of Apopka, the parties intend that the obligations of Emerson Point under this Agreement shall be binding on any persons or entity that succeeds Emerson Point as a primary developer of the Project, but (except for the assessments herein described) shall not act as an encumbrance on the Project to the extent portions are sold to persons or entities for residential, office, hotel, commercial, industrial and other above-ground construction and immediate uses distinct from site preparation or land development. Therefore, if all or any

substantial portion of the Project then owned by Emerson Point is transferred prior to meeting the obligations set forth in this Agreement, and if such transferee becomes the developer for the Project and not an end user, such transferee shall be bound by the terms hereof as if the transferee was an original party hereto. To that extent this Agreement shall be deemed to run with title to the Project, and this Agreement shall accordingly be recorded in the Public Records of Orange County, Florida by Emerson Point upon execution with a recorded copy furnished to the Authority prior to issuance of the Notice to Proceed.

12. TERMINATION OF AGREEMENT.

a. Automatic Termination. This Agreement shall terminate without any further action by the parties if Emerson Point refuses or fails to deliver the Financial Guarantee prior to the commencement of construction, or if construction has not commenced within two (2) years after the Effective Date unless extended in writing by the parties hereto. b. Termination by the Authority. The Authority may terminate this Agreement if Emerson Point defaults in the performance of any material obligation in this Agreement, and such default is not cured (or curative action has not commenced and is not being diligently pursued) within thirty (30) days following receipt of written notice thereof. For purposes of the foregoing sentence, any action or inaction by Emerson Point that results in the Authority drawing on the Financial Guarantee for payment shall also be deemed a default by Emerson Point. If the Authority draws on the Financial Guarantee, this Agreement shall not terminate and the default shall be addressed in accordance with the provisions of Section 17 of this Agreement.

c. Termination after Construction Commencement. If this Agreement is terminated by the Authority after commencement of construction because of a material default by Emerson Point, the Authority may elect to have removed whatever portion of the Interchange has been constructed as of the date of termination. In such circumstances, Emerson Point shall remove all improvements constructed pursuant to this Agreement, together with any other items necessary and incidental to removal of the Interchange. Such removal shall be at Emerson Point's expense (secured by the Financial Guarantee or other security acceptable to the Authority), and Emerson Point's obligation to pay the cost of such removal shall survive termination. In any event, upon termination for material default by Emerson Point, the Authority shall have no obligation whatsoever to complete construction and open the Interchange to public vehicular traffic.

d. Termination by Emerson Point. Emerson Point may terminate this Agreement if the Authority defaults in the performance of any material obligation in the Agreement, and such default is not cured (or if curative action has not commenced and is not being diligently pursued) within thirty (30) days following receipt of written notice thereof. Any default by the Authority shall be addressed in accordance with the provisions of Section 17 of this Agreement.

e. Reconveyance upon Termination. In the event that this Agreement is terminated in accordance with the provisions of this Section 12 after Emerson Point (or a Funding Agency or CCD's) has conveyed to the Authority the right of way for the Interchange and has granted to the Authority any off-site drainage easements, and the Authority does not elect to move forward with

construction within six (6) months after this Agreement is so terminated, then the Authority shall reconvey to Emerson Point (or the Funding Agency or City of Apopka) the right of way for the Interchange, and shall terminate or release such easements. Title shall be reconveyed subject to only those matters to which title was subject as of the date of conveyance by Emerson Point (or Funding Agency or City of Apopka) to the Authority as evidenced by a title insurance commitment. All costs of such reconveyance, including without limitation documentary stamps, if any, required to be affixed to the deed of conveyance, title searches and title insurance premiums, shall be paid by the party whose default hereunder resulted in the other party electing to terminate this Agreement.

13. COMPLIANCE WITH LAWS AND REGULATIONS. In performing pursuant to this Agreement, each party shall abide by the statutes, ordinances, rules and regulations pertaining to, or regulating, the acts of such party, including but not limited to those now in effect and hereafter adopted.

14. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and may not be modified or amended except by an instrument in writing executed by the parties to be bound thereby.

15. NOTICES. Any notices required to be given hereunder shall be deemed given to the proper parties if sent to the following:

Authority:	Executive Director Central Florida Expressway Authority 4974 Orlando Tower Road Orlando, Florida 32807
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With a copy to: General Counsel
Central Florida Expressway Authority
4974 Orlando Tower Road
Orlando, Florida 32807

Emerson Point: Emerson Point
c/o MMI Development, Inc.
Attention: Mike Wright
1350 Orange Avenue, Suite 250,
Winter Park, Florida 32789

With a copy to: Ted B. Edwards, Esquire
Law Office of Ted B. Edwards, P.A.
1350 Orange Ave, Suite 260
Winter Park, Florida 32789

Each such notice shall be deemed delivered on the date delivered if by personal delivery, or on the date upon which the return receipt is signed or delivery is refused or notice is designated by the postal authorities as not deliverable, as the case may be, if mailed, or date of delivery by overnight delivery service as evidenced by service receipt. Either of the parties may change, by written notice as provided herein, the address or persons for receipt of notices.

16. ENFORCEMENT. The parties each agree that this Agreement is lawfully entered into and is legal, valid and binding against both of them in accordance with its terms.

17. APPLICABLE LAW/VENUE/REMEDIES. This Agreement shall be construed, controlled and interpreted according to the laws of the State of Florida. Venue for any proceeding arising under this Agreement shall be in Orange County, Florida. If there is a dispute arising out of or related to this Agreement or the enforcement thereof, or regarding the subject matter of this Agreement, the

Authority and Emerson Point agree to submit such dispute to binding arbitration conducted by and in accordance with the rules of the American Arbitration Association. The arbitrators shall be entitled to grant such remedies as are provided by law or in equity. Provided, however, arbitration shall not be applicable in connection with the resolution of any issues pertaining to the statutory authority, mandate or interpretation of Authority powers as set forth in Chapter 348, Florida Statutes, and disputes regarding invoices from the Authority shall be processed as provided in Section 4 above. The costs and fees reasonably related to any arbitration occurring hereunder shall be shared equally by Emerson Point and the Authority. Each party shall bear its own attorneys fees and costs.

18. NON-WAIVER AND CONFLICTS. No consent or waiver, express or implied by either party, to or of any breach or default of the other with regard to the performance of said party of its obligations under this Agreement shall be deemed or construed to constitute consent or waiver to any other breach or default of such party. Failure by a party to complain of any act or failure to act on the part of the other party, irrespective of how long the failure continues, shall not constitute a waiver by that party of its rights and any remedies that exist under this Agreement.

19. SEVERABILITY. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder or substantially increase the burden of any party hereto, shall be held to be invalid or unenforceable to any extent, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

20. EFFECTIVE DATE. This Agreement shall be and become effective on

the date it is signed by the last to sign of Emerson Point and the Authority as set forth below.

21. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

22. TIME OF THE ESSENCE. Time and timely performance hereunder are of the essence in this Agreement.

23. FORCE MAJUERE. In the event that either party hereto shall be unable to fulfill any of its obligations hereunder or is delayed in doing so by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of such party, then for the period and to the extent that a party is unable to fulfill in whole or in part its obligations hereunder, such non-performing party shall be released from its obligations hereunder until the cessation of such disability.

Signatures of the parties are on the following pages.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in a manner and form sufficient to bind them on the dates set forth below.

Witnesses:

Jessica A Johnson
Print Name: Jessica Johnson
Daniel Conn
Print Name: Daniel Conn

Jessica A Johnson
Print Name: Jessica Johnson
Daniel Conn
Print Name: Daniel Conn

Jessica A Johnson
Print Name: Jessica Johnson
Daniel Conn
Print Name: Daniel Conn

EMERSON POINT ASSOC., LLLP,

By: [Signature]
Michael E. Wright, General Partner

Date: 9/29/15

Emerson Point Phase II, LLC,

By: [Signature]
Michael E. Wright, Manager

Date: 9/29/15

By: [Signature]
Mary L. Demetree, Manager

Date: 9/29/15

**CENTRAL FLORIDA EXPRESSWAY
AUTHORITY**

Print Name: _____

By _____
_____, **Chairman**

Print Name: _____

Date: _____

Approved as to Form and Legality

By: _____

Name: _____

EXHIBIT "A"

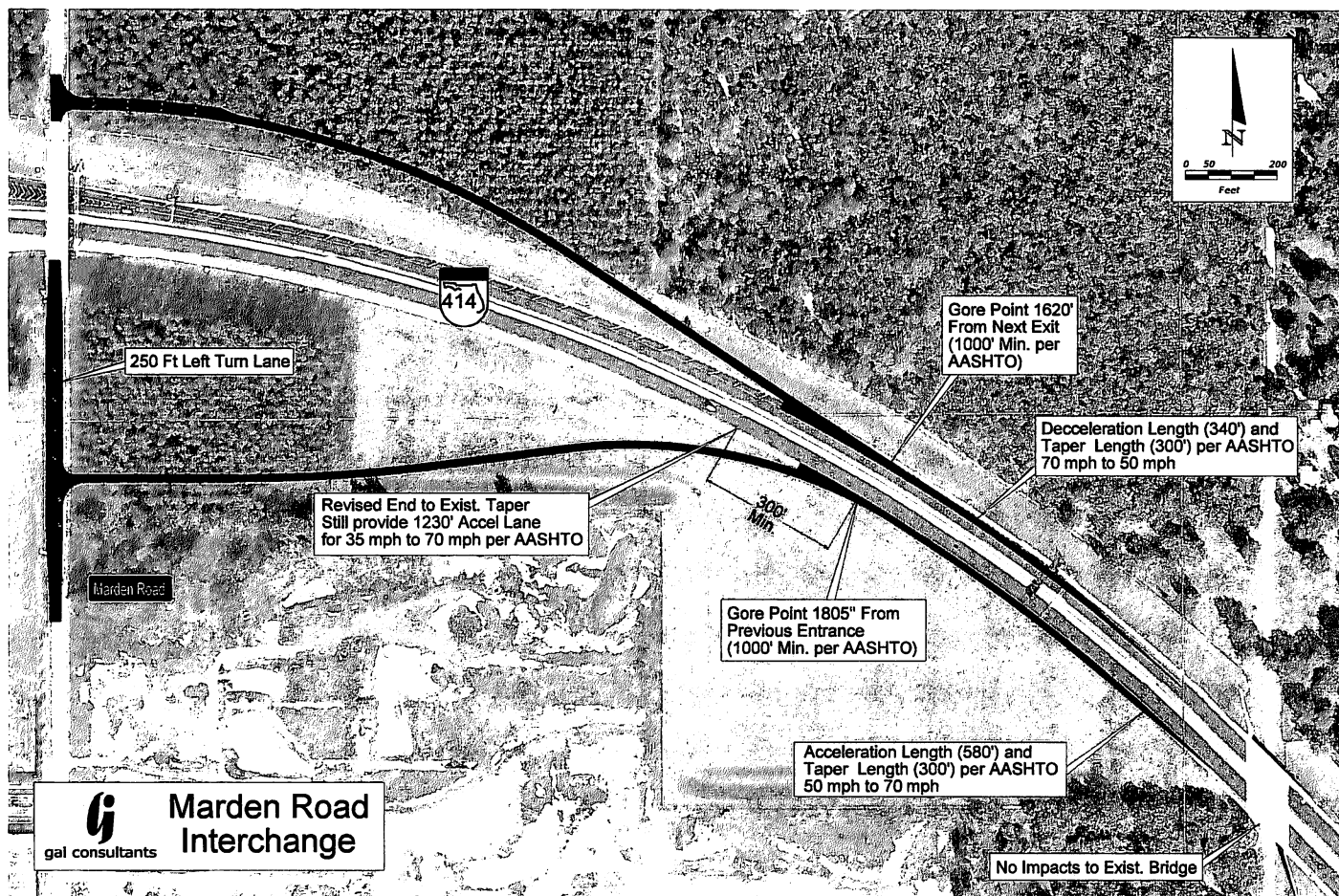


EXHIBIT "B"

4829-7709-0080, v. 4