

**MAINTENANCE MEMORANDUM OF AGREEMENT
BETWEEN
FLORIDA DEPARTMENT OF TRANSPORTATION,
FLORIDA'S TURNPIKE ENTERPRISE
AND
ORANGE COUNTY, FLORIDA**

THIS MAINTENANCE MEMORANDUM OF AGREEMENT (the "Maintenance Agreement") is made and entered into by and between the FLORIDA DEPARTMENT OF TRANSPORTATION, FLORIDA'S TURNPIKE ENTERPRISE, an executive agency of the State of Florida (the "Department"), and ORANGE COUNTY, FLORIDA, a political subdivision of the State of Florida (the "County") (the Department and the County may be referred to individually as a "Party" and collectively as the "Parties").

RECITALS

A. The Department is authorized by Section 334.044, Florida Statutes, to coordinate the planning, development, and operation of the State Highway System and to cooperate with local governments in the development of a statewide transportation system and individual components of the system.

B. The Department's Florida Turnpike Enterprise ("Enterprise") is authorized by Section 338.2216, Florida Statutes, to plan, develop, own, acquire, construct, improve, maintain, operate, and manage the Florida Turnpike System; and to cooperate and contract with other public entities for such purposes.

C. The County is authorized by Chapters 125 and 336 to own, construct, operate, and maintain the county road system roads located within the geographical boundaries of Orange County, Florida, and to enter into agreements with other governmental agencies for the performance of the other agencies' authorized functions.

D. The Enterprise operates the Beachline West Expressway (SR 528) in Orange County, Florida, a limited access highway that is part of the Florida Turnpike System.

E. The County operates International Drive, Universal Boulevard, Orangewood Boulevard, and John Young Parkway (CR 423) in Orange County, Florida.

F. The Department has completed construction of a project that widened SR 528 from Interstate 4 (I-4) to Florida's Turnpike Mainline (SR 91), and other improvements, in Orange County, Florida, as described in the Department's Five-Year Adopted Work Program as Financial Project Number (FPN) 406090-5 ("Project-1"); and the Department's adopted work program includes a project to widen the eastbound exit ramp from SR 528 to CR 423 at milepost 3, and other improvements, in Orange County, Florida, as described in the Department's Five-Year Adopted Work Program as FPN 449465-1 ("Project-2"). (Project-1 and Project-2 may be referred to collectively in this Maintenance Agreement as the "Projects").

G. To ensure the most effective utilization of public resources, the Parties agreed to establish this Maintenance Agreement to coordinate maintenance responsibilities for the Projects.

AGREEMENT

In consideration of the mutual covenants and promises contained in this Maintenance Agreement, the Parties agree that the Recitals are true, correct, and incorporated by reference herein, and further agree as follows:

1. **Representations of the County.**

a. To the knowledge of the County, there is no litigation pending or threatened with respect to this Maintenance Agreement, or the subject matter hereof, which would affect the performance by the County of its obligations under this Maintenance Agreement.

b. To the knowledge of the County, the execution of this Maintenance Agreement does not constitute a violation of applicable law or regulations or a breach of or default under any other agreement to which the County is a party or an event that, with the passage of time, would become a breach of or default under any such agreement.

c. All consents, waivers, approvals, and other governmental actions required to be taken in order for the County to enter into this Maintenance Agreement have been received by the County.

2. **Representations of the Department.**

a. To the knowledge of the Department, there is no litigation pending or threatened with respect to this Maintenance Agreement, or the subject matter hereof, which would affect the performance by the Department of its obligations under this Maintenance Agreement.

b. To the knowledge of the Department, the execution of this Maintenance Agreement does not constitute a violation of applicable law or regulations or a breach of or default under any other agreement to which the Department is a party or an event that, with the passage of time, would become a breach of or default under any such agreement.

3. **Descriptions of the Projects**

a. **Project-1**

The Department has completed final as-built construction plans (“Project-1 Plans”) for Project-1, which are on file with both the County and the Department. The Project generally included, among other things, widening of SR 528, bridge widenings, ramp widenings, traffic control plan, MSE walls, retaining walls, guardrail barriers, cross drain

replacements/extensions, drainage pipes, drainage structures, stormwater management facilities, sidewalk, fence, signs, roadway lighting, intelligent transportation system adjustments, temporary works, utility adjustments and earthwork.

b. Project-2

The Department has prepared construction plans (“Project-2 Plans”) for Project-2, which are on file with both the County and the Department. Project-2 generally includes, among other things, widening of the eastbound exit ramp from SR 528 to CR 423, construction of operational and safety improvements for southbound CR 423 to Taft Vineland Road, merge lane, turn lanes, ramp widenings, traffic control plan, guardrail, barriers, drainage and stormwater management improvements, signs, roadway lighting, intelligent transportation system adjustments, traffic signals, temporary works, utility adjustments and earthwork

4. **County Responsibilities.**

a. The County grants the Department, its consultants, and contractors (at no cost to the Department, its consultants, or contractors), the right to enter upon, over, through, under, across, and to occupy the County’s Right of Way (ROW) for the purposes of operating and maintaining those portions of the Projects owned and operated by the Department. The County agrees that no separate County ROW permit needs to be obtained for these purposes.

b. Project-1

i. The County shall operate and maintain, at its sole cost, all areas of Project-1 for which maintenance responsibility is assigned to the County as depicted on Exhibits “A” and “B” (as such exhibits may be later amended). The County’s responsibilities will include:

1) For the International Drive and SR 528 Interchange limits as reflected on Exhibit “A”:

a. On the west side of International Drive, up to and including the ROW fence line from the northern limits of the ROW line to the southern limits of the ROW line, except under the SR 528 bridges, where the western limits shall be up to but not including the bridge vertical wall.

b. On the east side of International Drive, up to but not including the ROW fence line from the northern limits of the ROW line to the intersection with the east-west portion of the ROW line, transitioning to and continuing south along the back of the sidewalk to the

back of the pedestrian crosswalk on the south side of the SR 528 eastbound exit/entrance ramps, transitioning to but not including the ROW fence line, continuing south to the southern limit of the ROW line.

- c. All components of the traffic and pedestrian signalization system, including portions located outside of the County limits of responsibility, as reflected in Exhibit "A."

2) For the Universal/Orangewood Blvd. and SR 528 Interchange limits as reflected in Exhibit "B":

- a. The area bounded by, and including, the sidewalk on the east and west sides of Universal/Orangewood Boulevard.
- b. Median landscaping installed under separate agreement and maintained by others shall not be the responsibility of the County.
- c. All components of the traffic and pedestrian signalization system, including portions located outside of the County limits of responsibility, as reflected in Exhibit "B."

c. Project-2

- i. Upon final acceptance of Project-2 by the Department, the County shall operate and maintain, at its sole cost, all areas of Project-2 for which maintenance responsibility is assigned to the County as depicted on Exhibit "C" (as such exhibit may be later amended). The County's responsibilities will include:

- 1) All improvements constructed on CR 423 as part of Project-2.
- 2) All components of the traffic and pedestrian signalization system, including portions located outside of the County limits of responsibility, as reflected in Exhibit "C."
- 3) The area bounded by, and including the sidewalk on the east and west sides of CR 423.

d. It is understood by the Parties that all traffic and pedestrian signalization systems and/or components constructed under the Projects shall be operated and maintained by the County in accordance with the terms and conditions of the then current traffic signal maintenance compensation agreement (TSMCA) between the Department and the County.

e. The County shall perpetually maintain all areas of the Projects for which it has maintenance responsibility in good repair and working order in accordance with the Project-1 Plans and Project-2 Plans and the standards and requirements of the Department generally applicable to work on Department ROW (as it may later be amended), and in a manner which will not interfere with the convenient, safe, and continuous operation of SR 528 or other Department facilities adjacent thereto. If any portion of the Projects for which the County has maintenance responsibility is damaged such that it is not structurally stable or presents a safety hazard to the public, it shall be repaired to a safe condition in a timely manner.

- i. For any routine or periodic maintenance activities on any portion of the Projects on County ROW (if impacting Department ROW), and on any portion of the Projects on Department ROW for which maintenance responsibility is assigned to the County under this Maintenance Agreement, the County shall submit to the Department a maintenance plan detailing the means and methods for accomplishing repairs in accordance with all Department standards, procedures, and specifications. This maintenance plan must be submitted to Enterprise's Maintenance Office at least forty-eight (48) hours in advance of the planned maintenance work and approved by the Department prior to commencing any maintenance or repair activities (this requirement shall not be construed to limit the County's responsibility for taking immediate action to protect the traveling public in the event any portion of the Projects maintained by the County is determined to pose an imminent safety threat). It is hereby agreed by the Parties that neither the granting of permission to access Department ROW nor the County's use or occupancy of Department ROW shall operate to create or vest any property right to or in the County. For any maintenance activities that will require a lane closure on SR 528 or impact traffic on SR 528, the County must provide a signed and sealed Maintenance of Traffic Plan and lane closure analysis to the Department for its review and approval prior to commencing such maintenance activities.
- ii. Maintenance work performed by the County on the Department's ROW shall only be performed by Department pre-qualified contractors, the selection of which is subject to review and approval by the Department, and shall be subject to the requirements of this Maintenance Agreement generally applicable to work in Department ROW, including the requirements for advance notice of work to be performed, maintenance of traffic, workmanlike performance, erosion and pollution control, environmental requirements, avoidance of damage to Department

facilities, public safety, hours of operation, and lane closures. Maintenance work that includes reconstruction of any portion of the Projects shall be subject to all provisions of this Maintenance Agreement applicable to the initial construction of the Projects.

- iii. Unless otherwise agreed to by the Department in a separate writing, improvements constructed as part of the Projects for which the County is responsible for maintenance shall be maintained to the same dimensions as originally constructed. The County shall not cause or permit any liens or encumbrances to attach to any portion of Department ROW.
- iv. The County's performance of its maintenance responsibilities for the portions of the Projects located on Department ROW is subject to periodic inspection by the Department, at the Department's sole discretion. If the Department determines that the County has failed to maintain the portions of the Projects located on Department ROW in accordance with the terms of this Maintenance Agreement, the Department may cause the needed maintenance to be performed, and the County shall reimburse any costs incurred by the Department for such work. If the needed maintenance is not required to avoid or correct a risk of injury to persons or property, the Department will notify the County, in writing, at least forty-eight (48) hours in advance of performing maintenance work for which the County is responsible. If the County does not perform the required maintenance within such period, the Department may proceed to perform the work at the County's expense.
- v. The County shall be solely responsible for any damages to Department real property, any surrounding property, real estate, vehicles, pedestrians, or other persons or things occurring as a result of its operation or maintenance activities, at no expense to the Department. In addition, the County will be solely responsible for clean-up or restoration required to correct any environmental or health hazards that may result from its maintenance operations, at no expense to the Department. The County shall not store any hazardous materials within the Department ROW.

The provisions of this paragraph shall survive the expiration or termination of this Maintenance Agreement.

5. **Department Responsibilities.**

a. **Project-1**

- i. Except as may be otherwise expressly provided in this Maintenance Agreement, the Department will operate and maintain those portions of Project-1 located within the Department's final SR 528 limited access

ROW as part of the Florida Turnpike System, as determined by the Project-1 Plans, in accordance with the Department's standard schedules for maintenance. The maintenance limits for Project-1 are currently reflected in Exhibits "A" and "B" to this Maintenance Agreement. The Department's responsibilities include:

- 1) For the International Drive and SR 528 Interchange limits as reflected on Exhibit "A":
 - a. At signalized ramp connections to International Drive, the responsibility for maintaining the paved portion of the ramp shall extend to the International Drive point of curvature of the curb return.
 - b. At non-signalized ramp connections to International Drive, the responsibility for maintaining the paved portion of the ramp shall extend to the physical gore.
 - c. All portions of the interchange lighting system connected to and including the Department load centers located within the interchanges.
 - d. All portions of the Department ITS system within the interchange.
 - e. The concrete barrier pier protection with crash cushions at each end within the median protecting the SR 528 bridge piers.
 - f. Overhead sign structures within the interchange.
- 2) For the Universal/Orangewood Blvd. and SR 528 Interchange limits as reflected in Exhibit "B":
 - a. At signalized ramp connections to Universal/Orangewood Blvd., the responsibility for maintaining the paved portion of the ramp shall extend to the Universal/Orangewood Blvd point of curvature of the curb return.
 - b. At non-signalized ramp connections to Universal/Orangewood Blvd., the responsibility for maintaining the paved portion of the ramp shall extend to the physical gore.

- c. All portions of the interchange lighting system connected to and including the Department load centers located within the interchange.
 - d. All portions of the Department ITS system within the interchange.
 - e. The concrete barrier pier protection with sloped ends (no crash cushions) within the median protecting the SR 528 bridge piers.
 - f. All noise walls constructed along the ROW lines within the interchange.
 - g. Overhead sign structures within the interchange.
- ii. The traffic control signal equipment at the following intersections will be owned by the Department:
 - 1) International Dr. Ramp and Westwood Blvd
 - 2) International Dr. North Side
 - 3) Orangewood Blvd. EB off ramp
 - 4) Universal Blvd. WB off ramp

b. Project-2

- i. Upon final acceptance of Project-2 by the Department, the Department will, except as may be otherwise expressly provided in this Maintenance Agreement, operate and maintain those portions of Project-2 located within the Department's final SR 528 limited access ROW, as determined by the Project-2 Plans and final construction, in accordance with the Department's standard schedules for maintenance. The maintenance limits for Project-2 are currently reflected in Exhibit "C" to this Maintenance Agreement. The Department's responsibilities include:
 - 1) All portions of the interchange lighting system connected to and including the Department load centers located within the interchange as shown in Exhibit "C."

- 2) All portions of the Department ITS system within the interchange.
- 3) The concrete barrier pier protection with crash cushions at each end within the median protecting the SR 528 bridge piers.
- 4) After final acceptance of Project-2 by the Department, the Department will continue operation and maintenance responsibilities within its existing ROW. These Department-owned facilities, as shown in the project plans, shall be operated and maintained by the Department at its sole cost.
- 5) Overhead sign structures within the interchange.

ii. The traffic control signal equipment at the following intersections will be owned by the Department:

- 1) John Young Parkway EB off ramp
- 2) John Young Parkway WB off ramp

6. **General Maintenance Responsibilities.**

In addition to each Party's specific maintenance responsibilities as outlined in Section 4 (County) and Section 5 (Department), the Parties agree to the following general maintenance responsibilities:

- a. Each Party shall be responsible for all ground-mounted signs within the limits of their responsibility, regardless of message, unless installed under a separate permit or agreement.
- b. Each Party shall be responsible for all drainage pipes and structures within the limits of their responsibility, unless installed under a separate permit or agreement.
- c. Each Party shall provide the other with forty-eight (48) hour advance notification prior to performing any work within the other Party's ROW, identified herein as their responsibility, performing requested work only upon approval of the request, which should not be unreasonably withheld.
- d. Each Party shall be responsible for guardrails within the limits of their responsibility, unless installed under a separate permit or agreement.
- e. Each Party shall be responsible for maintaining compliance with the criteria set forth by the approved permits associated with the roadways and accompanying facilities within the limits of their responsibility.

f. Any existing permits held by either Party will remain in full force and effect and will not otherwise be affected by this Maintenance Agreement.

7. **Miscellaneous.**

a. Any amendment to or modification of this Maintenance Agreement or any alteration, extension, supplement, or change of time or scope of work shall be in writing and signed by both Parties.

b. Nothing in this Maintenance Agreement shall be deemed or otherwise interpreted as waiving the parties' respective sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

c. Any notice or other document which either Party is required to give or deliver to the other under the terms of this Maintenance Agreement shall be given in writing and delivered personally or sent to:

TO DEPARTMENT:

Executive Director
Florida's Turnpike Enterprise
Turnpike Headquarters – Bldg. 5315
P.O. Box 613069
Ocoee, Florida 34761

With a copy to:

Chief Counsel
Florida's Turnpike Enterprise
Turnpike Headquarters – Bldg. 5315
P.O. Box 613069
Ocoee, Florida 34761

TO COUNTY:

Orange County Administrator
Orange County
P.O. Box 1393
Orlando, FL 32802-1393

With a copy to:

County Attorney
Orange County
P.O. Box 1393
Orlando, FL 32802-1393

d. The Department may cancel this Maintenance Agreement for refusal of the County to allow public access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, made or received by the County in conjunction with this Maintenance Agreement.

e. Nothing in this Maintenance Agreement shall prevent the Parties from entering into third party agreements that require third parties to assist the Parties with their obligations under this Maintenance Agreement; provided, however, such third-party agreements shall not in any manner relieve the Parties of their obligations under this Agreement. Neither the Department nor the County shall be obligated or liable hereunder to any person or entity not a party to this Maintenance Agreement. This Maintenance Agreement

confers no rights on any third party and shall not create any other third-party beneficiary under this Maintenance Agreement, nor shall this Maintenance Agreement authorize anyone not a Party to this Maintenance Agreement to maintain a suit against the Department or the County pursuant to the terms of this Maintenance Agreement.

f. All revenue generated by SR 528 shall be the sole property of the Department. Neither the County, nor any person claiming through the County, shall have any claim to revenues generated by the Projects, or shall take any action which would be in contravention of any Department bond resolution or indenture, or which would impair the integrity of any bond covenant of the Department.

g. Upon request, the County will (at no cost to the Department, its consultants, or contractors) enter into any additional agreement(s) as may be necessary for the Department to perform the work required for the Projects and to otherwise effectuate the terms of this Maintenance Agreement.

h. The requirements of Section 339.135(6)(a), Florida Statues, are incorporated into this Maintenance Agreement:

“The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than one year.”

i. This Maintenance Agreement shall be governed and construed in accordance with the laws of the State of Florida.

j. No waiver by either Party of any failure by the other Party to timely perform any of its obligations under this Maintenance Agreement, shall be construed as a waiver of any succeeding failure of the defaulting Party to perform or as a waiver of the defaulting Party’s obligations under this Maintenance Agreement.

k. To the extent provided by law, each Party agrees to indemnify the other Party against any damages arising out of, relating to or resulting from the indemnifying Party’s own negligent acts or omissions in connection with this Agreement, to the extent and within the limitations of Section 768.28, Florida Statutes. The foregoing indemnification shall not constitute a waiver of either Party’s sovereign immunity beyond the limits set forth in Section

768.28, Florida Statutes, nor shall the same be construed to constitute an agreement by either Party to assume any liability of any kind for the acts, omissions, and/or negligence of the other Party.

l. Nothing in this Maintenance Agreement shall constitute a waiver by either Party of its sovereign immunity for any damages claimed by third parties, nor shall anything included herein be construed as consent by the County or the Department to be sued by third parties in any matter arising out of this Maintenance Agreement.

m. If any part of this Maintenance Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Maintenance Agreement and the balance of this Maintenance Agreement shall remain in full force and effect.

n. THE COUNTY AND THE DEPARTMENT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

o. This Maintenance Agreement shall be binding upon the Parties, their successors and assigns. The County may not assign any of its rights or obligations under this Maintenance Agreement.

p. This Maintenance Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

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IN WITNESS WHEREOF, the Parties have executed this Maintenance Agreement effective as of the date last signed by a Party.

ORANGE COUNTY, FLORIDA
a political subdivision of the State
of Florida

By: _____

Jerry L. Demings
Orange County Mayor

Date: _____

(SEAL)

ATTEST:

By: _____

As authorized for execution at the Board of
County Commissioners (BOCC) meeting of:

Date: _____

Legal Review (County)

FLORIDA DEPARTMENT OF
TRANSPORTATION, FLORIDA'S
TURNPIKE ENTERPRISE

By: _____

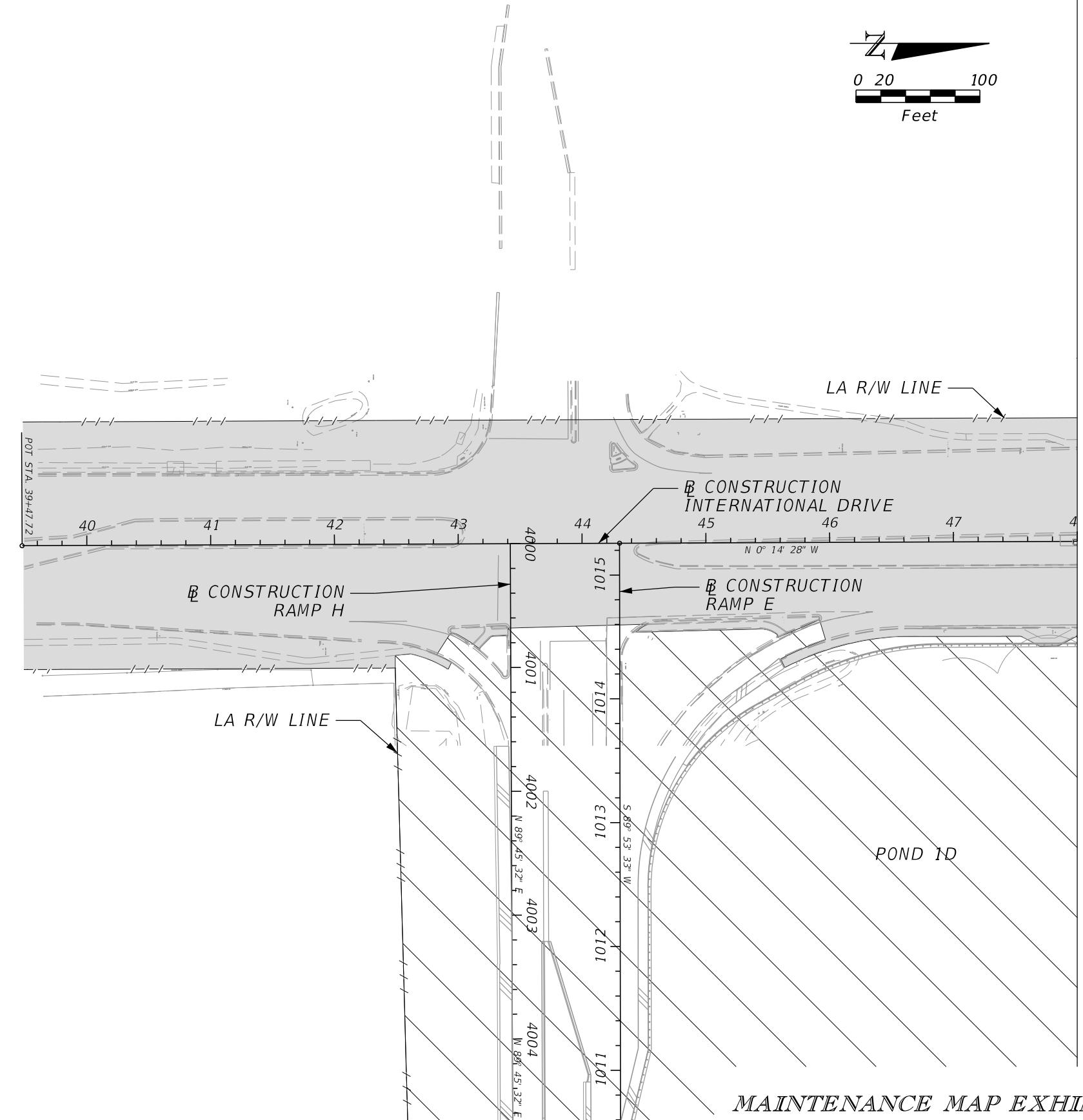
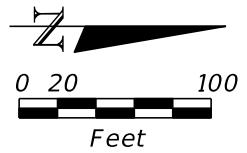
Nicola Liquori
Executive Director and CEO
Florida's Turnpike Enterprise

Date: _____

Legal Review (Department)

EXHIBIT “A”

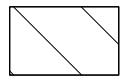
MATCHLINE STATION 48+00.00



LEGEND



To Be Maintained
By Orange County



To Be Maintained
By FTE

INTERNATIONAL DR & SR 528 INTERCHANGE	SHEET NO.
	1

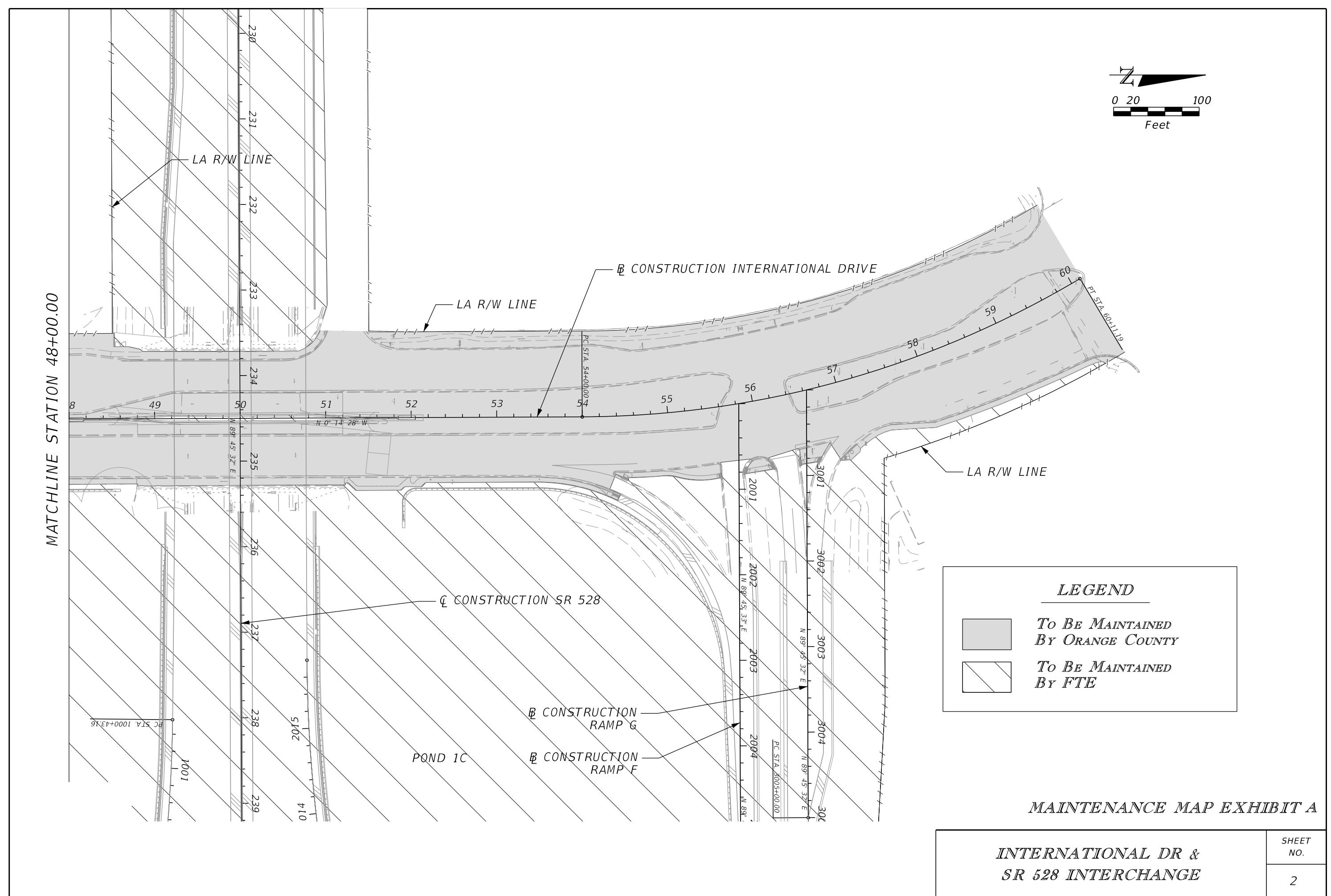
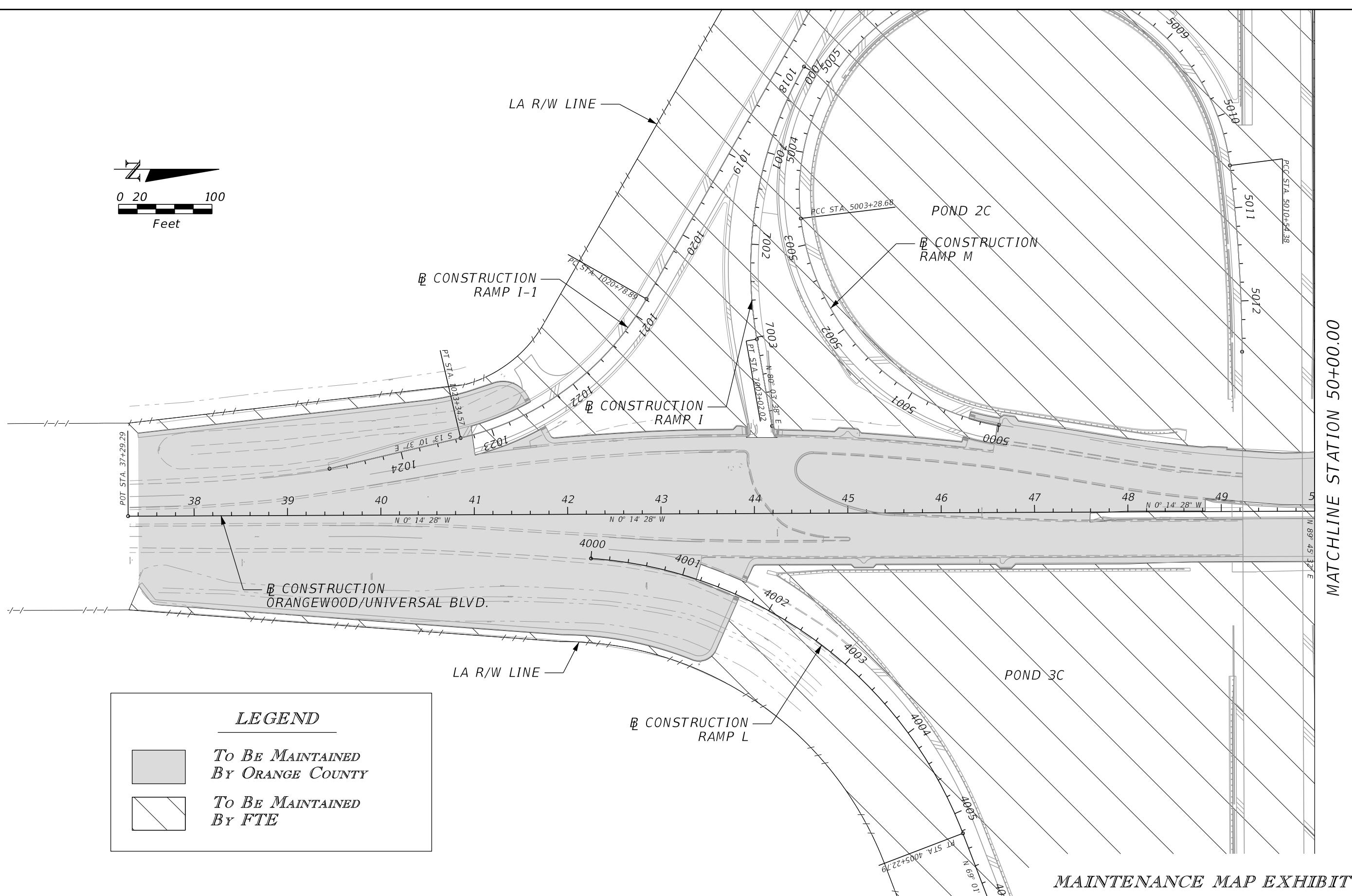


EXHIBIT “B”

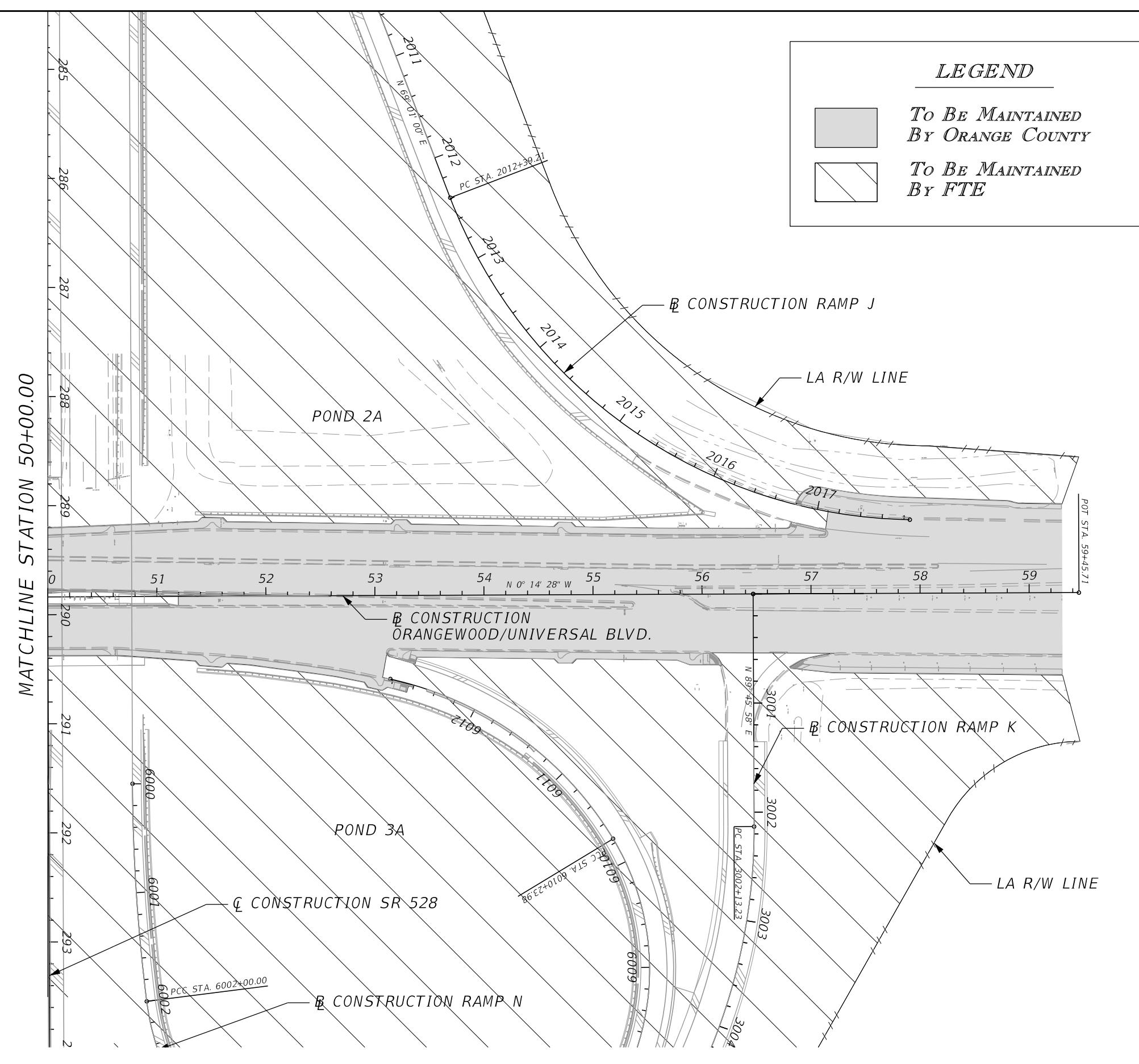


MAINTENANCE MAP EXHIBIT B

*UNIVERSAL/ORANGEWOOD BLVD &
SR 528 INTERCHANGE*

SHEET
NO.

1



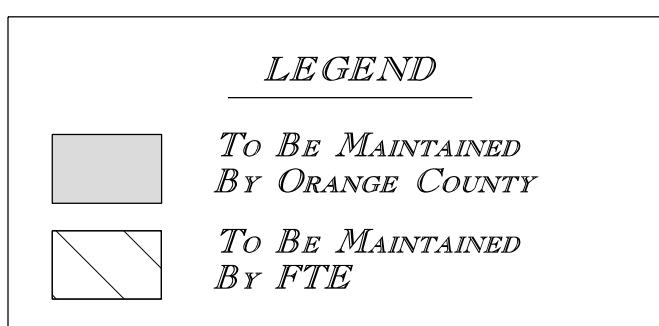
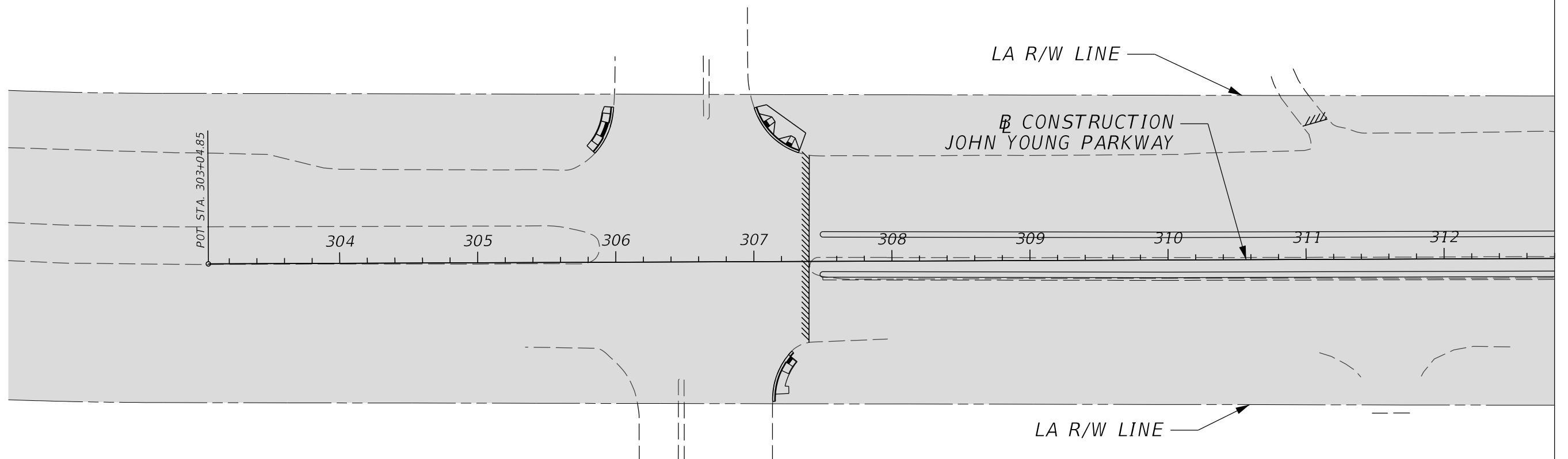
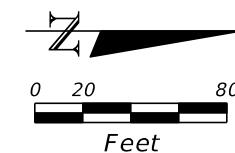
MAINTENANCE MAP EXHIBIT B

<i>VERSAL/ORANGEWOOD BLVD & R 528 INTERCHANGE</i>	<i>SHEET NO.</i>
	2

*SHEET
NO.*

2

EXHIBIT “C”

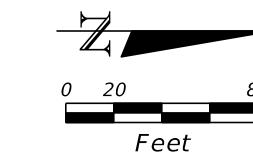
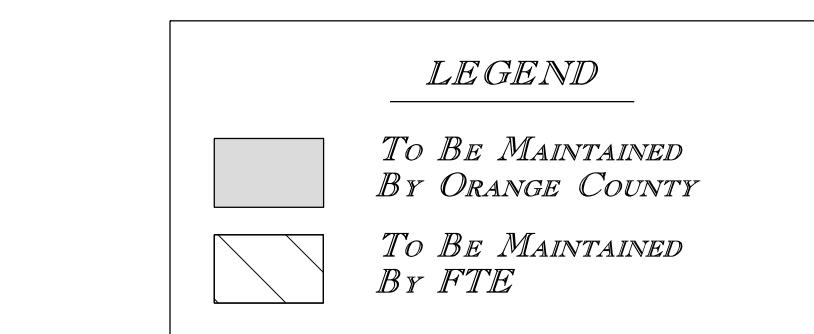


MAINTENANCE MAP EXHIBIT C

JOHN YOUNG PARKWAY &
SR 528 INTERCHANGE

SHEET
NO.
1

MATCHLINE STATION 312+80.00



CONSTRUCTION RAMP O

LA R/W LINE

PCC STA.

1017+86.35

1018

1019

1020

1016

1015

1014

POND 4B

MATCHLINE STATION 324+00.00

CONSTRUCTION RAMP S-2

CONSTRUCTION RAMP R-2

CONSTRUCTION RAMP R-1

LA R/W LINE

PC STA.

4005+01.77

4004

4003

4002

4001

4000

N 0° 13' 58" W

7002

5023

5022

5021

4003

4002

4001

4000

323

322

321

320

319

318

317

316

315

314

313

CONSTRUCTION JOHN YOUNG PARKWAY

MAINTENANCE MAP EXHIBIT C

JOHN YOUNG PARKWAY & SR 528 INTERCHANGE	SHEET NO. 2
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