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MEMORANDUM

TO: Members of the Board
Central Florida Expressway Authority

FROM: Issuer's Counsel
Shutts & Bowen LLP 

DATE: August 25, 2014

RE: Memorandum of Agreement with the Florida Department of Transportation and the Florida Department of Financial Services Providing for the Central Florida Expressway Authority's \$230,000,000 Contribution to the Interstate-4/State Road 408 Interchange Project to be held in an Interest-Bearing Escrow Account

The Board of the Orlando-Orange County Expressway Authority ("OOCEA" or "Authority"), on August 29, 2012, passed a motion to appropriate \$230,000,000 as its funding contribution to the I-4/S.R. 408 Interchange Project, with a payment schedule of: \$75,000,000 in July 2017, \$75,000,000 in July 2018 and \$80,000,000 in July 2019.

Management and legal counsel for OOCEA and the Florida Department of Transportation ("FDOT") negotiated an Interlocal Agreement to memorialize the terms and conditions for the \$230,000,000 funding contribution. The Interlocal Agreement, attached hereto as Attachment 2, was approved by the OOCEA Board on June 9, 2014, and entered into by the parties on June 16, 2014. Some of the key elements of that Interlocal Agreement included: (1) FDOT's certification that the estimated remaining cost of constructing OOCEA's portion of the I-4/S.R. 408 Interchange Project exceeds the \$230,000,000 in contribution payments; (2) FDOT's agreement to share with the Authority ten percent of the availability payment savings, if any, realized from the awarded Concession Agreement on the I-4 Ultimate Project over a projected 35-year period; (3) the Authority not being responsible for, nor FDOT being allowed to request, additional funding contributions for any costs of the I-4/S.R. 408 Interchange Project or the I-4 Ultimate Project, including change orders or other cost overruns, (4) the Authority agreement to include the contribution payments in the current and all future annually adopted Five-Year Work Plans until all contribution payments have been made.

Pursuant to the Interlocal Agreement, the contribution payments by the Authority are to be made directly to the State of Florida, Department of Financial Services, Division of Treasury ("DFS") for deposit into an interest bearing escrow account under which DFS will hold the funds and disburse them to FDOT as directed. FDOT and the Authority agreed to negotiate in good faith the terms of a mutually agreeable Memorandum of Agreement to be entered into with DFS for the establishment of the interest bearing escrow account and its responsibilities as escrow agent.

Memorandum to CFX Board
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The parties have negotiated the form of the Memorandum of Agreement ("MOA") attached hereto as Attachment 1. The MOA provides: for the establishment of an interest bearing escrow account with DFS; that FDOT's comptroller is the sole signatory on the account and will provide instructions to DFS for withdrawals in accordance with the terms of the Interlocal Agreement; that the account will be invested in accordance with Section 17.61(1), Florida Statutes; that the investments will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes; that all interest will accumulate to the account for the purposes the I-4/S.R. 408 Interchange Project; if there is a deficiency in the account for purposes of making any refund to the Authority of any contribution payments in accordance with the Interlocal Agreement, which deficiency resulted from fees assessed by DFS, that FDOT is responsible for covering the difference (which if greater than \$25,000, will be subject to the provisions of Section 339.135(6)(a), Florida Statutes).

It is recommended the Board approve the form of the Memorandum of Agreement attached hereto as Attachment 1 and authorize its execution by the Chairman.

cc: Joseph Passiatore, General Counsel
Joseph Berenis, Deputy Executive Director, Engineering, Operations, Construction and Maintenance
Laura Kelley, Deputy Executive Director, Administration and Finance

Consent Agenda 09/11/14

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MEMORANDUM OF AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation, hereinafter referred to as "FDOT", the Central Florida Expressway Authority (formerly the Orlando-Orange County Expressway Authority), hereinafter referred to as "Participant", and the State of Florida, Department of Financial Services, Division of Treasury, hereinafter referred to as "Escrow Agent", and shall become effective upon the agreement's execution by Escrow Agent.

WITNESSETH

WHEREAS, "FDOT" is to construct the following project:

Main Financial Project #:	432193-1-52-01
Project Description:	I-4/S.R. 408 Interchange Project
County:	Orange

hereinafter referred to as the "Project"; and

WHEREAS, FDOT and the Orlando-Orange County Expressway Authority entered into an Interlocal Agreement dated June 16, 2014 (the "Interlocal Agreement") providing, in part, for the Participant to make a monetary contribution of \$230 million to fund a portion of the Project, the installment payments of which are to be deposited into an interest bearing escrow account; and

WHEREAS, pursuant to Section 348.753(2)(a), Florida Statutes, the Central Florida Expressway Authority has assumed the governance and control of the Orlando-Orange County Expressway Authority System and has immediately succeeded to and assumed the powers, responsibilities, and obligations of the Orlando-Orange County Expressway Authority, which would include those under the Interlocal Agreement; and

WHEREAS, FDOT and Participant desire to establish such escrow account for the Project.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. Participant will make deposits of the contribution payments into the interest bearing escrow account established hereunder for the purposes of the Project. Said escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent's receipt and execution of this Agreement.
2. The contribution payments will be delivered in accordance with instructions provided by the Escrow Agent to the Participant for deposit into the escrow account.
3. FDOT's Comptroller or designee shall be the sole signatories on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from said account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided by FDOT's Comptroller or designee. FDOT agrees that all such instructions provided by FDOT's Comptroller or designee to the Escrow Agent shall be in accordance with and for the purposes set forth in the Interlocal Agreement, including with respect to any refund of contribution payments made by the Participant as described in Sections

9, 13 and 25 of the Interlocal Agreement.

4. Moneys in the escrow account will be invested in accordance with Section 17.61(1), Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while they are invested. There is no guaranteed rate of return. Investments will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of such investments shall accrue to the escrow account. Subject to paragraph 10 herein, FDOT agrees that in the unlikely event of having to refund the contribution payments made by the Participant as described in Sections 9, 13 and 25 of the Interlocal Agreement, FDOT will be responsible to cover the difference between (a) the required refund amount and (b) the balance in the escrow account at the time of such refund, the difference resulting from the fees assessed to the escrow account in accordance with Section 17.61(4)(b), Florida Statutes (such amount hereafter referred to as the "Deficiency").
5. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the Project.
6. The Escrow Agent agrees to provide written confirmation of receipt of funds to FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon receipt.
7. The Escrow Agent further agrees to provide quarterly reports to FDOT. FDOT agrees to provide a copy of such quarterly reports to Participant within fifteen (15) days of receipt from the Escrow Agent.
8. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.
9. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements, including the Interlocal Agreement, between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.
10. To the extent the Deficiency as defined in paragraph 4 above is in excess of twenty-five thousand dollars (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated as follows with the term "department" meaning FDOT:

"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 \$25,000.00 and which have a term for a period of more than one (1) year."

11. Paragraph 10 herein only applies to the Deficiency and to the extent the Deficiency exceeds \$25,000.00 and does not affect, impede or restrict the obligations or authority of FDOT or the Escrow Agent as and when instructed by FDOT's Comptroller or designee, in making a refund directly to the Participant of the balance of the contribution payments on deposit in the escrow account as required by the provisions of the Interlocal Agreement.
12. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
13. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
14. This Agreement shall terminate upon disbursement by the Escrow Agent of all moneys held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent and Participant that the account is to be closed.

The remainder of this page is blank.

IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

For FDOT (signature)

For PARTICIPANT (signature)

Name and Title

Name and Title

Federal Employer I.D. Number

Federal Employer I.D. Number

Date

Date

Legal Review:

APPROVED AS TO FINANCIAL TERMS
AND FUNDS ARE PROGRAMMED

Office of the Comptroller

For Escrow Agent (signature)

Name and Title

Date

**INTERLOCAL AGREEMENT BETWEEN
THE FLORIDA DEPARTMENT OF TRANSPORTATION AND
THE ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY FOR
THE LOCAL FUNDING CONTRIBUTION TO THE INTERCHANGE PROJECT AT
INTERSTATE HIGHWAY 4 AND STATE ROAD 408**

This INTERLOCAL AGREEMENT ("Agreement"), entered into this 16th day of June, 2014, between the **FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida ("DEPARTMENT") and the **ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY**, a body politic and corporate, and an agency of the State of Florida, created pursuant to Chapter 348, Part III, Florida Statutes ("AGENCY").

RECITALS:

A. On July 27, 2012, DEPARTMENT staff presented to the governing board of the AGENCY an analysis of the DEPARTMENT's proposed cost sharing for the reconstruction of the Interchange at Interstate Highway 4 ("I-4") and State Road 408 ("SR 408"), including without limitation the mainline, ramps, widened (or replaced) viaduct, right-of-way, landscaping and the scope of services set forth in Exhibit "A" hereto (collectively, the "Interchange Project"), necessitated by the DEPARTMENT's undertaking of the overall Financial Management ("FM") Number 432193-1-52-01 project ("I-4 Ultimate Project") to accommodate the bridging of I-4, the new width, and express lanes of I-4; and

B. The AGENCY contributed over \$57,000,000 toward the cost of the Interim I-4 Interchange at SR 408 (FM Numbers 242484-2-43-01, 242484-2-52-01, 242484-2-62-01 and 242484-2-56-01 (the "Interim Project")) which the DEPARTMENT completed in 2009. The DEPARTMENT has requested an additional contribution of \$230,000,000 from the AGENCY to complete the Interchange Project based on the DEPARTMENT's 2012 total estimated cost of \$626,503,374; and

C. On August 29, 2012, the AGENCY's governing board unanimously passed a motion to contribute an upset limit of \$230 million toward the Interchange Project to be appropriated as payments of \$75 million in the Fiscal Year beginning July 1, 2017, \$75 million in the Fiscal Year beginning July 1, 2018, and \$80 million in the Fiscal Year beginning July 1, 2019, with any availability payment savings resulting from the DEPARTMENT's final Concession Agreement for the I-4 Ultimate Project being shared on an equal percent basis with the AGENCY; and

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06/20/2014 01:21:12 PM Page 1 of 20
Rec Fee: \$171.50
Deed Doc Tax: \$0.00
DOR Admin Fee: \$0.00
Intangible Tax: \$0.00
Mortgage Stamp: \$0.00
Martha O. Haynie, Comptroller
Orange County, FL
MB - Ret To: CENTRAL FL EXPRESSWAY AUTH

D. The DEPARTMENT is now prepared, in accordance with its Adopted Five Year Work Program, to undertake the I-4 Ultimate Project, including the Interchange Project and intends to enter into that certain Concession Agreement, Contract #E5W13 ("Concession Agreement"), with I-4 Mobility Partners ("Concessionaire"), expecting to commence construction of the I-4 Ultimate Project in early 2015; and

E. The DEPARTMENT has now requested that the terms and conditions of the AGENCY contribution to the Interchange Project be memorialized into this Agreement; and

F. The AGENCY, understanding that the availability of the contribution payments is predicated on the current adopted toll policy and toll schedule identified in Chapter 2-9, Section 2-9.001 of the AGENCY's Policies and Procedures, is willing to make the commitments set forth herein and has determined that such contribution toward the Interchange Project will serve the public's interest and the best interests of the AGENCY.

NOW, THEREFORE, in consideration of the mutual benefits contained in this Agreement, the parties agree as follows:

1. This Agreement is entered into by the DEPARTMENT and the AGENCY under the authority of Section 163.01, Florida Statutes. The parties hereto find the Recitals set forth above to be true and correct and agree they are incorporated herein by this reference.

2. The DEPARTMENT hereby certifies that the estimated remaining costs of constructing the "AGENCY's portion of the Interchange Project" (meaning the Interchange Project excluding the I-4 mainline and the I-4 eastbound and westbound ramps to SR 408 eastbound and westbound) exceeds the \$230,000,000 in contribution payments to come from the AGENCY.

3. The DEPARTMENT agrees to share with the AGENCY ten percent (10%) of the availability payment savings, if any, realized from the awarded Concession Agreement on the I-4 Ultimate Project over a projected 35 year period. The availability payments will commence on substantial completion of the I-4 Ultimate Project. The availability payment savings will be those savings, if any, realized in comparison to the DEPARTMENT's upset limit detailed in Exhibit "B" hereto. The DEPARTMENT and the AGENCY will reconcile the payments with respect to any availability payments savings realized every ten (10) years and make payment of said savings, commencing with the tenth anniversary of the date of substantial completion of the I-4 Ultimate Project, and with a final reconciliation on the date of the payment of the final availability payment for the I-4 Ultimate Project.

4. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all obligations of the parties hereto, unless otherwise expressly provided herein. Subject to the provisions of this Agreement, the DEPARTMENT agrees to construct the Interchange Project. The DEPARTMENT agrees not to amend the Interchange Project without the prior written consent of the AGENCY.

5. The AGENCY previously provided concept drawings ("OOCEA Concepts") of the Interchange Project to the DEPARTMENT for review and consideration. The DEPARTMENT has determined that the OOCEA Concepts and the I-4 Ultimate Project design plans are consistent and has agreed to incorporate the OOCEA Concepts into its plans for the I-4 Ultimate Project and the Request for Proposals therefor. As outlined in Paragraph 19 of this Agreement, the AGENCY agrees to retain consultant representatives to be used throughout the construction duration of the Interchange Project and for a sufficient time after completion of construction to provide consultation to the DEPARTMENT concerning any design and construction issues involving the Interchange Project. Any and all costs associated with the AGENCY's consultant representatives shall be the sole responsibility of the AGENCY.

6. The AGENCY previously provided design and construction specifications for the AGENCY's portion of the Interchange Project ("OOCEA Design Criteria") to the DEPARTMENT for review and consideration. The DEPARTMENT reviewed the OOCEA Design Criteria and determined them to be in conformance with the DEPARTMENT's requirements and feasible for incorporation into the I-4 Ultimate Project. The DEPARTMENT has incorporated the OOCEA Concepts and the OOCEA Design Criteria into the Request for Proposals dated January 10, 2014 for the I-4 Ultimate Project ("RFP"). The DEPARTMENT and the AGENCY acknowledge and agree that the Interchange Project will be constructed pursuant to the requirements of the Concession Agreement, including the OOCEA Concepts and the OOCEA Design Criteria made part of Volume III of Addendum #2 of the RFP. In addition, on January 28, 2014, the AGENCY sent a letter to the DEPARTMENT requesting approval for the exclusive use of certain sole source procurement materials and/or products to be utilized as part of the Interchange Project. By letter dated May 21, 2014 (which letter is attached hereto as Exhibit "C"), FHWA has approved the request. The DEPARTMENT agrees to utilize such materials and products as part of the Interchange Project as approved by FHWA in Exhibit "C."

7. The DEPARTMENT's Concessionaire shall perform the construction, provide all necessary engineering supervision, and otherwise perform all other necessary work, all as may

be applicable, as related to the Interchange Project. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by Concessionaire, at such times, in such manner, under such conditions, and pursuant to such requirements, specifications and standards as are made part of the Concession Agreement. The AGENCY shall not have any jurisdiction or control over the DEPARTMENT's activities, except as specifically stated in Paragraph 8 of this Agreement. In addition to the terms outlined in Paragraph 19 of this Agreement, the AGENCY shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

8. Upon completion of the Interchange Project and subject to the AGENCY's inspection and final acceptance, the AGENCY shall have ownership and be immediately responsible for the perpetual maintenance of the SR 408 mainline portion of the Interchange Project, while the DEPARTMENT shall remain responsible for the perpetual maintenance of all ramps to and from the SR 408 portion of the Interchange Project. The perpetual maintenance of the ramps may, at the DEPARTMENT's sole discretion, be performed by the Concessionaire during the term of the Concession Agreement and, thereafter, shall be performed by the DEPARTMENT. The level of maintenance of the ramps shall be to the standards set forth in the Concession Agreement. If the AGENCY determines that the DEPARTMENT, or the Concessionaire, does not maintain the ramps at the AGENCY's level of maintenance standards, the AGENCY will notify the DEPARTMENT in writing specifying the maintenance deficiency. The DEPARTMENT will meet with the AGENCY regarding the notice and shall develop and implement a corrective action plan acceptable to the AGENCY in a timely manner. The perpetual maintenance by the AGENCY of the SR 408 mainline portion of the Interchange Project will be in coordination with and in accordance with the mainline maintenance specified in the Master Highway Maintenance Agreement (Department Contract ANT-85) dated January 1, 2005, as amended or supplemented from time to time ("Master Agreement"), and the parties hereby agree to amend the Master Agreement to, among other things, add the SR 408 mainline portion of the Interchange Project as a "Subject Road" thereunder. The DEPARTMENT agrees to require the Concessionaire to provide representations, warranties and guarantees as provided in Volume I, Section 4.14 of the RFP for all portions of the Interchange Project conveyed or otherwise transferred to the AGENCY upon completion. Additionally, in each event where the AGENCY so directs the DEPARTMENT in writing from time to time, the DEPARTMENT shall exercise and enforce its rights under the Concession Agreement with respect to the "value-added" specifications concerning the Interchange Project. This Paragraph 8 shall survive the expiration or termination of this Agreement.

9. Contribution payments by the AGENCY toward the Interchange Project will be made in accordance with and subject to the following:

(A) The AGENCY will make a total contribution to the DEPARTMENT in the amount of \$230,000,000 over a period of three consecutive Fiscal Years as specified in the Schedule of Agency Contribution of Funding, Exhibit "D;" provided, however, that the timing of the first scheduled payment by the AGENCY is contingent upon the actual physical construction of the Interchange Project having commenced beyond mere site clearing and grading ("Commencement of Construction"). If Commencement of Construction has not occurred at the time of the first scheduled payment under the Schedule of Agency Contribution of Funding, the first scheduled payment shall not be due until thirty (30) days following the date the DEPARTMENT has certified the Commencement of Construction. For purposes of this Agreement, "Fiscal Year" shall mean July 1 through and including June 30 of the following calendar year.

(B) The payment of funds by the AGENCY pursuant to this Agreement will be made directly to the State of Florida, Department of Financial Services, Division of Treasury ("DFS") for deposit into an interest bearing escrow account under which DFS will hold the funds and disburse them to the DEPARTMENT or at the DEPARTMENT's direction as provided in this Agreement. The DEPARTMENT and the AGENCY agree to work in good faith to negotiate the terms of a mutually agreeable Memorandum of Agreement to be entered into with DFS to provide for, among other things, the establishment of the interest bearing escrow account (the "MOA"). The DEPARTMENT agrees that the \$230,000,000 contribution from the AGENCY is a reasonable cost estimate of the AGENCY's portion of the Interchange Project and that the AGENCY shall not be responsible for, nor shall the DEPARTMENT request, additional funding contributions from the AGENCY for any costs of the Interchange Project or the I-4 Ultimate Project, including change orders or other cost overruns.

(C) The DEPARTMENT may, at any time and at any stage, terminate the Interchange Project if the DEPARTMENT determines that such action is in the best interest of the public. If the Interchange Project is terminated, the DEPARTMENT shall promptly, but in no event later than fifteen (15) days following the termination of the Interchange Project, give notice of its action to the AGENCY and within ten (10) days of written request from the AGENCY instruct the DFS to draw from the interest bearing escrow account established pursuant to the MOA and refund directly by wire transfer to

the AGENCY, within forty-five (45) days from the date of such instruction by the DEPARTMENT, the contribution payments made by the AGENCY or the applicable portion thereof for which the DEPARTMENT has not incurred any construction costs for the AGENCY's portion of the Interchange Project as of the date of the termination of the Interchange Project, plus all accrued interest in the escrow account, and the AGENCY shall be discharged and released of any obligations to make any future contribution payments toward the Interchange Project.

(D) The DEPARTMENT and the AGENCY agree that the contribution payments deposited into the interest bearing escrow account established pursuant to the MOA, plus all accrued interest in the escrow account, shall be an asset of the DEPARTMENT for the cost of the work on the Interchange Project; provided, however, upon DFS's receipt of an instruction from the DEPARTMENT to refund directly by wire transfer to the AGENCY the contribution payments or applicable portion thereof, plus all accrued interest in the escrow account, that are subject to refund as provided in Subparagraph 9(C) herein shall be considered an asset of the DEPARTMENT only for purposes of DFS acting on such instruction from the DEPARTMENT and the contribution payments or applicable portion thereof, plus all accrued interest in the escrow account, to be refunded shall be considered held for the benefit of the AGENCY (as the PARTICIPANT under the MOA) until refunded.

(E) The AGENCY agrees to include all of the contribution payments as set forth in Subparagraph 9(A) in current and future AGENCY annually adopted Five-Year Work Plans until all contribution payments have been made in accordance with the terms and conditions hereunder. To the extent that the contribution payments are not made from proceeds of any bonds, notes or other form of indebtedness issued by the AGENCY under and pursuant to any resolution authorizing the issuance thereof for purposes authorized in Chapter 348, Florida Statutes, the AGENCY's obligations with respect to the \$230,000,000 in contribution payments shall at all times be subordinate to any payment obligations of the AGENCY with respect to such bonds, notes or other form of indebtedness.

10. The AGENCY is entitled to Construction Closure Adjustments assessed to the Concessionaire, as set forth in the DEPARTMENT's Concession Agreement, due to SR 408 mainline and ramp closures resulting from the construction of the Project. The AGENCY may deduct these assessed Construction Closure Adjustments for FY 2015 and 2016 from its July 1,

2017 payment, and the assessed Construction Closure Adjustments for FY 2017 from its July 1, 2018 payment, and the assessed Construction Closure Adjustments for FY 2018 from its July 1, 2019 payment to the DEPARTMENT. Any SR 408 mainline Construction Closure Adjustments occurring after the final payment made by the AGENCY under this Agreement will be remitted to the AGENCY upon the DEPARTMENT's payment of its First Final Acceptance Payment to the Concessionaire.

Pursuant to Volume II, Section 2, T.3 of the RFP, if the AGENCY's Intelligent Transportation System (ITS) is damaged by the Concessionaire, the DEPARTMENT will direct its Concessionaire to repair the AGENCY's ITS. The DEPARTMENT is not responsible for any costs associated with damage to the AGENCY's ITS.

11. Additionally, the DEPARTMENT will remit to the AGENCY any fine assessed against the Concessionaire and received by the DEPARTMENT under the Concession Agreement arising from the construction of the Interchange Project, including, without limitation, fines with respect to any special provisions set forth in Volume III of the RFP.

12. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. The AGENCY may, however, inspect those materials upon providing reasonable advance notice to the DEPARTMENT. Upon completion of the Interchange Project, the DEPARTMENT shall provide to the AGENCY for its records copies of all shop drawings, final design and construction plans, product specifications, final engineering reports, record drawings and as-builts for the Interchange Project. Upon completion, the DEPARTMENT shall convey to the AGENCY title to all property within the limited access right-of-way associated with the AGENCY's portion of the Interchange Project.

13. The parties agree that in the event funds are not appropriated by the Florida Legislature to the DEPARTMENT for the Interchange Project, this Agreement may be terminated by the DEPARTMENT, which shall be effective upon the DEPARTMENT giving written notice to the AGENCY to that effect. In such event, the AGENCY shall be entitled to a refund in accordance with Subparagraph 9(C) herein.

14. The DEPARTMENT agrees to require the Concessionaire to release, indemnify and hold harmless the AGENCY as provided in Volume I, Section 17.4 of the RFP.

15. The DEPARTMENT and the AGENCY each expressly reserve, and specifically do not waive by this Agreement, any and all rights of action, in law or in equity, for any claim or cause of action whatsoever that either may have against the other, or against any person or entity not a party to this Agreement.

16. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements, whether oral or written.

17. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. If any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement will remain in full force and effect. The DEPARTMENT and the AGENCY shall endeavor in good-faith negotiations to replace the invalid, illegal, or unenforceable provision with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal, or unenforceable provision.

18. The DEPARTMENT shall file a complete executed copy of this Agreement with the clerk of the circuit court of Leon County, Florida. The AGENCY shall file a complete executed copy of this Agreement with the clerk of the circuit court of Orange County, Florida.

19. The DEPARTMENT is responsible for all direction of its Concessionaire through its construction oversight services ("COS") consultant. The AGENCY shall be entitled to have two (2) representatives stationed at the main office for the project, co-located with the COS. Relating specifically to the Interchange Project, the AGENCY representative(s) shall at a minimum be invited to all regularly scheduled progress meetings, provide input to the DEPARTMENT on shop drawing submittals, be consulted on requests for information, be authorized to perform reasonable independent assurance testing as coordinated with the DEPARTMENT and remain informed of the day to day operations of the Concessionaire. The AGENCY shall not directly communicate with the DEPARTMENT's Concessionaire unless the DEPARTMENT or its COS is present. All communications between the AGENCY and the DEPARTMENT's Concessionaire shall be conducted through the DEPARTMENT's COS. Nothing in this Paragraph 19 shall be construed to authorize the AGENCY to give any instructions to the DEPARTMENT's Concessionaire.

20. Notices under this Agreement shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by email communication (immediately followed by a confirmation of receipt to be effective) to the following addresses (or to such other address as may from time to time be specified in writing by such person):

DEPARTMENT

State of Florida, Department of Transportation
605 Suwannee Street
Tallahassee, FL 32399
Attn: Secretary
PH: (850) 414-5216

With a copy to:

State of Florida, Department of Transportation
605 Suwannee Street
Tallahassee, FL 32399
Attn: General Counsel

AGENCY

Orlando-Orange County Expressway Authority
4974 ORL Tower Road
Orlando, Florida 32807
Attn: Executive Director
PH: (407) 690-5000

With a copy to:

Orlando-Orange County Expressway Authority
4974 ORL Tower Road
Orlando, Florida 32807
Attn: General Counsel
PH: (407) 690-5000

21. This Agreement is binding on the parties' successors and/or assigns.
22. This Agreement may only be modified in writing and duly executed by the parties or their respective successors or assigns.
23. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

24. In the event this Agreement is in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

“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 \$25,000.00 and which have a term for a period of more than one (1) year.”

25. Paragraph 24 does not, and shall not be construed to, in any way affect, impede or restrict the obligations or authority of the State of Florida, Department of Financial Services, Division of Treasury in making a refund directly to the AGENCY when required by the provisions of this Agreement and/or the MOA.

26. Attached as Exhibit “E” is a graphic depiction of the Interchange Project.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) below.

**ORLANDO-ORANGE COUNTY
EXPRESSWAY AUTHORITY**

By: Walter A. Ketcham, Jr.

Name: Walter A. Ketcham, Jr.

Title: Chairman

Date: 6/11/14

Attest:

Darlene Mazzullo
Executive Secretary

Legal Review:

Joseph Flannery
General Counsel

**FLORIDA DEPARTMENT
OF TRANSPORTATION**

By: Ananth Prasad, P.E.

Name: Ananth Prasad, P.E.

Title: Secretary

Date: 6/16/14

Legal Review:

Roger Wood
Special Counsel

Financial Provision Approval by Office of
Comptroller:

Robin M. Dinkins

Exhibit "A"

SCOPE OF SERVICES

FM#: 432193-1-52-01

FDOT's I-4 Ultimate Project encompasses reconstruction of approximately 21 miles of Interstate 4 [State Road 400] (I-4) from Kirkman Road in Orange County to SR 434 in Seminole County and will add Managed Lanes (Express Lanes) in the I-4 corridor. In the middle of the project lies the I-4 at State Road (SR) 408 interchange. During the I-4/408 Interim Interchange Project FDOT and OOCEA partnered to reconstruct part of this major interchange, most of the work done at this time was to rebuild the ramps from SR 408 to I-4. The I-4 Ultimate Project completes the reconstruction of this interchange. A cost estimate was done to determine the work remaining within the interchange; a logical split between OOCEA and FDOT was developed and agreed upon. This Agreement sets forth the terms and conditions associated with OOCEA's contribution to the I-4 Ultimate Project. Specifically, the work outlined below is known as the Interchange Project in the Agreement.

Mainline SR 408 Improvements

- Improvements are being made to the mainline of SR 408. These improvements include the reconstruction of the SR 408 bridges over I-4 (commonly called the viaduct). The bridges are being constructed to accommodate the new width of I-4 as well as to facilitate the improved geometry and movements between the two major roadways.
- There are widening and access improvements being made to the SR 408 mainline east and west of the interchange proper. These improvements are being made to better facilitate access (traffic and weaving movements) for the ramps off of and onto SR 408.
- All existing hardscape and landscaping disturbed by the Interchange Project will be replaced in kind.

Ramps from I-4 to and from SR 408

- This project will update and improve the geometry of the ramp connections between Interstate 4 (State Road 400) and SR 408.
- The project will reconstruct the I-4 eastbound and westbound ramps to SR 408 eastbound and westbound as well as finish construction of the SR 408 eastbound and westbound ramps to I-4 westbound.
 - During the Interim project (completed in 2009), the DEPARTMENT reconstructed the SR 408 eastbound and westbound ramp movements to I-4 eastbound and started the SR 408 eastbound and westbound ramps to I-4 westbound.
- The existing ramps that are being replaced will be removed where their configurations have changed. These areas will be cleaned up and their final disposition will likely be sodded or in some areas, ponds will be constructed.

EXHIBIT B

FDOT BUDGETED AVAILABILITY PAYMENTS FOR I-4 PROJECT

FY Ending June 30	FDOT Upset Limit
2021	60,755,697
2022	99,887,594
2023	100,334,075
2024	100,791,717
2025	101,247,173
2026	101,742,946
2027	102,235,810
2028	102,740,996
2029	103,238,040
2030	103,791,046
2031	104,335,113
2032	104,892,781
2033	105,435,139
2034	106,051,918
2035	106,652,506
2036	107,268,110
2037	107,859,836
2038	108,547,666
2039	109,210,648
2040	109,890,206
2041	110,535,705
2042	111,302,692
2043	112,034,550
2044	112,784,704
2045	113,488,766
2046	114,343,930
2047	115,151,819
2048	115,979,906
2049	116,747,733
2050	117,701,116
2051	118,592,934
2052	119,507,048
2053	120,344,295
2054	121,407,071
2055	8,388,988
Total	3,675,220,274

Exhibit "C"



U.S. Department
of Transportation
**Federal Highway
Administration**

Florida Division

May 21, 2014

545 John Knox Road, Suite 200
Tallahassee, Florida 32303

Phone: (850) 553-2200
Fax: (850) 942-9691 / 942-8308

www.fhwa.dot.gov/fldiv

In Reply Refer To:
HDA-FL

Ms. Noranne Downs, P.E.
District Five Secretary
Florida Department of Transportation
719 S. Woodland Boulevard (MS-503)
Deland, FL 32720

Attn: Ms. Loreen Bobo

Subject: No. 0041(228) I, from SR-435 (Kirkman Rd) in Orange County to SR 434 in Seminole County

Dear Ms. Downs:

The Federal Highway Administration (FHWA) received a letter from your office dated April 27, 2014 and the letters addressed to your office from the Orlando Orange County Expressway Authority (OOCEA) dated November 5, 2013 and January 28, 2014 requesting the use of Proprietary Products on the section of SR-408 that will be impacted by the I-4 Ultimate with Managed Lanes project; FPID No. 432193-I-52-01. The letters request items on the proposed Proprietary Products list attached be used for work only on the SR-408 mainline, SR-408 frontage roads and ramp connections with local streets within the reference project construction limits. The proposed Proprietary Products are not authorized for use on I-4/SR-408 interchange ramps, I-4 mainline, I-4 frontage roads or I-4 ramp connections with local streets under this request. The Ultimate improvements will be operated and maintained by the successful bidder of the I-4 Ultimate Project with Managed Lanes.

The OOCEA and Florida Department of Transportation (FDOT) certify that this request is for a combination of synchronization needs with existing SR-408 facility features described in their January 28, 2014 letter. The use of these proprietary items on SR-408 will allow for interchangeable devices, equipment, materials and reduced inventory. The FDOT will monitor and track the design and installation of the attached proprietary items on SR-408 within the construction limits of the I-4 Ultimate Project with Managed Lanes project.

Based on the information provided and in accordance with 23 CFR 635.411 (a) (2), the FHWA accepts FDOT's and OOCEA's request certifications that the devices and equipment listed in the attachment are essential for synchronization needs with the existing SR-408 facility features deployed by the OOCEA. The FHWA finds that maintaining the synchronization of existing system components is in the public interest, and therefore approves the use of the proprietary devices and equipment as listed in the attachment on the referenced project. This approval does not extend to facilities, devices and equipment or projects, other than those described in this letter.

If you have any questions or need assistance, please contact Marvin Williams at (850) 553-2241.

Attachment

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael C. Paul".

For: James Christian, P.E.
Division Administrator



Exhibit "C"
ORLANDO-ORANGE COUNTY EXPRESSWAY
EXISTING DEVICES/EQUIPMENT

Item Description	Brand - Part/Serial Number	Reference Location
GENERAL SYSTEM, SIGNING AND PAVEMENT MARKINGS		
Retroreflective Pavement Markers	3M Series 290	OOCEA SPM
Delineation	3M Series 340	OOCEA SPM
Preformed Patterned Retroreflective Tape (PPRT)	3M Stamark Series 380IES Concrete Surface Adhesive SPA-60	712
Temporary Preformed Removable Markings	3M Series 710 Wet-Reflective Removable Tape	SR 408 Traffic Control Notes
Reflective Sheeting	Diamond Grade Cubed (DG3). Purple - 3M Company EC Film #1170-13	Special Provisions
Roadside Mounted flexible Tube Delincators	Safe Hit Corporation, Type 2 Guide Post (48" with Flattened Top), Single units shall be Flexstake 48" Flat, Low Profile Surface Mount Model HD	OOCEA SPM
Removable Markings	3M Wet reflective removable tape, series 710/715	OOCEA SPM
MOT Blacking out Existing Pavement Markings	3M Brand Scotch Lane Removable Tape Black Mask Tape, Series 715	SR 408 Traffic Control Notes
MOT Temporary Pavement Markings	Temp. Pavement Markings use 3M Scotch Lane removable Tape Series 710, 711, 715	SR 408 Traffic Control Notes
Route Confirmation Markers	3M DG3 sheeting, Top Layer EC Film 1170 Clear on OOCEA designated Orange	OOCEA SPM
Toll Logo Colors	Purple - 3M DG3 sheeting matching 3M 1170-13 Violet EC Film Orange - 3M DG3 Sheeting No. 1174	OOCEA SPM
Painting of Support Columns for Overhead Sign Structures	Sherwin Williams Procril Waterborne Acrylic Primer, DTM Waterborne Acrylic Finish Paint, Zinc-Ciad 5 B69 A 45 or ZRC Cold Galvanizing Compound	Special Provisions
Aesthetics/Finishes & Coatings for Concrete Finishes	Sherwin Williams Coating Series B97, DTM Acrylic Semi-gloss coating BGG-200 Series, Zolotone 20	OOCEA Aesthetics Criteria
Lighting Assemblies	Hapco Series 40 Aluminum with 8" Radius	OOCEA Aesthetics Criteria
Luminaires	Holophane Sign Vue, 2 or 3 Module LED (700Ma Driver) 480 volts, 4,500K.	OOCEA SPM
Sign Luminaires	GE Model M-400A POWR/DOOR Luminaire w/ cutoff optics. GE photometric curve 35.451002.	OOCEA Lighting Criteria
Ground Mount Signs	3M Company VHB (Very High Bond) Acrylic Foam Tape Number 4950	Special Provisions
Bridge Deck Joint Sealant	Type D Silicone Dow Corning (DOW 902 RCS)	458-2.2
Building Sealant	DOW Corning 790 Silicone	Special Provisions
Anti-Theft Wire Devices	Copper Keeper™	Special Provisions
INTELLIGENT TRANSPORTATION SYSTEM		
Pole Cable Distribution System	Duraline/[MG]2	OOCEA Lighting Requirements
FON Route Marker	Vulcan Utility Signs Products PN 0550145, 0300876, 0900466, Vulcan H- 41-Rf, Polyvinyl file by Avery XL1000 series S-652/78B	ITS D. Standards A-8, 631-2.4.5
Interduct Installation	Polywater Front End Pack\$ PN J-27, J-55	ITS D. Standards B-1
Bridge Hanger Detail - BRFC	Opti-Com Manf. Network Inc. PN 309602110, CH0472AII	ITS D. Standards C-2
FON Manhole Ladders	Inwesco Series I-3600	D-2
Fiber Optic Cable	Corning® 12 count Single-Mode Altos® stranded loose tube fiber optic cable (PN: 012EU4-64101D20) Corning® 24 count Single-Mode Altos® stranded loose tube fiber optic cable (PN: 024EU4-T4101D20) Corning® 72 count Single-Mode Altos® stranded loose tube fiber optic cable (PN: 072EU4-T4101D20) Corning® 144 count Single-Mode Altos® stranded loose tube fiber optic cable (PN: 144EU4-T4101D20) Corning splice closures: SCF-6C22-01 (72 count) SCF-6C28-01 (144 count) SCF-6C28-02 (288 count)	E-3, TS 631-2.4.4
FON splices	Corning splice trays: PN: SCF-ST-099 for 72 splice closure PN: SCF-ST-112 for 144 to 288 splice closure	633
CCTV	Corning Unicam Single-Mode Connectors (PN: 95-200-42) CCTV Field Assemblies shall be COHU 3925-5100-PEND	686



Exhibit "C"
ORLANDO-ORANGE COUNTY EXPRESSWAY
EXISTING DEVICES/EQUIPMENT

Item Description	Brand - Part/Serial Number	Reference Location
Camera Lowering Device	For 25 foot poles, Model CLDMG2@-HYP-025-ST (DOM) For 50 foot poles, Model CLDMG2@-HYP-050-ST (DOM) For 60 foot poles, Model CLDMG2@-HYP-060-ST (DOM) For 80 foot poles, Model CLDMG2@-HYP-080-ST (DOM) For 130 foot poles, Model CLDMG2@-HYP-130-ST (DOM) (DUAL)	686-2.3
TVSS Devices	APT XDS series Model #'s: TE01XDS154XA, TE01XDS204XA, TE11XDS154XA or TE11XDS204XA, TE01XCS104XA or TE11XCS104XA, APT XCS Series, Model TE11XCS104XA APT SPDee S50A120V1PN w/SKIT1 APT RS422/D1 APT BNCA10kA	F-1A
CCTV Camera Steel Pole Detail	Band-It Band Band-Fast Color-it	G-1
Data Collection Sensors	DCS Shall Read CALTRANS Title-21,ISO 18000-6B and the PS111(IAG) Identification numbers stored in the E-PASS System	663-1
DCS Sign Structure Mounting Detail	Astro-Bracket Pelico Liquatite Flexible Steel Conduit JIC, 2" PN 16102, 13102 Minerallic 1" stainless steel conduit hangers catalog number 2SB	K-1
DCS Steel structure notes and elevations	Weather perfect acrylic, latex flat, color no SW2333 impressive ivory	K-9
DCS Maint. Port	DB-9 B&B electronic part no. DR9MTB	663-2.4.5
DMS	470IB PROM Module	
DMS Rack	Type 170E	
CCTV Cabinet Detail - Surge Protection	APT XDS series, Model TE01XDS154XA TE01XDS204XA, APT XCS TE01XCS104XA, TE11XCS104XA	L-1
DCS Cabinet Detail - DCS Reader Maint. Port	RS-232 B&B electronic DR9 MTB	L-2
DMS LED	Daktronics Vanguard DMS model VF-2320-48x 128-20 RGB	728-2
DMS Service Point	Minerallic 1.5" stainless steel conduit catalog no 45b	M-1
3-Line DMS Backwall Detail Sheet - Surge Protection	APT XDS series, Model TE01XDS154XA, TE01XDS204XA, TE11XDS154XA, TE11XDS204XA, APT XCS SERIES TE01XCS104XA, TE11XCS104XA	M-4
Power Pedestal	APT XDS series, Model TE01XDS154XA, TE01XDS204XA, TE11XDS154XA, TE11XDS204XA, APT XCS SERIES TE01XCS104XA, TE11XCS104XA, APT RS232/D1 APT RS423/D1 APT SCATS APT 8038 (DIN RAIL)	M-5
TMS Sign details - Conduit	Minerallic 1" Stainless Steel Catalog no 25B	
Software	360 Systems Cameleon Software	611A-4.3.1
Mechanical bonding	Burndy L125-2 lugs, No-ox compound	620A-4.1
HDPE Conduit	CSR/Polypipe	631-2.4.1
Conduit couplers	electrofusio couplers by Central Plastics Company Radiodetection LMS, Burton Wire & Cable 12 AWG soft annealed bare	631-2.4.1.3
Tone Wire	copper high density polyethylene, weather resistant polyolefin, pn 10/444150322	631-2.4.2
Fiber Optic Warning Tape	Carlton Telecom Systems, PN MAT3051	
Proofing Dart	Innerduct Cup Projectile PN 2120-010 by Cal Am Manf.	631-3
FON Heat Shrinks	Corning PN 2806031.01	633
FON Manholes Cable Racks	Inwesco Cat. No. 10A09	636
Black Steel Pipe Conduit	Pittsburgh Pipe	638-2.6.3.1
Pipe Sleeve Conduit	Grinnell	638
Bullet-Resistive Fiberglass Conduit (BRFG)	Omni	638
Tone Wire Splices	3M DBR-6 or DBY-6	638-3.2.15.3
RF/Reader Module	Sirit Identity 6204	663-2.4.2
TMS Equipment	Wavetronix Smartsensor SS125 HD ClickI 201, 202 units	664.1.1.1



Exhibit "C"
ORLANDO-ORANGE COUNTY EXPRESSWAY
EXISTING DEVICES/EQUIPMENT

Item Description	Brand - Part/Serial Number	Reference Location
TMS Cable	Waveltronix TMS Cable	664-2.1
Gigabit Ethernet Field Switch	RuggedCoin RS900G fully managed Layer 2 Hardened ethernet	683-2.1
Factory Terminated Pigtail Modules	Corning PN CCH-RM12-59-P03RH	683-2.5.2
Closet Splice Housing	Corning PN CSH-03U	683-2.5.3
Uninterruptable Power Supply	Alpha FXM series w/ batteris Alphacell 85GXL HP. TRIPP-LITE SMART1000RM1U	685-3
Communication Rack Installation	Chatsworth Products Inc. CPI-55053-703, CPI-40604-001, CPI-40607-001, CPI-10629-119, CPI-12816-707	685-4
MPEG-2 Encoders	Vbrick VBSSM PN 9170-4200-0002	686-2.2
FON Software	OSPInSight Edit for Mapinfo 7x Bundle	783F
Guidesign Software	TRANSOFT GuidSIGN	OOCEA Signing & Pavement Marking

Exhibit "D"

SCHEDULE OF AGENCY CONTRIBUTION OF FUNDING

FM#: 432193-1-52-01

Due no later than:*	Amount Due:
<u>July 31, 2017</u>	<u>\$75,000,000.00</u>
<u>July 31, 2018</u>	<u>\$75,000,000.00</u>
<u>July 31, 2019</u>	<u>\$80,000,000.00</u>
<u>Total</u>	<u>\$230,000,000.00</u>

*** Subject to Subparagraph 9(A) of this Agreement**



INTERCHANGE PROJECT FDOT - OCEA INTERLOCAL AGREEMENT EXHIBIT "E" - LIMITS OF WORK

