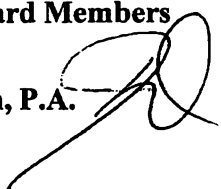


WINDERWEEDLE, HAINES, WARD & WOODMAN, P.A.

**329 Park Avenue North
Second Floor
Post Office Box 880
Winter Park, Florida 32790-0880
Telephone (407) 423-4246
Facsimile (407) 645-3728**

MEMORANDUM

TO: Central Florida Expressway Authority Board Members
FROM: Jere F. Daniels, Jr., Right-of-Way Counsel
Winderweedle, Haines, Ward & Woodman, P.A.
DATE: November 3, 2014
RE: (1) Second Amendment to State of Florida Department of Transportation Construction Agreement between State of Florida Department of Transportation and Central Florida Expressway Authority; and (2) Locally Funded Agreement; Central Florida Greenway (S.R. 417) Interchange with Florida's Turnpike; Project : 417-304



Approval of: (1) the Second Amendment to State of Florida Department of Transportation Construction Agreement ("Second Amendment") between the State of Florida Department of Transportation ("FDOT") and the Central Florida Express Authority (the "Authority"); and (2) the related Locally Funded Agreement ("LFA") between the FDOT and the Authority for the Central Florida Greenway (S.R. 417) Interchange with Florida's Turnpike (S.R. 91) is sought from the Central Florida Expressway Authority Board ("Board"). Copies of the proposed Second Amendment and LFA are attached for your review.

BACKGROUND/DESCRIPTION

The Authority and the FDOT entered into a State of Florida Department of Transportation Construction Agreement, as amended by that certain First Amendment to State of Florida Department of Transportation Construction Agreement dated September 19, 2014 (as amended, the "Construction Agreement"). The purpose of the Construction Agreement was to facilitate and coordinate construction responsibilities between the FDOT and the Authority for adjoining projects for the construction of an interchange between S.R. 91 (Florida's Turnpike) and S.R. 417 (the Central Florida Greenway) (the "Interchange").

The Interchange construction is in progress and an additional phase of the Interchange is also anticipated to commence in the near future. To better facilitate the continued construction of the Interchange, the Authority and the FDOT desire to transfer a portion of the Authority's scope of work (the "Work") under the Construction Agreement from the Authority to the FDOT. The estimated construction cost of the Work to the Authority is \$306,173.49. In consideration of the

FDOT assuming responsibility for the Work, the Authority has agreed to pay the amount of \$306,173.49 to the FDOT within 30 days of execution of the Second Amendment. The related LFA is required by the FDOT to establish the details of the funding and formally address legislative appropriations concerns for the FDOT as to the Work.

REQUESTED ACTION

It is respectfully requested that the Board approve the terms of the Second Amendment and the LFA between the FDOT and the Authority and authorize execution of the Second Amendment and the LFA by the Authority.

ATTACHMENTS

- (1) Second Amendment to State of Florida Department of Transportation Construction Agreement; and
- (2) Locally Funded Agreement.

**SECOND AMENDMENT TO STATE OF FLORIDA DEPARTMENT OF
TRANSPORTATION CONSTRUCTION AGREEMENT**

THIS SECOND AMENDMENT TO CONSTRUCTION AGREEMENT (the "Second Amendment") is made effective as of the ____ day of _____, 2014, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an executive agency of the State of Florida ("DEPARTMENT") and the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY f/k/a Orlando-Orange County Expressway Authority**, a body politic and corporate, and an agency of the state under the laws of the State of Florida ("Construction Coordinator").

WITNESSETH:

WHEREAS, DEPARTMENT and Construction Coordinator entered into a Construction Agreement (the "Agreement") as to the project more particularly described as SR 417 / SR91 (FLORIDA'S TURNPIKE) INTERCHANGE PROJECT NUMBER 417-304 within the limits of DEPARTMENT'S right of way; and

WHEREAS, pursuant to paragraph 2 of the Agreement, the term of the Agreement commenced on June 1st, 2013, and was scheduled to expire on November 1st, 2014 (the "Term"); and

WHEREAS, on September 19, 2014 the DEPARTMENT and Construction Coordinator entered into a First Amendment to State of Florida Department of Transportation Construction Agreement (the "First Amendment") to extend the expiration of the Term of the Agreement to December 31, 2014; and

WHEREAS, pursuant to the recitals of the Agreement, the improvements being constructed by the Construction Coordinator as part of the overall SR 417 / SR 91 (FLORIDA'S TURNPIKE) INTERCHANGE PROJECT NUMBER 417-304 is defined as the "Improvements"; and

WHEREAS, pursuant to the recitals of the Agreement, the portion of the Improvements to be constructed by the Construction Coordinator in DEPARTMENT's right of way is defined as the "Project"; and

WHEREAS, concurrent with the Project, the DEPARTMENT proposes to construct certain improvements for the SR 417 / SR 91 (Florida's Turnpike) Interchange ramp systems, including without limitation, new bridge structure, new ramp terminals and roadways connecting to the Turnpike and SR 417, traffic control plan, MSE walls, retaining walls, guardrail, barriers, extension of box culverts, drainage pipes, drainage structures, fence, gates, signs, roadway lighting, intelligent transportation system adjustments, temporary works, utility adjustments and earthwork under DEPARTMENT project E8N68, (collectively called the "Department Improvements"); and

WHEREAS, for the mutual benefit of the prosecution of work between adjoining Project and Department Improvements, the DEPARTMENT has requested and Construction Coordinator has agreed to transfer funds and construction scope from Construction Coordinator Improvements to Department Improvements in the amount of \$306,173.49, and the DEPARTMENT has agreed to assume responsibility for that certain construction scope. The pay item scope and detailed value are defined by the attached spreadsheet as Exhibit A - "CFX Change in Scope – revised." The transferred scope of work to be completed by the DEPARTMENT is generally associated with restoration of Turnpike roadway and pavement following the removal of existing temporary traffic diversions, and restoration of Turnpike traffic to the normal roadway alignment (and specifically defined in Exhibit A); and

NOW THEREFORE, in consideration of the mutual covenants contained in this Second Amendment, and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the DEPARTMENT and Construction Coordinator hereby agree to amend the Agreement, as of the effective date hereof, as follows:

1. The DEPARTMENT will accept Three Hundred Six Thousand One Hundred Seventy Three dollars and Forty Nine cents (\$306,173.49) as the final payment from the Construction Coordinator as full and complete compensation to construct the scope of the transferred work outlined in Exhibit A, and the DEPARTMENT will assume full responsibility for completion of that scope of transferred work.

2. The Construction Coordinator agrees to provide payment to the DEPARTMENT in accordance with this Second Amendment within 30 calendar days from the execution date of this Second Amendment.

3. Upon execution of this Second Amendment and payment to the DEPARTMENT the sum of Three Hundred Six Thousand One Hundred Seventy Three dollars and Forty Nine cents. (\$306,173.49), the Construction Coordinator will delete the transferred scope of work outlined in Exhibit A from the Project and shall no longer have any contractual responsibility or obligation to the DEPARTMENT to complete those portions of the Project.

4. Other than the above amendment to the Construction Coordinators responsibilities for construction of the Project, all remaining provisions of the Agreement shall remain in full force and effect.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, Construction Coordinator and the DEPARTMENT have executed this Second Amendment for the purposes herein expressed on the date indicated above.

**STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION**

By: _____
Diane Gutierrez-Scaccetti
Executive Director
Florida's Turnpike Enterprise

ATTEST: _____

LEGAL REVIEW:

BY: _____
Legal Counsel

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
f/k/a Orlando-Orange County Expressway Authority**

By: _____
Printed Name: _____
Title: _____

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: _____
General Counsel

CFX STA. 5121+84.84 = FTE STA. 2117+64.96

CFX									
Pay Item	ITEM	STA. to STA.	L	W	UNITS	QNTY	Unit \$	Total	Comment
327 70 6	1 1/2" Milling	5112+00 - 5133+50 NB & SB	4,300.00	14.00	SY	6,688.89	\$1.69	\$11,304.22	
327 70 11	2 1/2" Milling	5112+00 - 5133+50 NB & SB	4,300.00	24.00	SY	11,466.67	\$1.92	\$22,016.00	
334 1 23	TL D PG 76-22	5112+00 - 5133+50 NB & SB	4,300.00	28.00	TN	1,103.67	\$100.83	\$111,283.05	Used TL C PG 76-22; agree to use D at C price?
334 1 13	TL C	5112+00 - 5133+50 NB & SB	4,300.00	10.00	TN	394.17	\$85.92	\$33,867.09	
337 7 22T	FC 5	5112+00 - 5133+50 NB & SB	4,300.00	25.33	TN	484.08	\$141.93	\$68,705.47	80 #/SY
339 1	Misc. Asphalt	at GR locations	1,574.00	5.50	TN	121.72	\$123.14	\$14,988.60	
536 1 1	GR	5112+00 - 5127+24	1,524.00		LF	1,524.00	\$15.24	\$23,225.76	NB Outside
536 1 1	GR	5122+86 - 5123+36	50.00		LF	50.00	\$15.24	\$762.00	NB Inside
536 1 3	GR double face	5122+78 - 5123+53	75.00				\$21.58	\$0.00	Will not be removed & replaced
536 5 2	GR double sided w/ rr	5122+78 - 5123+53	75.00		LF		\$13.38	\$0.00	Will not be removed & replaced
536 73	GR Remove	5122+78 - 5123+53	75.00				\$2.13	\$0.00	Will not be removed & replaced
536 85 22	GR End Assy. Flair	5112+00			EA	1	\$1,625.30	\$1,625.30	NB outside
536 85 25	GR End Assy.				EA	2	\$543.54	\$1,087.08	
546 72 51	Rumble Strips	5112+00 - 5133+50 NB & SB	4,300.00		PM	1.64	\$3,339.24	\$5,476.35	
706 3	RMP's	5112+00 - 5133+50 NB & SB	4,300.00		EA	108	\$2.77	\$299.16	
710 90	Painted Pav't Marking	5112+00 - 5133+50 NB & SB			LS	0.17	\$11,563.64	\$1,965.82	Used 17% of LS price as provided by CFX
711 11 11	Thermo W 6"	5112+00 - 5133+50 NB & SB	4,300.00		NM	0.81	\$5,163.30	\$4,204.96	
711 11 13	Thermo Skip 6"	5112+00 - 5133+50 NB & SB	4,300.00		NM	0.81	\$1,406.82	\$1,145.71	
711 11 21	Thermo Y 6"	5112+00 - 5133+50 NB & SB	4,300.00		NM	0.81	\$5,177.99	\$4,216.92	
	15" RCP	Already Installed			EA				
	15" MSE	Already Installed			EA				
Total CFX work added								\$306,173.49	

EXHIBIT A: CFX Change in Scope – revised

LOCALLY FUNDED AGREEMENT

THIS LOCALLY FUNDED AGREEMENT (this "Agreement") is made and entered into on this ___ of _____, 2014, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, f/k/a Orlando-Orange County Expressway Authority, a public instrumentality and agency of the State of Florida ("CFX") and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION ("FDOT"), an Executive Agency of the State of Florida.

RECITALS:

WHEREAS, FDOT owns and operates the Florida Turnpike system, a system of limited access toll roads; and

WHEREAS, FDOT has Project 243017-1-52-01 in the Work Program to construct three ramp movements (Ramp A1, B2, and C1) at the interchange of SR 417 and Turnpike Mainline. The project will increase the traffic operations and mobility between SR 417 and the Turnpike Mainline in the southwest area of Orange County; and

WHEREAS, CFX has the SR 417 / SR 91 (FLORIDA'S TURNPIKE) INTERCHANGE PROJECT NUMBER 417-304 within the limits of FDOT'S right of way in the construction phase; and

WHEREAS, CFX and FDOT, for the mutual benefit of the prosecution of work between adjoining CFX and FDOT projects, agree to transfer funds and contract scope from CFX contract 417-304 to FDOT contract E8N68 in the amount of \$306,173.49. The pay item scope and value is defined by the spreadsheet attached hereto as "Exhibit A" - "CFX Change in Scope – revised." The transferred scope of work to be completed by FDOT is associated with restoration of Turnpike roadway and pavement following the removal of existing temporary traffic diversions, and restoration of Turnpike traffic to the normal roadway alignment. FDOT

will provide notice to CFX upon acceptable completion of the removal of the existing temporary traffic diversions installed under CFX contract 417-304; and

WHEREAS, CFX and FDOT agree to execute a Second (2nd) Amendment to the original STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION CONSTRUCTION AGREEMENT commenced on June 1, 2013 between the agencies; and

WHEREAS, FDOT has provided CFX with plan sets for review and CFX acknowledges it has not been involved in the actual design of the project; and

WHEREAS, the FDOT hereby finds, determines, and declares that it is necessary that CFX advance to the FDOT sufficient funds to pay for the direct and indirect costs of the Project totaling \$306,173.49.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants and benefits set forth herein and other good and valuable consideration, receipt of which is hereby acknowledged, hereby agree as follows:

1. **Representations by FDOT.** FDOT makes the following representations as the basis for the undertakings on its part herein contained:

(A) FDOT has been duly created and is validly existing as an Executive Agency under the laws of the State of Florida. FDOT has all necessary power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The obligations of FDOT under this Agreement are valid generally and enforceable in accordance with their terms.

(B) There is no litigation pending or, to the knowledge of FDOT, threatened with respect to this Agreement which will affect the performance FDOT of its obligations under this

Agreement.

(C) No default exists with respect to the obligations of FDOT under this Agreement, and the execution and delivery of this Agreement by FDOT do not constitute a violation of applicable law or regulations or a breach of or default under any other agreement to which FDOT is a party or an event that, with the passage of time, would become a breach of or default under any such agreement.

(D) All consents, waivers, approvals and other governmental actions required to be taken in order for FDOT to enter into and fully comply with this Agreement have been received or obtained by FDOT.

2. **Representations by CFX.** CFX makes the following representations as the basis for the undertakings on its part herein contained:

(A) CFX has been duly created and is validly existing as a body politic and corporate, a public instrumentality and an agency of the State existing under the Act. CFX has all necessary power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper corporate action CFX has been duly authorized to execute and deliver this Agreement. The obligations of CFX under this Agreement are valid and generally enforceable in accordance with their terms.

(B) No litigation is pending or, to the knowledge of CFX, threatened with respect to this Agreement which will affect the performance by CFX of its obligations under this Agreement.

(C) No default exists with respect to the obligations of CFX under this Agreement, and the execution and delivery by CFX of this Agreement do not constitute a violation of

applicable law or regulations or a breach of or default under any other agreement to which CFX is a party or an event that, with the passage of time, would become a breach of or default under any such agreement.

(D) All consents, waivers, approvals and other governmental actions required to be taken in order for CFX to enter into and fully comply with this Agreement have been received or obtained by CFX.

3. **Recitals.** The Recitals to this Agreement are true and correct and are hereby incorporated herein by reference and made a part hereof

4. **Funding of Work.**

(A) CFX agrees that it will furnish FDOT a contribution in the amount of Three Hundred Six Thousand One Hundred Seventy Three dollars and Forty Nine cents (\$306,173.49) within thirty (30) calendar days of execution of this agreement. FDOT shall be under no obligation to execute a contract modification with the construction contractor until CFX funds are received. Such amount will be used exclusively for the estimated project cost for locally funded project number 243017-1-52-02. The Department may utilize this contribution for payment of the costs of the project.

(B) If the actual cost of the project is less than the funds provided the excess will be applied to other phases on the project. FDOT shall be under no obligation to CFX to provide an accounting of funds expended by it hereunder.

(C) The payment of funds under this Locally Funded Agreement will be made directly to FDOT for deposit.

7. **Appropriations.** The obligation of FDOT to expend funds under this Agreement is contingent upon an annual appropriation by the Florida Legislature. Accordingly, pursuant to the requirements of Section 339. 135(6)(a), Florida Statutes, the following is incorporated herein:

"FDOT, 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. FDOT shall require a statement from the comptroller of FDOT 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 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 FDOT which are for an amount in excess of \$25,000 and which have a term for a period no more than 1 year."

8. **Effective Date of this Agreement.** This Agreement shall become effective on the date first above written.

9. **Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

10. **Provisions Separable.** The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be

invalid or unenforceable in whole or in part.

11. **Amendment of Agreement.** This Agreement may only be amended by mutual agreement of FDOT and CFX expressed in writing and executed and delivered by each.

12. **Format.** All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

13. **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when delivered (personally, by courier service such as Federal Express, or by other messenger) against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below:

To CFX:

Executive Director
Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, Florida 32807

With Copy to:

General Counsel
Central Florida Expressway Authority

4794 ORL Tower Road
Orlando, FL 32807
With Additional Copy to:

_____, Esq.
Central Florida Expressway Authority
4794 ORL Tower Road
Orlando, FL 32807

To FDOT:

Chief Financial Officer
Florida's Turnpike Enterprise
Turnpike Headquarters -Bldg. 5315
P.O. Box 613069
Ocoee, FL 34761-3069

With Copy to:

Turnpike Chief Counsel
Turnpike Headquarters -Bldg. 5315
P.O. Box 613069
Ocoee, FL 34761-3069

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

14. **Entire Agreement.** This Agreement, including the exhibits to this Agreement, contain the sole and entire agreement between the parties with respect to their subject matter and supersede any and all other prior written or oral agreements between them with respect to such subject matter.

15. **Binding Effect.** This Agreement shall be binding upon the parties and their respective representatives, successors and assigns.

16. **Waiver.** Waiver by either party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

17. **Captions.** The captions contained in this Agreement are inserted only as a matter of convenience or reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.

18. **Absence of Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to (a) confer upon any entity or person other than the parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third party beneficiary or otherwise except as specifically provided in this Agreement; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement.

19. **Other Documents.** The parties shall take all such actions and execute all such documents which may be reasonably necessary to carry out the purposes of this Agreement, whether or not specifically provided for in this Agreement; provided that the parties further acknowledge that certain additional actions by CFX may require approval by the Board of CFX, and, to the extent such approval is required by applicable law, obtaining such approval shall be a condition to the obligations of the parties under this Agreement.

20. **Governing Law.** This Agreement and the interpretation of its terms shall be governed exclusively by the laws of the State of Florida. Venue for any judicial, administrative or other action to enforce or construe any term of this Agreement or arising from or relating to this Agreement shall lie exclusively in Leon County, Florida.

[BALANCE OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement, the Central Florida Expressway Authority (CFX), signing by and through its Executive Director, and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, signing by and through its Executive Director, each duly authorized to execute same.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

BY: _____ [Seal]
Executive Director

ATTEST: _____ [Seal]
Executive Secretary

Legal Review:

BY: _____
General Counsel

**STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION**

BY: _____ [Seal]
Executive Director & Chief Executive Officer, Florida's Turnpike Enterprise

ATTEST: _____ [Seal]
Executive Secretary

Legal Review:

BY: _____
Legal Counsel