


MEMORANDUM

TO: CFX Board Members

FROM: Robert Johnson, Manager of Procurement 

DATE: April 6, 2016

SUBJECT: Approval of Interlocal Agreement with Osceola County Expressway Authority for Customer Service and Support for Poinciana Parkway Contract No. 001200

Board approval is requested for Interlocal agreement with Osceola County Expressway Authority for customer service and support for Poinciana Parkway. Please see attached letter requesting this assistance from Osceola County Expressway Authority. This contract allows for customer support for E-PASS, including Pay by Plate processing and invoicing, Financial Support including reconciliation and financial data on the Electronic Toll Revenue. This contract also allows for the pass through of cost to Osceola County Expressway Authority for toll collection software and hardware maintenance, facilities maintenance and upgrades of toll buildings as requested. This allows Osceola County Expressway Authority to take advantage of CFX's volume pricing with some of our existing vendors and will streamline future maintenance and operations efforts.

Reviewed by: 
Corey Quinn, Chief of Technology/Operations



February 23, 2016

Ms. Laura Kelley
Executive Director
4974 ORL Tower Road
Orlando, Florida 32807

Reference: Poinciana Parkway
Osceola County Expressway Authority
Request for Operations and Maintenance Contract

Atlee Mercer
Chairman

Bob Healy
Secretary

William Folsom
Vice-Chairman

Thomas White
Board Member

Arturo Otero
Board Member

Noranne Downs
FDOT District 5

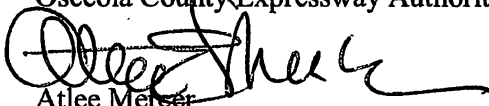
Jeffrey Jones
Acting Executive
Director

Dear Ms. Kelley:

The Osceola County Expressway Authority (OCX) sincerely appreciates working with the Central Florida Expressway Authority (CFX) in moving the Poinciana Parkway project forward. There is an excellent working relationship with our consultants and the CFX staff on the toll collection system and marketing of E-Pass.

To further assist OCX as we approach the opening of the initial segment of Poinciana Parkway, we are requesting that CFX continue partnering with OCX to provide the maintenance of the toll equipment by TransCore and the maintenance of the toll plaza buildings by your facilities maintenance contractor. We understand that CFX has an existing toll equipment maintenance contract with TransCore and OCX is requesting to be added to that contract for the Poinciana Parkway equipment maintenance. On the facilities contract, we understand it is in the procurement process and we are requesting the procurement include the two additional toll plaza sites on Poinciana Parkway. OCX would reimburse CFX for the costs associated with these two maintenance contracts. We believe that by working with CFX on these maintenance contracts, there will be significant savings.

We look forward to continuing to work with you to make Poinciana Parkway a success.

Sincerely,
Osceola County Expressway Authority

Atlee Mercer
Chairman

OCX

1 Courthouse Square
Suite 1100
Kissimmee, FL 34741
PH: (407) 742-0293
Fax: (407) 742-0206
www.osceolaxway.org

xc: Jeff Jones, Frank Raymond, Jan Everett, Wayne Rich, Jo Thacker

**INTERLOCAL AGREEMENT
BETWEEN
OSCEOLA COUNTY EXPRESSWAY AUTHORITY AND
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
FOR CUSTOMER SERVICE AND SUPPORT**

This Interlocal Agreement (the "Agreement") made and executed between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and corporate and an agency of the state, having an address at 4974 ORL Tower Road, Orlando, Florida 32807 ("CFX"), and OSCEOLA COUNTY EXPRESSWAY AUTHORITY, a body politic and corporate and an agency of the state, having an address at 1 Courthouse Square, Kissimmee, Florida 34741-5440 ("OCX").

WITNESSETH:

WHEREAS, CFX was created and established under Part III, Chapter 348 of the Florida Statutes and is charged with acquiring, constructing, improving, maintaining and operating a system of limited access roadways known as the Central Florida Expressway System, including the Holland East-West Expressway (SR 408), the Beachline Expressway (SR 528), the Central Florida GreeneWay (SR 417), the Daniel Webster Western Beltway (SR 429), the John Land Apopka Expressway (SR 414), SR 451, and associated toll plazas, toll booths and facilities, and entrance and exit ramps; and

WHEREAS, CFX has been granted the power under Section 348.754(2)(m) of Florida Statutes, "to do everything necessary or convenient for the conduct of its business and the general welfare" of CFX; and

WHEREAS, pursuant to Section 348.753(1)(a), Florida Statutes, CFX serves the geographical boundaries of Orange, Seminole, Lake, and Osceola Counties; and

WHEREAS, OCX was created and established under Part V, Chapter 348 of the Florida Statutes and, pursuant to Sections 348.9953 and 348.0002(9), Florida Statutes, OCX's jurisdiction covers Osceola County; and

WHEREAS, CFX and OCX have determined that it is necessary and convenient in the conduct of business for CFX to collect electronic toll transactions generated on the proposed OCX Expressway System.

NOW, THEREFORE, for and consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I. DEFINITIONS.

(a) “AVI Transponder” or “Transponder” is a radio frequency device attached to a motor vehicle for identification purposes. It transmits the transponder number to the reader in the lane through an antenna.

(b) “CFX” means the Central Florida Expressway Authority, a body politic and corporate and an agency of the state created pursuant to Part III of Chapter 348, Florida Statutes.

(c) “CFX Expressway System” has the meaning assigned to it in the first WHEREAS clause.

(d) “Effective Date” of this Agreement shall be the last date of full and complete execution by each party.

(e) “Electronic Toll Revenue” or “ETR” means any funds collected via transponder transactions or image-based transactions. It does not include cash transactions.

(f) “ETTM” means CFX's Electronic Toll and Traffic Management system consisting of computerized data collection and processing with computer hardware and software to collect, process, report and archive traffic, toll revenue, E-PASS Service Center data and system maintenance activity.

(g) "Host Computer" is the computer system used for the toll collection system responsible for monitoring and processing all CFX toll transactions as modified and upgraded over time.

(h) “OCX” means Osceola County Expressway Authority, a body politic and corporate and an agency of the state created pursuant to Part V of Chapter 348, Florida Statutes.

(i) “OCX Expressway” means the proposed Poinciana Parkway Project and any future expansion of the OCX Expressway System.

ARTICLE II. OWNERSHIP OF ELECTRONIC TOLL REVENUE

All Electronic Toll Revenue (or “ETR”) generated on an OCX Expressway shall belong to the OCX and be transferred by CFX to the OCX as set forth in this Agreement.

All Electronic Toll Revenue generated on the CFX Expressway System shall belong to CFX.

ARTICLE III. SCOPE OF SERVICES.

In its management of the processing of accounts and transponders on an OCX Expressway, CFX shall perform the following services:

Section 3.01 Customer Support

(a) CFX will provide customer service and support for the OCX Expressway, including services and support at the E-PASS Service Centers, the E-PASS Call Center, the E-PASS website, and the E-PASS Phone Interactive Voice Response ("IVR").

(b) OCX will be interoperable with all other Interoperable Florida Toll Agencies.

(c) CFX will provide for violation processing and invoicing.

Section 3.02 Financial Support

(a) CFX will collect all ETR on the OCX Expressway.

(b) CFX will provide for the reconciliation and accounting of financial data for the ETR on the OCX Expressway to OCX.

Section 3.03 Exclusions. CFX will not provide the following:

(a) CFX will not provide the initial infrastructure, hardware, and software for the OCX Expressway.

(b) CFX will not pay for credit card fees associated with transactions on an OCX Expressway.

(c) CFX will not provide for any cash collections or operations at the toll plazas on the OCX Expressway.

(d) CFX will not provide for any toll plaza lane or equipment maintenance.

(e) CFX will not provide any hardware or software upgrades to the lane or plaza equipment.

(f) CFX will not perform operation, management, maintenance and repair of the OCX's right of way and the toll plazas, booths, ramps and facilities involved therewith.

(g) The above list of exclusions is not exhaustive and CFX has no obligation to provide any additional services not specifically enumerated in this Agreement.

Section 3.04 Additional Services. Upon written request by OCX, and subject to CFX's approval, CFX will provide to OCX additional services including, but not limited to: (a) toll collection equipment and toll collection software maintenance; (b) hardware or software upgrades to the lane or plaza equipment; (c) facilities maintenance and upgrades of the toll equipment buildings on the OCX Expressway, as may be expanded or contracted from time to time; and (d) the other items excluded above. The actual costs incurred by CFX will be passed to OCX through a deduction of the revenues or through alternate means as more specifically addressed through a written amendment or supplement.

ARTICLE IV. CONSIDERATION.

Section 4.01 If at any time CFX determines that the actual cost of providing the services to OCX is such that CFX needs to charge OCX a fee, CFX may request an adjustment from OCX to cover CFX's actual cost.

Section 4.02 OCX is responsible for the cost of signage. Any future or additional signs on the OCX Expressway (or any future expansion by the OCX) will include or reference E-PASS and the cost will be borne by OCX.

ARTICLE V. TRANSFER AND RECONCILIATION OF ELECTRONIC TOLL REVENUE.

All Electronic Toll Revenue belonging to OCX shall be transferred to OCX's Toll Account, in arrears, on a weekly basis. Said amounts shall be reconciled to the exact amount of gross revenue minus:

- (a) any and all credit card processing fees or charges paid by any and all Florida Interoperable Partner Agency for OCX toll roads; and
- (b) any adjustments or discounts given on OCX toll roads; and
- (c) the cost of processing Pay-by-Plate transactions; and
- (d) any transaction fee imposed or retained by an interoperable partner; and
- (e) any additional costs passed on to OCX for the additional services or for additional costs as referenced in Section 3.04 or Section 4.01 above.

ARTICLE VI. TERM OF AGREEMENT.

This Agreement shall remain in force and effect for an initial term of ten (10) years, and shall automatically renew each year thereafter unless otherwise terminated as provided herein. The term commences on the Effective Date.

ARTICLE VII. TERMINATION.

This Agreement may be terminated at any time by mutual agreement of the parties as indicated by a termination agreement approved and executed by the governing board of each party. Absent mutual agreement, either side may elect to terminate, but only upon giving one hundred and eighty (180) days written notice to the other prior to the date of termination. In such event, each party hereby agrees to reconcile any and all amounts owed to the other pursuant to this Agreement and to pay such amounts within ninety (90) days of the termination date.

ARTICLE VIII. OCX'S OBLIGATION TO MAINTAIN COMPATIBILITY.

In order to facilitate electronic toll collection, OCX agrees to conduct maintenance and implement upgrades to lane and plaza hardware and software so as to maintain compatibility with CFX's ETTM and Host Computer. CFX agrees to provide written notice to OCX of any necessary maintenance or upgrades within a reasonable period after it receives actual notice of the need for any necessary maintenance or upgrades.

ARTICLE IX. COOPERATION.

Section 9.01 Staff Cooperation. CFX and OCX shall use their best efforts to work together, cooperate and coordinate activities with each other to ensure high level service and quality for OCX customers in CFX's E-PASS System. Staff members from CFX and OCX shall meet as necessary to discuss and develop solutions for operation problems and concerns. CFX and OCX shall promptly notify each other of any complaints, issues, problems, or system malfunctions or unforeseen occurrences and shall, if necessary, schedule a special meeting to discuss and resolve such complaints, issues, problems, malfunctions or unforeseen occurrences.

Section 9.02 Joint Marketing and Advertising. CFX and OCX shall develop and implement a joint marketing, public service and information dissemination plan to publicize the use of CFX's E-PASS System by OCX customers. OCX shall pay the cost of such activities. Nothing contained herein shall prohibit the parties from also undertaking their own individual marketing efforts.

ARTICLE X. LOSS, DAMAGE.

CFX shall have no responsibility or liability to pay OCX for any automated toll payments not made, collected or recorded for any reason, including, but not limited to, a hardware, software, or mechanical malfunction or breakdown, events outside the control of CFX, force majeure events (including, but not limited to war, natural disaster such as fire, flood, tornado, sink hole, breaches of the peace, and other acts of God), vandalism or intentional misuse, or any other reason.

ARTICLE XI. AUDITS AND AUDITING.

Each party shall have the right, at its own cost and expense, to perform or cause to be performed from time to time an audit or review of the Electronic Toll Revenue generated on the OCX Expressway. CFX and OCX shall cooperate to provide to each other all documents, data, and access necessary to facilitate an audit or review by each entity with respect to the Electronic Toll Revenue generated on any portion the OCX Expressway. A copy of such audit or review shall be promptly provided to the other party upon request.

ARTICLE XII. DISPUTE RESOLUTION.

Section 12.01 Settlement Conference. In the event of any dispute hereunder, the parties shall work together in good faith with a spirit of cooperation to resolve disputes and shall as soon as possible after a dispute arises (but no later than twenty-one (21) calendar days thereafter), schedule and attend a settlement conference to resolve such dispute.

Section 12.02 Mediation.

(a) If the parties are unsuccessful in their efforts to resolve disputes at a settlement conference in accordance with Section 12.01, either party may submit the issue in controversy for resolution by means of mediation.

(b) If either party elects to submit an issue to mediation, the parties shall cooperate in an effort to select a mediator, who shall be certified as a mediator by the Supreme Court of the State of Florida. If the parties are unable to agree upon a mediator, each shall select a mediator, who shall select a third mediator, and the proceedings shall be conducted by the third mediator. The parties shall equally share the costs and expenses of the mediator and the mediation proceedings and shall cooperate in good faith in an effort to reach a mutually acceptable resolution of the dispute.

(c) If the parties attempt to resolve a dispute by means of mediation proceedings in accordance with Section 12.02 but are unable to do so, either party may file an action at law or equity to enforce, interpret or construe the provisions of this Agreement.

Section 12.03 Cooperation. Each party shall diligently cooperate with the other in an effort to resolve disputes in the most fair and amicable manner possible, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute.

ARTICLE XIII. MISCELLANEOUS PROVISIONS.

Section 13.01 Waiver. This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by the parties hereto. No failure by either party to insist upon the strict performance of any covenant, duty, agreement or condition set forth in this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. No waiver shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

Section 13.02 Designation of Responsibility; Cooperation with Representatives.

(a) CFX and OCX shall each designate an individual (or individuals) who shall be authorized to make decisions and bind the parties on matters relating to the effectuation of this Agreement and the operations required hereunder. The designated individuals shall not have the right to make decisions inconsistent with the Agreement, or make amendments thereto or make any action or make any decisions that are not allowed under applicable law. Designations of representatives may be changed by a subsequent writing delivered to the other party. The parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to this Agreement and negotiate on behalf of each of the parties but who are not authorized to bind CFX or OCX.

(b) OCX and CFX pledge mutual cooperation between all representatives of OCX and CFX. OCX and CFX shall provide such data, reports, certifications, and other documents or assistance reasonably requested by the other, subject to compliance with applicable laws. The provision of such information shall not in any manner diminish OCX's or CFX's rights or obligations under any other provision hereof.

Section 13.03 Limitation on Third Party Beneficiaries. This Agreement shall not create any third party beneficiary hereunder, nor shall this Agreement authorize anyone not a party hereto to maintain a suit of any type whatsoever, including, but not limited to, a suit for personal injury or property damage pursuant to the terms of provisions hereof.

Section 13.04 Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of Florida.

Section 13.05 Notices and Communications.

(a) All notices required or permitted by law or by this Agreement to be given to CFX or OCX shall be in writing and may be given by either personal delivery or by registered

or certified U.S. mail sent return receipt requested, or by a recognized overnight courier service. Notices shall be sent to the parties at the addresses set forth below or at such other addresses as the parties shall designate to each other from time to time in writing:

All correspondence with OCX shall be sent to the Chairman. The initial address for such correspondence shall be:

Osceola County Expressway Authority
1 Courthouse Square
Kissimmee, Florida 34741
Attn: Chairman
Telephone: (407) 343-2700

All correspondence with CFX shall be sent to the Executive Director of CFX. The initial address for such correspondence shall be:

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

(b) Any notice or demand given, delivered or made by registered or certified United States mail sent return receipt requested, shall be deemed so given, delivered or made on the date of actual receipt. Notices sent by overnight courier service shall be deemed or made on the date of actual receipt. Notices sent by overnight courier service shall be deemed effective on the first business day after deposited with such service, with the fee paid in advance. Any notice, demand or document that is personally delivered shall be deemed to be delivered upon receipt by the party to whom the same is given, delivered or made. Notices given by facsimile or telecopy shall not be deemed effective for purposes of this Agreement.

Section 13.06 Interpretation. For purposes of this Agreement, the singular includes the plural and the plural shall include the singular. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to. Words not otherwise defined that have well-known technical or industry meanings are used in accordance with such recognized meanings. References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities.

Section 13.07 Severability. The invalidity or unenforceability of any portion or provisions of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

Section 13.08 Computation of Periods. References to "days" contained herein shall mean calendar days unless otherwise specified; provided that if the date to perform any act or give any notice specified herein (including the last date for performance or provision of notice "within" a specified time period) falls on a Saturday, Sunday or legal holiday, such act or notice may be timely performed on the next succeeding day that is not a Saturday, Sunday or legal holiday. Notwithstanding the foregoing, requirements relating to emergencies and other requirements for which it is clear that the intent is to require performance on a non-business day, shall be required to be performed as specified, even though the date in question may fall on a weekend or legal holiday.

Section 13.09 Headings. The captions of the sections of this Agreement are for convenience only and shall not be deemed part of this Agreement or considered in construing this Agreement.

Section 13.10 Entire Agreement. This Agreement, including the Exhibits (if any) attached hereto, constitutes the entire and integrated agreement between the parties hereto and supersedes and nullifies all prior and contemporaneous negotiations, representations, understandings and agreements, whether written or oral, with respect to the subject matter hereof.

Section 13.11 Counterparts. This Agreement may be executed in any number of counterparts.

ARTICLE XIV. FILING.

In accordance with Section 163.01(11), Florida Statutes, this Interlocal Agreement shall be filed with the Clerk of the Circuit Court for Osceola County by OCX and with the Clerk of the Circuit Court for Orange County by CFX.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have set their hands by their duly authorized agents on the dates indicated.

**CENTRAL FLORIDA EXPRESSWAY
AUTHORITY**

By: _____
Welton Cadwell, Chairman

ATTEST:

Approved as to form and legality:

By: _____
Darleen Mazzillo, Executive Assistant

Joseph L. Passiatore, General Counsel

Date: _____

Date: _____

**OSCEOLA COUNTY EXPRESSWAY
AUTHORITY**

By: _____
Chairman

ATTEST:

Approved as to form and legality:

By: _____
Executive Assistant

General Counsel

Date: _____

Date: _____

R:\Departments\Legal\General\Contracts\Osceola County EA ILA\ILA OCX-CFX v2016_02_29.docx