

SCEA

SEMINOLE COUNTY EXPRESSWAY AUTHORITY

520 W. Lake Mary Boulevard, Suite 200 Sanford, Florida 32773 (407) 665-5601

SEMINOLE COUNTY EXPRESSWAY AUTHORITY MEETING
SEMINOLE COUNTY SERVICES BUILDING
1101 EAST FIRST STREET; ROOM 1028
SANFORD, FLORIDA 32771

JANUARY 12, 2010
4:00 P.M.

A G E N D A

1. CALL TO ORDER - Commissioner Gary L. Brender, Chairman
2. INVOCATION / PLEDGE OF ALLEGIANCE
3. CHAIRMAN'S OPENING STATEMENT - Commissioner Gary L. Brender, Chairman
4. INFORMATIONAL / DISCUSSION ITEM - W. Gary Johnson, P.E., SCEA Executive Director
Draft Interlocal Agreement Between the Orlando-Orange County Expressway Authority
and Seminole County, Florida (Copy Attached)
5. BOARD DISCUSSION / WRAP-UP
6. ADJOURNMENT
The Next Regularly Scheduled Meeting Date: May 11, 2010.

PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE SEMINOLE COUNTY EXPRESSWAY AUTHORITY OFFICE 48 HOURS IN ADVANCE OF THE MEETING AT 407-665-5601.

PERSONS ARE ADVISED THAT IF THEY DECIDE TO APPEAL ANY DECISIONS MADE AT THESE MEETINGS/HEARINGS, THEY WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE THEY MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED, PER SECTION 286.0105, FLORIDA STATUTES.

AUTHORITY MEMBERS

Brenda Carey
Bob Dallari

Carlton D. Henley

Gary L. Brender, Chairman

Dick Van Der Weide

Michael J. McLean, Vice Chairman
Art Woodruff

DRAFT

**INTERLOCAL AGREEMENT
BETWEEN
THE ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY
AND SEMINOLE COUNTY, FLORIDA**

This Interlocal Agreement (the "Agreement") made and executed as of _____, by and between the Orlando-Orange County Expressway Authority, a body, politic and corporate, an agency of the State created pursuant to Part V, Chapter 348, *Florida Statutes*, having an address at 4974 ORL Tower Road, Orlando, Florida 32807 (the "Authority"), and Seminole County, a political subdivision of the State of Florida, having an address at 1101 East First Street, Sanford, Florida 32771.

WITNESSETH

WHEREAS, this Agreement is entered into pursuant §163.01, *Florida Statutes*, also known as the "Florida Interlocal Cooperation Act of 1969;" and

WHEREAS, the Wekiva Parkway is being designed as a limited access toll road beginning at the planned S.R. 429 interchange at U.S. 441 in Apopka, continuing North and then East along the current S.R. 46 alignment and connecting to Interstate 4 at the S.R. 417 interchange in Sanford, Florida, including a proposed S.R. 46 Bypass beginning at U.S. 441 and S.R. 46 near Mount Dora, Florida, and connecting to the Wekiva Parkway at a systems interchange together with all necessary approaches, roads, bridges and avenues of access that constitute a part of such project, the "Wekiva Parkway;" and

WHEREAS, the Authority, with the assistance of the Florida Department of Transportation ("FDOT"), through the Wekiva Parkway S.R. 429/S.R. 46 Realignment Project Development and Environment Study (Wekiva PD&E Study), has found a balance between the interest of the public, the environment and engineering, minimizing impacts to homes, businesses and the environment while developing the Wekiva Parkway as a transportation facility that meets the region's growing transportation needs; and

WHEREAS, the Wekiva Parkway preferred alignment has been approved by the Authority, FDOT, Orange County, Lake County, Seminole County, the Cities of Mount Dora and Apopka, the Seminole County Expressway Authority and other local, state and federal entities; and

WHEREAS, the Wekiva Parkway is critical to accommodate intensifying growth in inter-county travel between Seminole, Lake and Orange Counties and will relieve congestion on Interstate 4 through Seminole and Orange Counties and on U.S. Highway 441, S.R. 46 and local roads, and complete the beltway on the West side of Metropolitan Orlando; and

WHEREAS, the construction of the Wekiva Parkway will ease the flow of vehicular traffic within Seminole County and Lake County and provide more convenient and direct access to

Interstate 4 and the Western Beltway, thereby providing the citizens of Seminole County and Lake County, tourists and other visitors to Seminole County and Lake County a direct connection to the Central Florida area beltway; and

WHEREAS, the Wekiva Parkway has been studied and included as part of the Seminole County Comprehensive Plan, the Lake County Comprehensive Plan, the Orange County Comprehensive Plan, the Lake-Sumter MPO 2025 Long Range Transportation Plan, Metroplan Orlando's 2030 Long Range Transportation Plan, East Central Florida Regional Planning Council's Strategic Regional Policy Plan, and FDOT's Adopted Work Program; and

WHEREAS, Seminole County has determined that the construction of the Wekiva Parkway is in the best interest of the citizens of Seminole County; and

WHEREAS, the Authority is currently only responsible for the development, design, financing, right-of way acquisition, permitting, construction, operation and maintenance of the limited access portion of the Wekiva Parkway in Orange County; and

WHEREAS, to insure the development of the entire Wekiva Parkway, Seminole County desires that the Authority also undertake the development, design, financing, right-of-way acquisition, permitting, construction, operation and maintenance of the limited access portion of the Wekiva Parkway located in Seminole County; and

WHEREAS, the Authority is willing to develop, design, finance, acquire right-of-way, permit, construct, operate and maintain the limited access portion of the Wekiva Parkway in Seminole County and to develop funding for the costs associated with the entire Wekiva Parkway as a limited access toll road; and

WHEREAS, Seminole County acknowledges that the exercise of eminent domain power by the Authority is necessary in the event that certain parcels can not be obtained through negotiations between the property owners and the Authority and has agreed and consented to the Authority exercising its power of eminent domain within the jurisdiction of Seminole County; and

WHEREAS, the Authority and Seminole County desire to enter into this Agreement to memorialize the understanding of the parties to this Agreement regarding the development of the Wekiva Parkway in Seminole County.

NOW, THEREFORE, for and in 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
INCORPORATION OF RECITALS AND INTERPRETATIONS**

Section 1.01. Incorporation of Recitals. The above recitals are true and correct and are incorporated into and made a part hereof.

Section 1.02. Interpretations. Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any other similar terms, shall refer to this Agreement; the term "heretofore" shall mean before the execution of this Agreement; and the term "hereafter" shall mean after execution of this Agreement. This Agreement shall not be construed more strongly against any party regardless that such party, or its counsel, drafted this Agreement.

Section 1.03. Section Headings. Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

**ARTICLE II
REPRESENTATIONS**

Section 2.01. Representations of the Authority. The Authority makes the following representations as the basis for its undertakings contained herein:

- A. The Authority is duly organized and validly existing as a body politic and corporate and an agency of the State of Florida.
- B. The Authority has full power and authority to enter into this Agreement and to carry out its obligations hereunder.
- C. The Authority is authorized by §348.7543 and §348.7546, *Florida Statutes*, to finance the Wekiva Parkway with any funds available to the Authority for such purpose including revenue bonds issued by the Authority under §11, Art. VII of the State Constitution and §348.755(1)(b), *Florida Statutes*.
- D. The Authority is not in default under any provisions of the laws of the State material to the performance of its obligations under this Agreement.
- E. The Authority has duly authorized the execution and delivery of this Agreement.

F. To the Authority's knowledge, the authorization, execution and delivery of this Agreement and the compliance by the Authority with the provisions herein will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State of Florida relating to the Authority or its affairs, or any ordinance, resolution, agreement, or other instrument to which the Authority is subject or by which it is bound.

G. To the Authority's knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of the Authority, threatened against or affecting the Authority, where an unfavorable decision, ruling or finding would materially adversely affect the validity of this Agreement.

Section 2.02. Representations of Seminole County. Seminole County makes the following representations as the basis for its undertakings contained herein:

A. Seminole County is duly organized and validly existing as political subdivision and charter county of the State of Florida.

B. Seminole County has full power and authority to enter into this Agreement and to carry out its obligations hereunder.

C. Seminole County is not in default under any provisions of the laws of the State material to the performance of its obligations under this Agreement.

D. Seminole County has duly authorized the execution and delivery of this Agreement.

E. To Seminole County's knowledge, the authorization, execution and delivery of this Agreement and the compliance by Seminole County with the provisions herein will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State of Florida relating to Seminole County or its affairs, or any ordinance, resolution, agreement, or other instrument to which Seminole County is subject or by which it is bound.

F. To Seminole County's knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of Seminole County, threatened against or affecting Seminole County, where an unfavorable decision, ruling or finding would materially adversely affect the validity of this Agreement.

**ARTICLE III
WEKIVA PARKWAY**

Section 3.01. General.

A. The Wekiva Parkway is being designed as a limited access toll road beginning at the planned S.R. 429 interchange at U.S. 441 in Apopka, Florida, continuing North and then East along the current S.R. 46 alignment and connecting to Interstate 4 at the S.R. 417 interchange in Sanford, Florida, including a proposed S.R. 46 Bypass beginning at U.S. 441 and S.R. 46 near Mount Dora, Florida, and connecting to the Wekiva Parkway at a systems interchange.

B. In accordance with §348.7546, *Florida Statutes*, the Authority is authorized to exercise its condemnation powers, construct, finance, operate, own and maintain the Wekiva Parkway as part of the Authority's long range capital improvement plan. The project may be financed with any funds available to the Authority for such purpose, or revenue bonds issued by the Authority under §11, Article VII of the State Constitution and §348.755(1)(b), *Florida Statutes*.

C. Seminole County covenants and agrees to permit the Authority to peacefully and quietly hold, enjoy and operate the Wekiva Parkway as a limited access toll road, without hindrance from Seminole County, or any party claiming by, through or under Seminole County, but not otherwise, subject to the terms and conditions of this Agreement.

D. Pursuant to the requirements of §348.754(2)(n), *Florida Statutes*, Seminole County consents to the Authority developing, constructing, operating and maintaining the Wekiva Parkway within the jurisdiction of Seminole County, together with the right to construct, repair, replace, operate, install and maintain electronic toll payment systems thereon, with all necessary and incidental powers to accomplish the foregoing, and to do all acts and things necessary or convenient for the conduct of the Authority's business and the general welfare of the Authority, and in order to carry out the powers granted to the Authority in Part V, Chapter 348, *Florida Statutes*, or any other law.

Section 3.02. Ownership. The limited access portions of the Wekiva Parkway shall be owned and operated by the Authority as a limited access toll road in the manner that the Authority owns and operates the other facilities that comprise its Expressway System.

Section 3.03. Funding of Costs of Acquisition and Construction.

A. The Authority will be responsible for funding the costs associated with the development of the Wekiva Parkway, including the costs associated with any land acquisitions necessary for the project. Funding sources may include, and are not limited to any funds available to the Authority for such purpose, revenue bonds issued by the Authority, agreements with governmental agencies which jurisdictions are being served by the Wekiva Parkway, the FDOT, Florida's Turnpike Enterprise and the Federal Highway Administration.

B. Should funding be unavailable to the Authority, in its sole determination, prohibiting the Authority's development of all or any part of the Wekiva Parkway, Seminole County agrees that the Authority shall have the right to terminate its efforts to develop the Wekiva Parkway or any portion thereof. In the event the Authority determines funding is unavailable, Seminole County may elect to provide funding to complete any portion of the Wekiva Parkway that the Authority elects not to develop.

C. Should Seminole County withdraw its consent to the Authority constructing, operating and maintaining the Wekiva Parkway within its jurisdiction, then Seminole County shall be responsible for reimbursing the Authority for all of its documented expenses related to the Authority's efforts to develop that portion of the Wekiva Parkway located in Seminole County and any damages the Authority may suffer resulting from lost revenue or revenue bonding obligations.

Section 3.04. Tolls, Collection and Enforcement.

A. The Authority shall have the sole authority and responsibility to establish toll rates for the Wekiva Parkway, including any toll rate adjustments, in accordance with the applicable rules and requirements of the Authority.

B. The Authority shall be solely responsible for the collection of tolls and the enforcement of toll violations on the Wekiva Parkway.

C. There shall be no free service on the limited access portions of the Wekiva Parkway except for law enforcement and emergency service vehicles while in the discharge of their official duties, officials or employees of the Authority or FDOT while engaged in official business, or except as required by existing law.

D. The parties hereto understand that at all times the Authority is required to and shall maintain rates at a level which in its discretion provide for appropriate coverage of debt service, meet debt service ratios, and otherwise are in accordance with governing Florida law and applicable bond covenants.

E. The Authority shall make all necessary arrangements for traffic enforcement on the limited access portions of the Wekiva Parkway and may enter into any agreements necessary for appropriate patrolling and traffic enforcement.

**ARTICLE IV
PLANNING, DESIGN AND CONSTRUCTION**

Section 4.01. Planning and Design.

A. The Wekiva PD&E Study, which began in January 2005, has been completed and an approved alternative was proposed to Seminole County. Upon formal public hearing in Seminole

County for the approval of the preferred alignment, Seminole County consented to the Authority constructing, operating and maintaining the Wekiva Parkway within Seminole County's jurisdiction.

B. The Authority shall be solely responsible for developing all plans and specifications for the Wekiva Parkway project and shall be responsible for obtaining any necessary permits and approvals from any and all governmental agencies that may be required for the construction, installation and equipping of the Wekiva Parkway. Seminole County shall assist the Authority, upon request, in its efforts to obtain all permits and approvals required from other governmental agencies or authorities.

Section 4.02. Construction. In its sole discretion, the Authority will be responsible for developing any and all schedules related to the acquisition, construction and equipping of the Wekiva Parkway and the phasing of the acquisition, construction and equipping of any segments of the Wekiva Parkway. Seminole County agrees that it may be necessary to develop the Wekiva Parkway in segments and that it is in the sole discretion of the Authority as to which order the segments of the Wekiva Parkway shall be constructed. Seminole County understands and agrees that the Authority also has the sole discretion regarding the timing of the construction of the Wekiva Parkway project.

Section 4.03. Indemnification. To the extent permitted by law, the Authority shall indemnify, defend and save Seminole County, its agents, and employees, harmless against all damages, claims, expenses, injuries and demands of any kind arising from any act, negligence or omission by the Authority that may occur by reason of its obligations arising out of this Agreement. To the extent permitted by law, Seminole County shall indemnify, defend and save the Authority, its agents, and employees, harmless against all damages, claims, expenses, injuries and demands of any kind arising from any act, negligence or omission by Seminole County that may occur by reason of its obligations arising out of this Agreement.

ARTICLE V MISCELLANEOUS PROVISIONS

Section 5.01. 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. Any party hereto, by notice, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. 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 5.02. Cooperation with Representatives. The parties pledge mutual cooperation between all representatives of the Authority and Seminole County. The parties shall provide such data, reports, certifications and other documents or assistance reasonably requested by other. The provision of such information shall not in any manner diminish the parties' rights or obligations under any other provision hereof.

Section 5.03. 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 5.04. Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of Florida.

Section 5.05. Notices and Communications.

A. All notices required or permitted by law or by this Agreement to be given to the parties 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:

Seminole County:

Cynthia A. Coto, County Manager
Seminole County, Florida
1101 East First Street
Sanford FL 32771

Orlando-Orange County Expressway Authority:

Michael D. Snyder, Executive Director
Orlando-Orange County Expressway Authority
4974 ORL Tower Road
Orlando, FL 32807

With a copy to:

Joseph Passiatore, General Counsel
Orlando-Orange County Expressway Authority
4974 ORL Tower Road
Orlando, FL 32807

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 5.06. Interpretation. References to statutes or regulations include all statutory or regulatory provisions consolidating, amended 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 5.07. 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 5.08. Opinions of Counsel. If requested, each party shall provide to the other an opinion of counsel regarding the validity and enforceability of this Agreement.

Section 5.09. 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 5.10. Waiver of Jury Trial. EACH PARTY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY LITIGATION OR OTHER COURT PROCEEDING WITH RESPECT TO ANY MATTER ARISING FROM OR RELATED TO THIS AGREEMENT.

Section 5.11. Filing. In accordance with Florida Statute 163.01(11), this Agreement shall be filed with the Clerk of Court of the Circuit Court for Seminole County, Florida.

Section 5.12. Counterparts. This Agreement may be signed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

DRAFT

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature:

Orlando-Orange County Expressway Authority through its Board of Directors, signed by and through its Executive Director, authorized to execute this Agreement by Board action on the _____ day of _____, 2009.

Seminole County through its Board of County Commissioners, signed by and through its Chair or Vice Chair, authorized to execute this Agreement by Board action on the _____ day of _____, 2009.

ORLANDO-ORANGE COUNTY
EXPRESSWAY AUTHORITY

SEMINOLE COUNTY, FLORIDA

By: _____
Michael Snyder, Executive Director

By: _____
Bob Dallari, Seminole County Chairman

Approved as to form for execution
by a signatory of the Orlando-Orange
County Expressway Authority
by Joseph Passiatore, General Counsel.

Approved as to form by Office of County
Attorney Seminole County, Florida
by Robert A. McMillan, County Attorney.

By: _____
Joseph Passiatore

By: _____
Robert A. McMillan, County Attorney

Date: _____, 2009

Date: _____, 2009

Maryanne Morse, Clerk to the Board of
County Commissioners in and for The County
of Seminole, Florida
