AGENDA ITEM 9

Resolution Concerning the Lease Agreement Between the Central Florida Expressway Authority and All Aboard Florida

Introduction

The All Aboard Florida (AAF) project is intended to provide new high-speed intercity express service between Miami and Orlando on the Florida East Coast (FEC) rail corridor and along State Road 528. In June 2013, AAF secured a lease agreement with the Orlando-Orange County Expressway Authority (now known as the Central Florida Expressway Authority) to utilize a portion of the Authority’s right-of-way to construct the passenger rail project. The lease agreement acknowledges the four planned AAF stations in Miami, Fort Lauderdale, West Palm Beach, and Orlando. However, any new stops or depots between the Orlando and West Palm Beach stations require an extraordinary review and determination by the Authority to protect toll and any other Expressway system revenues pledged for the Authority’s bonds. This requirement could require additional fees for any new stations and therefore presents an extraterritorial tax on counties beyond the Authority’s area of jurisdiction. The purpose of this agenda item is to request Council approval of a resolution for the language to impose the extraterritorial tax be struck from the lease agreement (Exhibit 1).

Analysis

The Orlando-Orange County Expressway Authority was created in 1963 by the Florida Legislature to oversee, fund, construct, and maintain expressways and related transportation improvements in Orange County. The Authority’s five-member board included three Orange County citizens appointed by the governor, the Orange County Commission Chair, and the central Florida representative on the State Road Board. The Authority was restructured by the Legislature in 2014 as the Central Florida Expressway Authority with broad responsibilities for the Central Florida Expressway System and an area of service that includes Lake, Orange, Osceola and Seminole counties (348.754(1)(a), Florida Statutes). The Central Florida Expressway Authority Board consists of nine members, including elected officials and gubernatorial appointees from the four noted central Florida counties.

The AAF project proposes to construct a new passenger rail line along State Road 528 from Cocoa to the Orlando International Airport, utilizing property owned by the Central Florida
Expressway Authority and Florida Department of Transportation. Accordingly, on June 28, 2013, the Authority executed a lease agreement with AAF for the construction of passenger rail improvements. An excerpt from this lease agreement is included as Exhibit 2. The full agreement is provided on Council’s website at http://www.tcrpc.org/special_projects/AAF/AAF4914.html. The lease acknowledges the AAF service will include four stations in Miami, Fort Lauderdale, West Palm Beach, and Orlando. However, for any new stops or depots located between Orlando and West Palm Beach, the lease includes a provision requiring that any “additional stops or depots will not result in any reduction in System Pledged Revenues … taking into account any additional rent to be paid to the Authority or other compensation” to the satisfaction of the Authority’s bond counsel. The lease further indicates that rent to the Authority shall be determined as follows:

7. RENT. [TO BE DETERMINED AND SUBJECT TO FINAL APPROVAL BY THE AUTHORITY’S BOARD. THE RENT WILL REPRESENT ALL COMPENSATION TO THE AUTHORITY FOR: THE REDUCTION IN REVENUES TO THE SYSTEM, IF ANY, AS DETERMINED BY THE AUTHORITY’S TRAFFIC AND EARNINGS CONSULTANT; FOR AAF’S USE AND RIGHTS AS TO THE PROPERTY; AND FOR ALL OTHER ISSUES AND CONDITIONS TAKEN INTO CONSIDERATION RELATIVE TO THE LEASE AGREEMENT. SUCH RENT TO BE PAID IN ANNUAL INSTALLMENTS OR PERIODIC LUMP-SUM PAYMENTS OR A COMBINATION THEREOF]

In correspondence to Attorney General Pam Bondi dated July 29, 2014, Florida State Senator Thad Altman requested an Attorney General Opinion (AGO) on what is described as an extraterritorial tax established by the lease agreement’s conditions on rent as noted above (Exhibit 3). Senator Altman indicated “the practical application of this requirement” is if train stations are located in Brevard and Indian River counties, the lost revenue from the tolls collected for cars traveling to Orlando will be added to the base rent,” constituting an illegal extraterritorial tax that would impact the viability of those additional stations. The same illegality would be extended to St. Lucie, Martin, and Palm Beach counties as well, wherein the Authority is imposing a tax to AAF beyond the territorial boundaries for which it is created. Both the City of Sebastian and Indian River County have adopted resolutions supporting Senator Altman’s request for an AGO on this issue (Exhibits 4 and 5).

Conclusion

The Central Florida Expressway Authority is authorized by the Legislature with a specified area of responsibility: Lake, Orange, Osceola and Seminole counties. The Authority’s board is comprised of elected officials and gubernatorial appointees from those counties, which provide representation to the citizens in the subject counties. The imposition of a tax on properties beyond the statutorily designated counties is an exertion of the Authority’s powers that conflicts with Florida Statutes. Further, raising the rents for additional stations along the AAF route reduces the possibility for those stations to occur. The accompanying resolution requests Governor Scott direct the Authority to strike this language from the lease agreement.
**Recommendation**

Council should approve Resolution 14-05 requesting Florida Governor Rick Scott direct the Central Florida Expressway Authority to strike the language in the lease agreement that imposes an extraterritorial tax on Treasure Coast counties.

Attachments
A RESOLUTION OF THE TREASURE COAST REGIONAL PLANNING COUNCIL REPRESENTING THE LOCAL GOVERNMENTS OF INDIAN RIVER, MARTIN, PALM BEACH, AND ST. LUCIE COUNTIES, FLORIDA REQUESTING FLORIDA GOVERNOR RICK SCOTT DIRECT THE ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY (NOW KNOWN AS THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY) (the “Authority”) REMOVE CERTAIN PROVISIONS OF THE LEASE AGREEMENT BETWEEN THE AUTHORITY AND ALL ABOARD FLORIDA – OPERATIONS LLC

WHEREAS, a lease agreement has been executed between the Orlando-Orange County Expressway Authority (now known as Central Florida Expressway Authority) (the “Authority”) and All Aboard Florida – Operations LLC (AAF); and

WHEREAS, the statutory authority for the Authority limits its powers and duties to Lake, Orange, Osceola, and Seminole counties; and

WHEREAS, Florida Senator Thad Altman has petitioned the Florida Attorney General Pam Bondi to issue an opinion as to whether certain language of the lease agreement between the Authority and AAF imposes an illegal “extraterritorial tax” on residents of Brevard and Indian River counties; and

WHEREAS, the lease agreement also imposes an extraordinary review and determination prior to construction of any stops or depots between Orlando International Airport and West Palm Beach for the protection of the System Pledged Revenues for the Authority’s Amended and Restated Master Bond; and

WHEREAS, the extraterritorial tax and extraordinary review and determination would extend to all counties along the proposed AAF route between the Orlando International Airport and West Palm Beach, including Brevard, Indian River, St. Lucie, Martin, and Palm Beach.

NOW, THEREFORE, BE IT RESOLVED THAT THE TREASURE COAST REGIONAL PLANNING COUNCIL REQUESTS FLORIDA GOVERNOR RICK SCOTT DIRECT THE AUTHORITY TO STRIKE ALL LANGUAGE IN THE LEASE AGREEMENT THAT IMPOSES AN EXTRAORDINARY REVIEW AND DETERMINATION FOR AAF STOPS AND DEPOTS IN COUNTIES BEYOND THE AUTHORITY’S TERRITORY AND IMPOSES AN EXTRATERRITORIAL TAX.

DULY ADOPTED by the Treasure Coast Regional Planning Council this 17th day of October 2014.

Peter O'Bryan Michael J. Busha
Chairman Executive Director
Exhibit 2
Excerpt from Lease Agreement

THIS LEASE AGREEMENT SHOULD BE READ IN ITS ENTIRETY, INCLUDING THE COVER PAGE HERETO WHICH SHALL BE REMOVED HEREFROM IF ESCROW BREAKS AND THIS LEASE AGREEMENT BECOMES EFFECTIVE.

ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY
LEASE AGREEMENT

This Lease Agreement ("Agreement") is made effective as of ____________, 20___ ("Effective Date"), between Orlando-Orange County Expressway Authority, a body corporate and politic and an agency of the State of Florida (the "Authority") and All Aboard Florida – Operations LLC, a Delaware limited liability company ("AAF" and collectively with the Authority referred to as the "Parties").

RECITALS

A. The Authority was created in 1963 by Chapter 348 Florida Statutes for the purpose of construction and operation of expressways and appurtenant facilities known as the Orlando-Orange County Expressway System with the Authority having such other purposes and powers as are set forth in Section 348.754, Florida Statutes ("F.S.") including the power to enter into and make leases with regard to the Orlando-Orange County Expressway System in order to carry out the right to lease as set forth in Chapter 348, Part III, Florida Statutes, as amended and subject to bond covenants of the Authority and the provisions of the Lease-Purchase Agreement dated December 23, 1985, as amended (the "LPA") between the Authority and the State of Florida, Department of Transportation (the "Department").

B. On October 3, 2012, the Department advertised a Request for Proposals jointly by the Department and the Authority (the "RFP") to competitively procure a lease for the State Road 528 right-of-way owned by the Department and the Authority for the purposes of constructing and operating an intercity passenger rail service between Orlando and Miami.

C. The sole proposal, which was submitted by AAF, was determined to be responsive to the RFP, and the Authority is willing to lease to AAF portions of its right-of-way on State Road 528 described in this Agreement and for the purposes stated in this Agreement.

D. The intercity passenger railroad service to be operated on such right-of-way by AAF, a railroad company, will be a common carrier service and system, open to the public for transportation-related purposes, shall be part of the public roadway to be used for transportation purposes and shall create a high speed rail system that fulfills an essential public purpose.

E. Although executed, this Agreement, is being placed in escrow pursuant to the Document Escrow Agreement dated __________, 2013 (the "Document Escrow Agreement") between the Authority, AAF, and First American Title Insurance Company ("Escrow Agent"), and will not be dated, delivered, effective and binding upon the Parties, except as to the rights and obligations in this Agreement pertaining to Testing, Due Diligence, Planning and Permitting Activities (as defined in the Document Escrow Agreement), until an executed certificate of the Escrow Agent has been delivered in the form of Attachment 1 to Exhibit B certifying (1) that all
Conditions (as set forth on Exhibit B hereto) to the breaking of such escrow, if not waived, have in fact occurred and been satisfied, not the least of which is the determination by official action of the Authority’s Board, solely and exclusively in reliance upon an opinion of its Consulting Engineer, that the Property (as defined herein) is no longer essential in connection with the Authority’s operation of the Orlando-Orange County Expressway System and (2) the date of the Effective Date of this Agreement.

AGREEMENT

In consideration of the mutual covenants in this Agreement, the Parties agree that the foregoing recitals are true and correct and are fully incorporated herein as part of this Agreement, and the Parties further agree as follows:

1. **GRANT OF LEASE; DESCRIPTION OF PROPERTY.** Upon the terms and conditions of this Agreement, the Authority leases to AAF, and AAF leases from the Authority, the right-of-way described in Exhibit “A” (the “Property”), attached to this Agreement. The description of the Property provided in Exhibit “A” is expected to provide AAF with sufficient property to construct, operate, and maintain those portions of the Project (as defined below) that are located within the Authority owned right-of-way on State Road 528. The Parties acknowledge that final design and construction of the Project may require adjustment of the description of the Property and agree to amend the description to reflect the actual portions of the Authority’s right-of-way that are leased to AAF under this Agreement. Upon completion of construction of the Project and provision of the survey required under paragraph 8.r of this Agreement, AAF and the Authority shall amend Exhibit “A” to accurately describe the Property. This agreement to adjust the description of the Property is intended to provide a mechanism to allow for shifts in the Project alignment based on conditions on the ground as may be agreed to by the Authority and AAF, but shall not be construed to conflict with the other terms of this Agreement.

While this Agreement is in Escrow pursuant to the terms and conditions of the Document Escrow Agreement and until effective, this Agreement shall not be binding on the Parties with respect to transferring the right to possession of the Property, creating any right to construct improvements within the Property, creating any right to access or use the Property or for other purposes or activities; however, the Authority recognizes that AAF will have to conduct, and does not object to AAF conducting, Testing, Due Diligence, Planning and Permitting Activities with respect to the Project along, within or partly within the State Road 528 right-of-way. The term “Testing, Due Diligence, Planning and Permitting Activities” shall mean AAF conducting surveys, including, but not limited to processing title insurance surveys, conducting a Project Development and Environment Study or any component thereof, environmental assessments, designing, planning and engineering and development of the alignment of the Project along the State Road 528 right-of-way, development of the plans and specifications for the Project, site planning and permitting processes, inspections, testing, due diligence, and such other activities which typically occur or are reasonably incidental to the due diligence, planning, designing, and permitting stages of projects similar to the Project (any access for such purposes shall, however, be conditioned upon satisfying the insurance requirements of this Agreement).
2. **PRESENT CONDITION.** AAF acknowledges that it is leasing the Property in "as-is" condition except as otherwise expressly set forth in this Agreement, without warranty of title (provided that, if requested by AAF in connection with a policy of leasehold title insurance to be obtained by AAF, the Authority will execute and deliver a written instrument in the form of Exhibit "D" to this Agreement). AAF has inspected the Property to the extent desired by AAF and is satisfied with the physical condition of the Property. The taking of possession by AAF is conclusive evidence of AAF's acceptance of the condition of the Property, subject to the terms and conditions of this Section and this Agreement. Except as otherwise expressly set forth in this Agreement, the Authority has not made and does not make any representations or warranties as to the physical condition or any matter or thing affecting or pertaining to the Property or its suitability for AAF's intended use, and AAF expressly acknowledges and agrees to take the Property "AS IS." It is understood and agreed that all understandings and discussions of the Parties concerning the lease of the Property are merged into this Agreement and that this Agreement is entered into after full investigation, with neither party relying upon any statements or representations of the other not embodied in this Agreement. AAF acknowledges that the Authority has afforded and has agreed to continue to afford it the opportunity of a full and complete investigation, examination, and inspection of the Property and all matters and items related or connected to the Property. There are no express or implied warranties given by the Authority to AAF in connection with the Property except as otherwise expressly set forth in this Agreement. AAF EXPRESSLY RELEASES THE AUTHORITY FROM ANY LIABILITY, WARRANTY, OR OBLIGATION TO AAF RELATING TO THE CONDITION OF THE PROPERTY, SPECIFICALLY INCLUDING: LATENT AND PATENT CONDITIONS; ZONING; PERMITTING; SUBSOIL CONDITIONS; STORMWATER DRAINAGE CONDITIONS; THE EXISTENCE OR CONDITION OF ANY UTILITIES; AND ANY AND ALL OTHER MATTERS RELATING TO THE PHYSICAL CONDITION OF THE PROPERTY; PROVIDED, HOWEVER, NOTWITHSTANDING THE FOREGOING, WITH REGARD TO HAZARDOUS OR TOXIC WASTES, SUBSTANCES, AND MATERIALS, OR POLLUTANTS, AAF ONLY RELEASES THE AUTHORITY FROM ANY LIABILITY, WARRANTY, OR OBLIGATION TO AAF RELATING TO THE RELEASE OF HAZARDOUS OR TOXIC WASTES, SUBSTANCES, AND MATERIALS, OR POLLUTANTS, ON OR FROM THE PROPERTY OR ANY ADJOINING LANDS NOT OWNED OR OCCUPIED BY THE AUTHORITY FIRST OCCURRING AFTER THE EFFECTIVE DATE, EXCEPT TO THE EXTENT CAUSED BY OR THROUGH THE AUTHORITY, ITS AGENTS, OR EMPLOYEES, WITH IT BEING UNDERSTOOD AND AGREED THAT, EXCEPT AS OTHERWISE SPECIFICALLY STATED IN SECTION 22 OF THIS AGREEMENT, AAF IS NOT HEREBY ASSUMING ANY RESPONSIBILITY OR LIABILITY FOR THE PRESENCE OF ANY SUCH HAZARDOUS OR TOXIC WASTES, SUBSTANCES, AND MATERIALS, OR POLLUTANTS, EXISTING BEFORE THE EFFECTIVE DATE OR THE RELEASE THEREOF THAT IS NOT CAUSED BY AAF, ITS AGENTS, EMPLOYEES OR CONTRACTORS, WHETHER KNOWN OR UNKNOWN TO AAF. THE PROVISIONS OF THIS SECTION 2 SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.
3. TERM. The term of this Agreement shall be for fifty (50) years, beginning on ____________ and ending on ________________ (the “Initial Term”), unless sooner terminated in accordance with the terms of this Agreement. Provided this Agreement is in full force and effect and provided that at the time of exercise AAF is using the Property for the Project (subject to Force Majeure Events, as herinafter defined), AAF shall have the right to renew this Agreement for an additional term of forty-nine (49) years (the “Renewal Term”), under the same terms and conditions, by delivering a written notice of its intention to renew this Agreement to the Authority no later than one hundred eighty (180) days before the end of the current term. The “Initial Term” and the “Renewal Term” (if any) are collectively referred to as the “Term” throughout this Agreement.

4. USE OF THE PROPERTY: COVENANT OF QUIET POSSESSION. The Property shall be used exclusively for the public purpose of the construction, operation, and maintenance of intercity passenger rail service, initially contemplated between Orlando and Miami, as may be expanded beyond current destinations as permitted in this Agreement, and for those certain uses ancillary and incidental in the operation of the Project and/or for the benefit of its crew and Project Passengers, as more specifically identified and described in Section 30 herein and in Exhibit “C” attached hereto and incorporated in this Agreement (the improvements, infrastructure, property utilized for such purposes and such undertaking constitute the “Project”). The term “Project Passengers” shall mean those individual passengers on board or waiting to board the intercity passenger rail service within the Property. The right to conduct ancillary and incidental uses shall not be construed as authorizing AAF to (i) install, operate, or maintain any billboards or other signage on the Property (with the exception of signage or advertisements as described in Exhibit “C” hereto) or (ii) install, operate, or maintain utilities, telecommunications or other infrastructure that AAF may lease or resell for the provision of services to third parties who are not Project Passengers or AAF’s Project crew or contractors/vendors engaged in the construction, operation, or maintenance of the Project (with it being understood and agreed that the right to conduct ancillary and incidental uses shall authorize AAF to install, operate, or maintain utilities, telecommunications or other infrastructure that AAF may lease, resell or make available for the provision of services to Project Passengers and/or AAF’s Project crew or contractors/vendors while engaged in the construction, operation, or maintenance of the Project).

It is understood and agreed that the passenger rail service may be expanded to other destinations beyond the current destinations during the Term of this Agreement and/or additional stops or depots may be added, but, prior to including any additional stops or depots between Orlando International Airport and West Palm Beach, Florida or any expansion west of Orlando International Airport, AAF shall satisfy the following conditions precedent thereto: (i) AAF shall provide the Authority with a reasonably detailed description of the proposed expansion and/or additional stops or depots together with associated internal and consultant studies and reports pertaining to ridership and diverted trips along State Road 528; (ii) at the expense of AAF, the Authority shall be able to obtain and does obtain the opinion of the Authority’s Traffic and Earnings Consultant for such matters (certified to the Authority in a report), that such expansion and/or additional stops or depots will not result in any reduction in System Pledged Revenues (as such term is defined in the Authority’s Amended and Restated Master Bond Resolution) taking into account any additional rent to be paid to the Authority or other compensation with respect to such expansion and/or additional stops or depots that would offset any reduction in System Pledged Revenues, which opinion shall be in form and substance acceptable to the Authority.
(similar to the opinion obtained by the Authority with respect to the Project prior to the Effective Date); and (iii) at the expense of AAF, the Authority shall be able to obtain and does obtain an opinion of the Authority’s Bond Counsel, that the same does not jeopardize the exclusion from gross income for federal income tax purposes of interest on the Authority’s then outstanding bonds. Until such conditions precedent are satisfied to the reasonable satisfaction of the Authority, no expansion, additional stops or depots may be added and no intercity passenger rail service may be expanded by AAF as described above during the Term of this Agreement (with it being understood that the satisfaction of said conditions precedent or approval of stops, depots or expansion shall be construed as obligating the Authority to lease or otherwise provide AAF the right to use additional Authority property). All other rights in and to the Property are retained by the Authority. Any change in the use of the Property must receive prior written approval from the Authority in its sole discretion. AAF shall not use the Property to provide freight transportation services or for commuter rail services (which for purposes of this Agreement shall mean passenger rail service between points within a single county). AAF shall not use the Property in any manner that would obstruct or interfere with any transportation facilities existing as of the Effective Date or as contemplated in the Existing Eight Laning Memorandum or any Approved Supplemental Eight Laning Memorandum (as each term is defined in Section 8 hereof); or with any other rights in and to the Property which are retained by the Authority under this Agreement, in each instance, unless the same is expressly permitted and described elsewhere in this Agreement, provided that (a) the construction of the Project in accordance with the Approved Plans (as defined herein), and (b) operation of the Project, including the operation of a passenger train service and its ancillary train noise and emissions, shall not be deemed to be such an obstruction or interference. AAF will not cause, will not allow those working through AAF to cause and will take reasonable steps to prevent third parties from causing, any nuisance activity of any nature on the Property, provided that, for purposes of this Agreement (y) the construction of the Project in accordance with the Approved Plans (as defined herein), and (z) operation of the Project, including the operation of a passenger train service and its ancillary train noise and emissions, shall not be considered by the Parties to be a nuisance. The Property shall not be used for the manufacture or storage of flammable, explosive or hazardous materials, with it being acknowledged that flammable, explosive or hazardous materials as would customarily be found in or on or used in the operation of passenger rail cars are permitted, so long as AAF complies with all state or federal laws or regulations regarding hazardous materials or substances that are applicable to the operation of a commercial enterprise such as the Project. AAF will not use or occupy said Property for any unlawful purpose and will, at AAF’s sole cost and expense, conform to and obey any applicable ordinances and/or rules, regulations, requirements, and orders of governmental authorities or agencies with jurisdiction over the use and occupation of the Property. AAF shall obtain, at AAF’s sole cost and expense, any and all permits or licenses required by applicable law to operate and maintain any facility constructed by or through AAF on the Property as part of the Project. The Authority (at no cost to the Authority) shall reasonably cooperate with AAF in connection with AAF obtaining all such permits and licenses; provided, in no event shall this agreement to cooperate be misconstrued to obligate the Authority to attend any meeting or proceeding or take any action that would, in the Authority’s reasonable discretion, be expected to (i) adversely affect any existing rights, entitlements, and/or obligations pertaining to the Property or the Authority’s use of the Property (other than to allow for the construction, operation and maintenance of the Project on the Property in accordance with this Agreement), (ii) impose covenants, restrictions or liability upon, or with respect to, the Authority.
or the Property that are inconsistent or in contravention of the uses of the Property allowed in
this Agreement, or (iii) subject the Authority’s funds or property (other than the Property) to the
rules, regulations, or jurisdiction of the applicable permitting or licensing agency. Further, for
any such permits and licenses to be issued by or through the Authority, the Authority shall
process the same in the manner and at such charges, if any, as is customary with others seeking
similar permits and licenses.

The Authority further hereby covenants that, subject to the terms of this Agreement, and the
“Excepted Rights, Documents and Matters” defined below, AAF shall have peaceful and quiet
enjoyment of the Property for the Project during the full Term (as defined herein), without
interruption or interference by the Authority or any person claiming by, through, or under the
Authority, except as otherwise expressly provided for herein. AAF acknowledges and agrees
that AAF’s right to possession of the Property during the Term of this Agreement will be subject
to the following with respect to the Property (the “Excepted Rights, Documents and Matters”):
(i) the Authority’s rights expressly reserved to the Authority or otherwise expressly provided for
in this Agreement; (ii) the rights of third parties under any permits for existing utilities as of the
Effective Date and under any permits for utilities issued after the Effective Date, subject to the
terms of Subsection 5.e and Section 15 hereof; (iii) any rights of the Authority’s grantors
herefore conveying any portion of the Property expressly set forth in documents recorded in
the Public Records of Brevard County or Orange County, Florida, or expressly reflected or
indicated on the Authority’s or the Department’s right-of-way maps, as of the Effective Date;
(iv) all covenants, easements, restrictions, reservations, oil, gas and mineral rights,
encumbrances, agreements and other matters expressly appearing in the Public Records of
Orange County, Florida as of the Effective Date; (v) all matters which could be discovered by an
inspection or survey of the Property existing on the Effective Date; (vi) with respect to any
portion of the Property in which fcc title is held by the State of Florida Board of Trustees of the
Internal Improvement Trust Fund (“TIIF”) (if any), any rights of TIIF, and any and all prior
rights of the United States, and any and all prior rights granted by TIIF in documents recorded in
the Public Records of Brevard County or Orange County, Florida, as of the Effective Date; (vii)
the Existing Eight Laning Memorandum and any Approved Supplemental Eight Laning
Memorandum (as each term is defined in Section 8 hereof); and (viii) the right and authority of
any police, fire and emergency services and any other security or emergency personnel,
including the armed forces, and any Governmental Authority with jurisdiction over the Property
to access the Property as necessary for fire and rescue services, emergency management and
homeland security purposes, including the prevention of, or response to, a public safety
emergency. AAF shall cooperate with police, fire and emergency services and any other security
or emergency personnel, including the armed forces, with respect to their exercise of emergency
management and homeland security powers. Any entry by the Authority or the State onto the
Property required or permitted under this Agreement shall not constitute a reentry, trespass, or a
breach of the covenant for quiet enjoyment contained in this Agreement.

The construction, operation and maintenance of the Project shall be performed and arranged in a
manner which (i) will not unreasonably interfere with the Authority’s use of the Property or with
respect to the convenient, safe, and continuous use, or the operation, maintenance and
improvement of the Orlando-Orange County Expressway System or any portion of the public
right-of-way located on or adjacent to the Property and (ii) will be in accordance with the terms
of any special permits issued for construction, operation and maintenance of the Project or other
Authority, in its sole discretion, in accordance with applicable law, in which event Authority and AAF shall have no further liability to each other on account thereof. If AAF removes all the Rail Improvements as provided in this paragraph, any other AAF property remaining on the Property on the date that is 365 days after the termination or expiration of this Agreement shall be deemed to have been abandoned by AAF, and may be retained or disposed of by the Authority, in its sole discretion, in accordance with applicable law, in which event Authority and AAF shall have no further liability to each other on account thereof.

The terms and provisions of this Section shall survive the termination and expiration of this Agreement.

AAF shall enter into an easement agreement with the Authority in the form of Exhibit “E” attached to this Agreement, under which AAF shall grant the Authority a perpetual non-exclusive easement, free and clear of all encumbrances, for ingress and egress by the Authority (which may extend such easement to the South Florida Water Management District and other governmental agencies or entities with jurisdiction over the facilities to be accessed by said easement) to and from the Authority’s State Road 528 right-of-way over the frontage road AAF shall construct on the south side of its intercity passenger rail right-of-way adjacent to the Property to and from the Authority’s drainage and other facilities separated from the Property by said frontage road. The easement agreement shall be executed before the commencement of physical construction of the Project on the Property, and after the approval of the Approved Plans, at which time the description of the easement property may be attached to the easement agreement by the Parties for the execution thereof and the executed easement shall be recorded in the public records of Orange County and Brevard Counties, Florida.

7. RENT. [TO BE DETERMINED AND SUBJECT TO FINAL APPROVAL BY THE AUTHORITY’S BOARD. THE RENT WILL REPRESENT ALL COMPENSATION TO THE AUTHORITY FOR: THE REDUCTION IN REVENUES TO THE SYSTEM, IF ANY, AS DETERMINED BY THE AUTHORITY’S TRAFFIC AND EARNINGS CONSULTANT; FOR AAF’S USE AND RIGHTS AS TO THE PROPERTY; AND FOR ALL OTHER ISSUES AND CONDITIONS TAKEN INTO CONSIDERATION RELATIVE TO THE LEASE AGREEMENT. SUCH RENT TO BE PAID IN ANNUAL INSTALLMENTS OR PERIODIC LUMP-SUM PAYMENTS OR A COMBINATION THEREOF]

8. IMPROVEMENTS. It is understood and agreed by the Parties that the Authority’s existing State Road 528 right-of-way may be expanded and improved by the Authority, as described in the Technical Memorandum SR 528 (Beachline Expressway), Conceptual Eight Laning Study, dated September 12, 2012 by Atkins North America, Inc. (“Atkins”), inclusive of the Conceptual Level Roadway Design Criteria, Drainage Support Documentation, and Concept Plans attached thereto (the “Existing Eight Laning Memorandum”). As proposed by AAF, the ultimate design of the Project shall include Rail Improvements and may include Road Improvements and shall take into account and accommodate the planned expansion of and improvements to State Road 528 described in the Existing Eight Laning Memorandum, as may be further supplemented or amended from time to time by the Authority, provided, however, that in designing the Project, AAF shall only be required to take into account and accommodate such further supplements or amendments to the extent that they were requested by AAF (and approved in writing by the Authority, in its sole discretion) or they
Exhibit 3
Letter from Senator Altman

July 29, 2014

The Honorable Pam Bondi
Attorney General
Department of Legal Affairs
The Capitol PL01
Tallahassee, Florida 32399-1050

Subject: Request for an Attorney General Opinion (AGO) in regard to a lease stipulation between the Orlando-Orange County Expressway Authority “the Authority” and All Aboard Florida (AAF) and the use of an extraterritorial tax.

Dear Attorney General Bondi:

I respectfully request that you issue an AGO in regard to the Orlando-Orange County Expressway Authority exceeding its statutory authority in regard to a lease for right-of-way for an intercity passenger rail service between Orlando and Miami known as All Aboard Florida. The specific issue is a condition of the lease that was signed June 28, 2013.

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"7. RENT. [TO BE DETERMINED AND SUBJECT TO THE FINAL APPROVAL BY THE AUTHORITY’S BOARD. THE RENT WILL REPRESENT ALL COMPENSATION TO THE AUTHORITY FOR: THE REDUCTION IN REVENUES TO THE SYSTEM, IF ANY, AS DETERMINED BY THE AUTHORITY’S TRAFFIC AND EARNINGS CONSULTANT; FOR AAF’S USE AND RIGHTS AS TO THE PROPERTY; AND FOR ALL OTHER ISSUES AND CONDITIONS TAKEN INTO CONSIDERATION RELATIVE TO THE LEASE AGREEMENT. SUCH RENT TO BE PAID IN ANNUAL INSTALLMENTS OR PERIODIC LUMP-SUM PAYMENTS OR A COMBINATION THEREOF]"

While this section seems appropriate to hold the Authority harmless for any impacts of the AAF system it has a direct impact for two communities, the Space and Treasure Coasts. The practical application of this requirement is if train stations are located in Brevard and Indian River.

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore
Counties, the lost revenue from the tolls collected for cars traveling to Orlando will be added to the base rent. That is an extraterritorial tax imposed by the Authority to AAF. That illegal tax directly impacts the viability of stations in those two counties.

This requirement makes the viability of stations to be located in either county unlikely. While the Authority does have a responsibility to keep revenues stable for the bond holders, the Authority cannot impose a “toll” outside of its territorial boundaries. The Authority has remedies other than to impose an extraterritorial toll. The Authority could deny the lease or raise tolls within the existing system. Both remedies are allowable but each has negative impacts. It appears to be to be a hidden tax. By imposing this extraterritorial tax the Authority achieves all of the benefits for itself and AAF and punishes the citizens of Brevard and Indian River Counties. Those impacted citizens also have no representation on the Authority’s board of directors.

As you know there are numerous AGOs and court decisions that rule that municipalities, authorities and special districts may not levy taxes, special assessment or liens beyond their territorial limits. That standard should still apply in this instance even if it is done by contract. An authority and private company cannot impose a tax/toll by contractual consent.

I thank you for your consideration of this matter. The lease agreement is attached. If you have any questions please do not hesitate to contact me.

Sincerely,

Thad Altman

Attachment
RESOLUTION NO. R-14-17

A RESOLUTION OF THE CITY OF SEBASTIAN, INDIAN RIVER COUNTY, FLORIDA, SUPPORTING SENATOR THAD ALTMAN’S REQUEST FOR A FLORIDA ATTORNEY GENERAL OPINION CONCERNING CERTAIN PROVISIONS OF THE LEASE AGREEMENT BETWEEN THE ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY (NOW KNOWN AS THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY) (the ‘Authority’) AND ALL ABOARD FLORIDA – OPERATIONS LLC (“AAF”).

WHEREAS, Florida Senator Thad Altman has petitioned Florida Attorney General Pam Bondi to issue an opinion as to whether certain language of the lease agreement between the Orlando-Orange County Expressway Authority (now known as Central Florida Expressway Authority) and All Aboard Florida – Operations LLC imposes a special “tax” on residents of Brevard and Indian River County (see attached); and

WHEREAS, the lease agreement also imposes an extraordinary review and determination prior to construction of any stops or depots between Orlando International Airport (OIA) and West Palm Beach for the protection of the System Pledged Revenues for the Authority’s Amended and Restated Master Bond.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEBASTIAN, INDIAN RIVER COUNTY, as follows:

SECTION 1. City Council supports Senator Altman’s request for an Attorney General Opinion, and agrees that provisions in the lease agreement between the Authority and AAF which impose additional rent in the event of additional stations for lost revenue by the Authority and extraordinary review and determination prior to construction of any stops or depots between OIA and West Palm Beach are disincentive to include Brevard and Indian River County stations in any future expansion of the high speed rail.

SECTION 2. CONFLICT. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

SECTION 3. EFFECTIVE DATE. This Resolution shall take effect upon its adoption.

The foregoing Resolution was passed for adoption by Council Member ___, was seconded by Council Member ___, and upon, being put to a vote, the vote was as follows:

Mayor Bob McPartlan
Vice Mayor Jim Hill
Council Member Jerome Adams
Council Member Andrea Cay
Council Member Richard Gillmor

The Mayor thereupon declared this Resolution duly passed and adopted this 27th day of August, 2014.
CITY OF SEBASTIAN, FLORIDA

By: ___________________________
    Bob McPartlan, Mayor

ATTEST: _______________________
    Sally A. Maio, MMC - City Clerk

Approved as to Form and Content for
Reliance by the City of Sebastian Only:

_______________________________
Robert A. Ginsburg, City Attorney
July 29, 2014

The Honorable Pam Bondi
Attorney General
Department of Legal Affairs
The Capitol PL01
Tallahassee, Florida 32399-1050

Subject: Request for an Attorney General Opinion (AGO) in regard to a lease stipulation between the Orlando-Orange County Expressway Authority “the Authority” and All Aboard Florida (AAF) and the use of an extraterritorial tax.

Dear Attorney General Bondi:

I respectfully request that you issue an AGO in regard to the Orlando-Orange County Expressway Authority exceeding its statutory authority in regard to a lease for right-of-way for an intercity passenger rail service between Orlando and Miami known as All Aboard Florida. The specific issue is a condition of the lease that was signed June 28, 2013.

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“7. RENT. [TO BE DETERMINED AND SUBJECT TO THE FINAL APPROVAL BY THE AUTHORITY’S BOARD. THE RENT WILL REPRESENT ALL COMPENSATION TO THE AUTHORITY FOR: THE REDUCTION IN REVENUES TO THE SYSTEM, IF ANY, AS DETERMINED BY THE AUTHORITY’S TRAFFIC AND EARNINGS CONSULTANT; FOR AAF’S USE AND RIGHTS AS TO THE PROPERTY; AND FOR ALL OTHER ISSUES AND CONDITIONS TAKEN INTO CONSIDERATION RELATIVE TO THE LEASE AGREEMENT. SUCH RENT TO BE PAID IN ANNUAL INSTALLMENTS OR PERIODIC LUMP-SUM PAYMENTS OR A COMBINATION THEREOF]”

While this section seems appropriate to hold the Authority harmless for any impacts of the AAF system it has a direct impact for two communities, the Space and Treasure Coasts. The practical application of this requirement is if train stations are located in Brevard and Indian River

REPLY TO:
610 S. West Circ stickers, Suite 500, Tallahassee, Florida 32301-1060
318 Brevard Office Building, 444 South Main Street, Tallahassee, Florida 32301-1060
(850) 487-5075

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore
Counties, the lost revenue from the tolls collected for cars traveling to Orlando will be added to the base rent. That is an extraterritorial tax imposed by the Authority to AAF. That illegal tax directly impacts the viability of stations in those two counties.

This requirement makes the viability of stations to be located in either county unlikely. While the Authority does have a responsibility to keep revenues stable for the bond holders, the Authority cannot impose a “toll” outside of its territorial boundaries. The Authority has remedies other than to impose an extraterritorial toll. The Authority could deny the lease or raise tolls within the existing system. Both remedies are allowable but each has negative impacts. It appears to be to be a hidden tax. By imposing this extraterritorial tax the Authority achieves all of the benefits for itself and AAF and punishes the citizens of Brevard and Indian River Counties. Those impacted citizens also have no representation on the Authority’s board of directors.

As you know there are numerous AGOs and court decisions that rule that municipalities, authorities and special districts may not levy taxes, special assessment or liens beyond their territorial limits. That standard should still apply in this instance even if it is done by contract. An authority and private company cannot impose a tax/toll by contractual consent.

I thank you for your consideration of this matter. The lease agreement is attached. If you have any questions please do not hesitate to contact me.

Sincerely,

[Signature]

Thad Altman

Attachment
EXHIBIT 5
Resolution from Indian River County

RESOLUTION NO. 2014-074

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, SUPPORTING FLORIDA STATE SENATOR THAD ALTMAN’S REQUEST FOR A FLORIDA ATTORNEY GENERAL OPINION CONCERNING CERTAIN PROVISIONS OF THE LEASE AGREEMENT BETWEEN THE ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY (NOW KNOWN AS THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY) AND ALL ABOARD FLORIDA – OPERATIONS, LLC.

WHEREAS, All Aboard Florida – Operations, LLC (“All Aboard Florida”) is proposing to provide passenger rail service between Miami and Orlando that will run through populated areas of Indian River County, including Vero Beach, Sebastian, and the communities of Gifford, Roseland, Wabasso and Winter Beach; and

WHEREAS, All Aboard Florida has no proposed stops between West Palm Beach and the Orlando International Airport; and

WHEREAS, All Aboard Florida has entered into a lease agreement with the Orlando-Orange County Expressway Authority, now known as the Central Florida Expressway Authority, (the “Authority”) in which All Aboard Florida has agreed that any additional stops would require, among other things, an increase in rental payment to the Authority and an opinion from the Authority’s bond counsel that the additional stops will not jeopardize the Authority’s bonds; and

WHEREAS, the Authority is controlled by a nine member board consisting of the Mayor of Orange County, the Mayor of Orlando, an Orange County commissioner appointed by the Mayor of Orange County, an Osceola County commissioner appointed by the chair of the Osceola County Commission, a Seminole County commissioner appointed by the chair of the Seminole County Commission, a Lake County commissioner appointed by the chair of the Lake County Commission, and three members appointed by the Governor; and

WHEREAS, the Indian River County Board of County Commissioners is extremely concerned that the Authority, run by elected officials from central Florida and unelected individuals appointed by the Governor, will dictate how passenger rail service is proposed to be provided in Indian River County and the Treasure Coast; and

WHEREAS, Florida State Senator Thad Altman has requested Florida Attorney General Pam Bondi to issue an opinion as to whether certain language concerning the addition of new stops in the lease agreement between the Authority and All Aboard Florida imposes an illegal special tax on the residents of Brevard County and Indian River County; and
RESOLUTION NO. 2014-074

WHEREAS, the Indian River County Board of County Commissioners is supportive of the request made by Florida State Senator Thad Altman to Florida Attorney General Pam Bondi; and

WHEREAS, the Indian River County Board of County Commissioners is opposed to any efforts by the State of Florida, including any other agencies and entities of the State of Florida, to dictate and impose a passenger rail system on the citizens of Indian River County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, THAT:

Section 1. The above “WHEREAS” clauses are true and correct, and are hereby adopted as findings of the Board.

Section 2. The Board of County Commissioners of Indian River County supports Florida State Senator Thad Altman’s request for an Attorney General Opinion concerning the provisions of the lease agreement between the Authority and All Aboard Florida concerning the addition of new stops in the lease agreement between the Authority and All Aboard Florida imposes a special tax on the residents of Brevard County and Indian River County.

Section 3. The Board of County Commissioners of Indian River County opposes any attempts by the State of Florida and its governmental agencies and entities to dictate and impose a passenger rail system on the citizens of Indian River County.

Section 4. A certified copy of this resolution shall be provided to the Governor Rick Scott, Florida Attorney General Pam Bondi, Florida State Senators Thad Altman and Joe Negron, and Florida State Representative Debbie Mayfield.

The foregoing resolution was moved for adoption by Commissioner Solari, and seconded by Commissioner Fleischer, and, upon being put to a vote, the vote was as follows:

Chairman Peter D. O’Bryan  Aye
Vice Chairman Wesley S. Davis  Aye
Commissioner Joseph E. Fleischer  Aye
Commissioner Bob Solari  Aye
Commissioner Tim Zorc  Aye

The Chairman thereupon declared the resolution duly passed and adopted this 16 day of September, 2014.

ATTEST: Jeffrey R. Smith, Clerk of Court
By: Deputy Clerk

By: Peter D. O’Bryan, Chairman
RESOLUTION NO. 2014– 074

BCC approval date: September , 2014

Approved as to form and legal sufficiency:

By:
Dylan Reingold, County Attorney
July 29, 2014

The Honorable Pam Bondi
Attorney General
Department of Legal Affairs
The Capitol PL01
Tallahassee, Florida 32399-1050

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REPLY TO:
D E K 275 North Wakulla Road, Suite 211, Melbourne, Florida 32901 (321) 752-3136
D 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1190 (850) 487-5016
Senator’s Website: www.flstate.gov

DON GAETZ
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