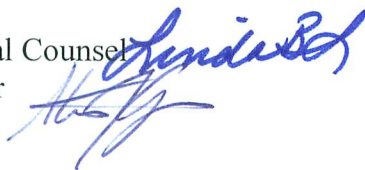



CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: Central Florida Expressway Authority Board Members

THROUGH: Joseph L. Passiatore, General Counsel

FROM: Linda Brehmer Lanosa, Deputy General Counsel 
Steve Geiss, Senior Roadway Inspector 

DATE: March 24, 2015

RE: Settlement Agreement with the Florida Department of Transportation (FDOT) for Reimbursement of \$72,683.93 for Electrical Services at S.R. 429 and Seidel Road

Background Information

Steve Geiss, Senior Roadway Inspector, recently discovered that Duke Energy had been charging the Central Florida Expressway Authority (CFX) for electrical services at State Road 429 (Western Beltway) and Seidel Road, even though the services should have been charged to and paid by FDOT. FDOT and CFX own and operate separate sections of S.R. 429 and each are responsible for payment of the needed electrical service provided to their respective toll facilities. S.R. 429 at Seidel Road is on the section that is under the jurisdiction of FDOT, and payment of all electrical service to S.R. 429 at Seidel Road should have been made by FDOT.

CFX contacted FDOT regarding this matter and requested reimbursement to CFX of all past payments made by CFX to Duke Energy for the utility service provided by Duke Energy at the electric meters at S.R. 429 and Seidel Road. In response, FDOT requested that CFX contact Duke Energy for documentation of the CFX payment history at this location for FDOT's review. CFX contacted Duke Energy for the documentation, and Duke Energy provided the spreadsheets detailing the payment history. FDOT reviewed the payment history and agreed to reimburse CFX for the total amount shown on the spreadsheets in the sum of \$72,683.93, for the billing periods from January 2007 through December 2014, subject to the approval and execution of the attached Settlement Agreement, which includes a release of the claim.

Request

Staff recommends that the Board approve the attached Settlement Agreement providing for reimbursement of \$72,683.93 for utility services at State Road 429 and Seidel Road in return for a release.

:lbl
Enclosure

cc: Lisa Lumbard
Ben Dreiling

**SETTLEMENT AGREEMENT AND RELEASE
BETWEEN
STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
AND
CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

THIS SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is entered into by and between Central Florida Expressway Authority, successor to Orlando-Orange County Expressway Authority, (“CFX”), and the State of Florida, Department of Transportation, (“FDOT”) (collectively the “Parties”). (All references to Central Florida Expressway Authority or “CFX” also include the former Orlando-Orange County Expressway Authority, as applicable.)

RECITALS

A. FDOT and CFX own and operate separate sections of SR 429 (Western Beltway), which is a toll road. FDOT and CFX are each responsible for payment of the needed electrical service provided to their respective toll facilities on SR 429. SR 429 at Seidel Road is on the section that is under the jurisdiction of FDOT, and payment of all electrical service to SR 429 at Seidel Road should be made by FDOT.

B. It has come to the attention of CFX and FDOT that CFX has been paying for the utility service provided by Duke Energy for electric meters at SR 429 (Western Beltway) and Seidel Road, for the years of 2007 through 2014.

C. On January 27, 2015, CFX contacted FDOT regarding this matter and requested reimbursement to CFX of all past payments made by CFX to Duke Energy for the utility service provided by Duke Energy at the electric meters at SR 429 and Seidel Road. In response, FDOT requested that CFX contact Duke Energy for documentation of the CFX payment history at this location for FDOT review. CFX contacted Duke Energy for the documentation, and Duke Energy provided the attached spreadsheets detailing the payment history in response. FDOT has reviewed

the attached payment history and has agreed to reimburse CFX for the total amount shown on the attached spreadsheets. The total amount is \$72,683.93, for the pertinent billing periods of January 2007 through December 2014 as shown on the attached spreadsheets.

D. CFX has asserted a colorable legal claim in support of its demand for payment.

E. The Parties enter into this Agreement to settle the above matter in accordance with the terms and conditions of this Agreement, as a full discharge of any service, payment, or other obligation relating to this matter.

AGREEMENT

In consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **RECITALS.** The above recitals are true and correct and are made a part of this Agreement.

2. **SETTLEMENT AGREEMENT.**

a. FDOT agrees to submit to the Chief Financial Officer of the State of Florida for payment to CFX of Seventy Two Thousand Six Hundred Eighty Three and 93/100 Dollars (\$72,683.93) in full and complete satisfaction of the matter described above, and any associated claims and invoices, or with any other written or verbal supplementation or renewal(s), including all interest, costs, and fees associated with the subject matter of this Agreement.

b. This Agreement settles all claims raised by CFX or FDOT relating to the utility service charges from Duke Energy at S.R. 429 and Seidel Road, or which could have been raised by CFX or FDOT, and all defenses raised by CFX or FDOT. No interest of any kind or any other payment is to be added to the amount identified above to be paid by FDOT to CFX.

3. **APPROVAL.** Pursuant to Section 287.0582, Florida Statutes, the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature. This Agreement is contingent upon approval by the Chief Financial Officer of the State of Florida. Until such approval is received, FDOT has no obligation to make any payments pursuant to this Agreement.

4. **VOLUNTARY SETTLEMENT.** The Parties agree that this Agreement is entered into after a full and independent investigation and they explicitly acknowledge that they are entering into this Agreement entirely of their own free will, uninfluenced by any duress, economic coercion, or other factors that might have the effect of negating the free will with which they entered into this Agreement. In executing this Agreement, the Parties represent that they have not relied on any statement or representation relating to this matter made by another party, or any other person or persons representing such other party. The Parties acknowledge that they have been represented by counsel throughout the negotiation of this Agreement and that they have or could have consulted their own attorney(s) regarding the meaning and effect of the terms contained in this Agreement. The Parties further acknowledge that they have read and understand this Agreement.

5. **RELEASES.** In return for and upon complete performance of paragraphs 2.a. and 2.b., above, and the releases and promises contained in this Agreement, the Parties, for themselves, their agents, representatives, attorneys, administrators, heirs, executors, successors, and assigns, do hereby fully, finally, and forever release and discharge each other and their agents, representatives, attorneys, administrators, heirs, executors, successors, and assigns of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever arising from any or all of the facts or circumstances which gave rise to this action, including but not limited to, those claims asserted or any federal, state, or administrative

action or other claims that were or might have been asserted by or on behalf of the Parties against each other and any other suits or charges filed or which may be filed by or on behalf of the Parties with any federal, state, or local agency or court relating to these facts or circumstances whatsoever.

6. NO ADMISSION OF LIABILITY. The Parties agree and represent that this Agreement is entered into only for the purpose of settlement and compromise and any action taken pursuant to this Agreement is not to be construed or considered as an admission of liability or fault on the part of either of the Parties. The Parties further acknowledge, understand, and represent that the execution of this Agreement shall not be construed as an admission of liability or validity of any claim on the part of either of the Parties in any respect and that this Agreement is entered into to settle and terminate the dispute and avoid additional expense.

7. ENFORCEMENT. The Parties understand and agree that the promises and undertakings set forth in this Agreement are the sole consideration for the Agreement, that the terms and conditions are contractual and are not mere recitals, and that all agreements and understandings related to this settlement and release are expressed and embodied in this Agreement. Additionally, the Parties and their counsel have participated in the negotiation and drafting of this Agreement and that, for all purposes, this Agreement shall be deemed to have been drafted by both Parties and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. This Agreement shall be construed and interpreted in accordance with the laws of the State of Florida.

8. INTEGRATION. The Parties agree that this Agreement supersedes all other written or oral exchanges, agreements, or negotiations between the Parties concerning the subject matter of this Agreement. The Parties state that there are no representations, agreements, arrangements, or understandings, oral or written, concerning the subject matter of this Agreement

that are not fully expressed and incorporated. Nothing in this Agreement is intended to nor shall it be construed to give any person or entity, other than the Parties, any right, remedy, or claim under or by reason of this Agreement. In the event of any conflict between any provisions of the Contract and this Agreement, this Agreement shall control.

9. **SUCCESSORS.** This Agreement shall be binding on and shall inure to the benefit of the Parties, their agents, representatives, successors, and assigns.

10. **MODIFICATION.** This Agreement may not be discharged, abandoned, supplemented, changed, modified, or amended in any manner, nor any provision waived, except by a writing signed by the Parties.

11. **SEVERABILITY.** If any provision of this Agreement is adjudged by a court of competent jurisdiction to be void and unenforceable, that judgment shall not affect: (a) any other provision of this Agreement; (b) the application of such provision in any other circumstances; and (c) the validity or enforceability of this Agreement as a whole, subject to the law of severability under Florida law.

12. **WAIVER.** A waiver by FDOT or CFX of any breach of any provision of this Agreement shall not constitute a continuing waiver of any subsequent breach of the same or any other provision(s) of this Agreement.

13. **EXECUTION AND SIGNATURES.** CFX will execute two (2) originals of this Agreement. Following CFX's executing this Agreement, FDOT will execute the originals executed by CFX. Each party will be provided an executed original of this Agreement.

14. **CAPACITY AND AUTHORITY.** Each party represents and warrants to the other party that it has the capacity and full authority to make this Agreement. The persons signing this Agreement warrant that they are authorized to do so on behalf of the party they represent.

15. **NON-ASSIGNMENT.** The Parties represent that no portions of the claims, demands, or causes of action referred to by and released by this Agreement have been sold, assigned, transferred, or conveyed to any third party.

16. **ATTORNEYS' FEES AND COSTS.** The Parties agree to bear their own attorneys' fees and costs in connection with any work performed relating to this claim, including, but not limited to, the negotiation, drafting, and execution of this Agreement. In the event that any action or proceeding is brought to enforce the terms of this Agreement, venue shall only be proper in the appropriate court located in Leon County, Florida, and the prevailing party shall be entitled to recover its attorneys' fees and costs.

17. **E-VERIFY REQUIREMENT.**

CFX:

a. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the CFX performing work under the Agreement for the term of the Agreement; and

b. shall expressly require any subcontractors performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF the parties have executed this Agreement on the dates noted below.

CFX:

Central Florida Expressway Authority

By: Joseph A Berenis
Name: Joseph A Berenis
Title: Dep Exe Director
Date: 3/9/15

REVIEWED AND APPROVED
BY CFX LEGAL

Linda S. Benson

FDOT:

State of Florida, Department of
Transportation

By: _____
Name: Jim Boxold
Title: Secretary
Date: _____

Legal Review:

Date: _____

Contract Funds Administrator

Print Name

Date

Account No. 86698-12291

[illegible]

Account No. 86698-12291

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
\$431.00	\$481.00	\$464.00	\$445.00	\$479.00	\$358.00	\$452.00	\$340.00	\$616.00	\$415.00	\$461.00	\$453.00	\$10,289.00
\$664.00	\$618.00	\$665.00	\$625.00	\$692.00	\$619.00	\$507.00	\$424.00	\$367.00	\$455.00	\$440.00	\$522.00	\$11,937.00
\$382.24	\$374.89	\$437.90	\$466.61	\$474.61	\$418.16	\$429.67	\$371.01	\$374.06	\$388.58	\$392.96	\$404.35	\$9,809.40
												\$32,035.40

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[illegible]

Account No. 30238-96114

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
\$450.00	\$377.00	\$462.00	\$423.00	\$475.00	\$334.00	\$477.00	\$320.00	\$329.00	\$396.00	\$326.00	\$424.00	\$8,960.00
\$381.00	\$365.00	\$391.00	\$451.00	\$498.00	\$396.00	\$354.00	\$344.00	\$309.00	\$348.00	\$333.00	\$410.00	\$8,679.00
\$327.64	\$317.73	\$383.29	\$372.24	\$402.93	\$368.03	\$313.54	\$284.41	\$273.96	\$282.54	\$239.75	\$318.36	\$8,316.44
												\$25,955.44