

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES BOARD MEETING August 12, 2021

Location: Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, FL 32807
Boardroom

A. CALL TO ORDER

The meeting was called to order at approximately 9:05 a.m. by Chairman Dyer.

Board Members Present:

Mayor Buddy Dyer, City of Orlando (Chairman)
Commissioner Sean Parks, Lake County (Vice Chairman)
Mayor Jerry Demings, Orange County (Treasurer)
Commissioner Brandon Arrington, Osceola County
Commissioner Curt Smith, Brevard County
Commissioner Lee Constantine, Seminole County
Jay Madara, Gubernatorial Appointment
Christopher "CJ" Maier, Gubernatorial Appointment
Rafael "Ralph" Martinez, Gubernatorial Appointment

Board Members Not Present:

Commissioner Victoria Siplin, Orange County

Staff Present at Dais:

Laura Kelley, Executive Director
Mimi Lamaute, Recording Secretary
Diego "Woody" Rodriguez, General Counsel

Non-Voting Advisor Not Present:

Nicola Liquori, Executive Director, Florida's Turnpike Enterprise

B. PUBLIC COMMENT

- There were no public comments from the audience.
- There were no written public comments received by the deadline.

C. APPROVAL OF MEETING MINUTES

1. June 10, 2021 Meeting Minutes

A motion was made by Mr. Madara and seconded by Commissioner Constantine to approve the June 10, 2021 Board Meeting Minutes as presented. The motion carried unanimously with eight (8) board members in attendance voting AYE by voice vote. Mayor Demings and Commissioner Siplin were not present.

2. July 20, 2021 Meeting Minutes

A motion was made by Mr. Madara and seconded by Commissioner Constantine to approve the July 20, 2021 Board Meeting Minutes as presented. The motion carried unanimously with eight (8) board members in attendance voting AYE by voice vote. Mayor Demings and Commissioner Siplin were not present.

Mayor Demings arrived at this time, approximately 9:08 a.m.

D. APPROVAL OF CONSENT AGENDA

The Consent Agenda was presented for approval.

CONSTRUCTION

1. Approval of Construction Contract Modifications on the following projects:

Project 528-143	SEMA Construction, Inc.	\$ 44,636.78
Project 538-165	The Lane Construction Corp.	\$ 97,951.05
Project 429-169	Cathcart Construction Co.	\$ 15,082.00
Project 528-760A	Hubbard Construction	(\$ 25,073.25)
Project 599-421	BASE Construction	\$ 224,216.00

2. Approval of Contract Award to AE Engineering, Inc. for Construction Engineering and Inspection (CEI) Services for SR 429 Widening from Stoneybrook West Parkway (South) to Florida's Turnpike, Project No. 429-154, Contract No. 001698 (Agreement Value: \$6,478,000.00)

ENGINEERING

3. Approval of Supplemental Agreement No. 2 with The Balmoral Group, LLC for Design Consultant Services for SR 528 Widening from Narcoossee Road to SR 417, Project No. 528-160, Contract No. 001589 (Agreement Value: \$112,956.72)

4. Approval of Contract Award to WBQ Design & Engineering, Inc. for Design Consultant Services for SR 528 Widening from SR 417 to Innovation Way, Project No. 528-161, Contract No. 001697 (Agreement Value: not-to-exceed \$3,600,000.00)
5. Approval of Contract Award to Hubbard Construction Company for SR 417 Resurfacing from SR 408 to Canal E-4 Bridge, Project No. 417-761, Contract No. 001801 (Agreement Value: \$6,779,194.64)
6. Approval of Contract Award to Traffic Control Devices, Inc. for SR 408 Guide Sign and Lighting Replacements West Colonial Drive (SR 50) to Ingenuity Drive, Project No. 408-628B, Contract No. 001805 (Agreement Value: \$3,846,846.00)
7. Approval of Second Contract Renewal with CDM Smith, Inc. for Traffic and Earnings Consultant Services, Contract No. 001300 (Agreement Value: \$1,200,000.00)

FINANCE

8. Approval of Revised Debt Policy
9. Approval of Revised Interest Rate Risk Management Policy

INTERNAL AUDIT

10. Acceptance of Internal Audit Report:
 - a. Fiscal 2022 Internal Audit Plan and Risk Assessment

LEGAL

11. Approval of Joint Participation Agreement (Narcoossee Road at SR 417 Interchange) Between the City of Orlando and CFX, Project No. 417-150
12. Approval of Reimbursement Agreement with Florida Southeast Connection, LLC, Project No. 538-235 (Agreement Value: not-to-exceed \$750,000.00)
13. Approval of Reimbursement Agreement with Central Florida Pipeline, LLC, Project No. 538-235 (Agreement Value: not-to-exceed \$448,715.00)
14. Approval of First Amendment to Joint Participation Agreement Between Osceola County and CFX for the Shingle Creek Mainline and Poinciana Boulevard Ramp Toll Plazas, Project No. 599-902
15. Approval of Consortium Appraisal, Inc. and Donald W. McIntosh Associates, Inc. as Subconsultants to Shutts & Bowen LLP for Right-of-Way Services, Contract No. 001431

16. Approval of Landon, Moree & Associates, Inc. and Consortium Appraisal, Inc. as Subconsultants to Lowndes, Drosdick, Doster, Kantor & Reed, P.A. for Right-of-Way Services, Contract No. 001792
17. Approval of Cooperative Purchase Agreement with Durrance & Associates, P.A. for Appraisal Services, Contract No. 001825 (Agreement Value: not-to-exceed \$150,000.00)

MAINTENANCE

18. Approval of Supplemental Agreement No. 6 with Traffic Engineering and Management, LLC d/b/a Control Specialists for Traffic Signal Maintenance Services, Contract No. 001322 (Agreement Value: not-to-exceed \$150,000.00)
19. Approval of First Contract Renewal with Aero Groundtek, LLC for Landscape Maintenance Services for SR 408, SR 417 and CFX's Headquarters, Contract No. 001680 (Agreement Value: \$1,750,000.00)
20. Approval of Contract Award to Arazoza Brothers Corporation for SR 408 Landscaping from SR 417 to Alafaya Trail, Project No. 408-830, Contract No. 001804 (Agreement Value: \$1,998,647.90)

PUBLIC OUTREACH

21. Approval of Second Contract Renewal with Quest Corporation of America, Inc. (QCA) for Public Information Services, Contract No. 001298 (Agreement Value: \$875,721.48)

RISK MANAGEMENT

22. Approval of Insurance Policy with Florida Municipal Insurance Trust (FMIT) (Agreement Value: not-to-exceed \$235,000.00)

TECHNOLOGY/TOLL OPERATIONS

23. Approval of First Agreement Renewal with Law Enforcement Systems, LLC for Out of State Division of Motor Vehicles (DMV) Lookups, Contract No. 001410 (Agreement Value: \$400,000.00)

Mr. Christopher "CJ" Maier requested that Item #12 be pulled for separate consideration. Mr. Maier will abstain from voting on this item due to a conflict of interest with Florida Southeast Connection, LLC (Form 8B, Memorandum of Voting Conflict Form is attached as **Exhibit "A"**).

A motion was made by Commissioner Arrington and seconded by Mr. Martinez to approve the Consent Agenda except for item #12. The motion carried unanimously with nine (9) members present voting AYE by voice vote. Commissioner Siplin was not present.

A motion was made by Commissioner Arrington and seconded by Commissioner Parks to approve Consent Agenda Item #12. The motion carried unanimously with eight (8) members present voting AYE by voice vote. Mr. Maier abstained from voting. Commissioner Siplin was not present.

E. REPORTS

1. CHAIRMAN'S REPORT

Chairman Dyer commented on the following:

- CFX will host the Florida Automated Vehicle Summit planned for November 29th through December 1st at the Rosen Shingle Creek. Additional information is available on the FAVSummit website; and
- He provided an overview of the upcoming agenda items for today's Board meeting.

2. TREASURER'S REPORT

Mayor Demings reported that as of the end of June, CFX's toll revenue year-to-date was \$501,970,766, which is 17.0% over budget and 13% over prior year.

Total Operations, Maintenance and Administration expenses were \$88,125,481 which is 9.8% under budget.

After debt service, the total net revenue available for projects for the year was \$217 million.

Mayor Demings noted that due to year-end accruals these were not final numbers.

3. EXECUTIVE DIRECTOR'S REPORT

Ms. Kelley provided the Executive Director's Report in written form.

In addition, Ms. Kelley expanded on the following:

- Ms. Kelley asked General Counsel, Woody Rodriguez, to elaborate on his Legal Opinion titled Use of Right-of-Way for High-Speed Rail, provided to the Board and attached as **Exhibit "B"**;
- CFX closed on bond refunding last month. Ms. Lisa Lumbard, Chief Financial Officer, provided a brief report on the results;
- Electric Vehicle Charging stations have been installed at the CFX Headquarters parking lot.
- CFX serves on the ASPIRE Executive Board and co-chairs the ASPIRE Policy Committee. The Committee is meeting with policy makers and members of Congress to underscore the importance of including commercial allowances for charging vehicles in motion along the highways and CFX wants to make sure that it is addressed in the federal infrastructure bill;
- The E-PASS walk-in center was relocated to a more centralized location at 525 S. Magnolia Avenue;

- The labor markets are currently struggling, and this has affected CFX's customer call center. Mr. Jim Greer, Chief of Technology/Operations, elaborated on the service tools that are being used to assist customers, such as the mobile app, Interactive Voice Response, Website and Virtual Hold Feature.
- CFX is in the mist of updating its 2045 Master Plan and there will be a series of workshops this winter to discuss emerging challenges and technologies. It is in the spirit of acknowledging our past that we may lay the groundwork for a brighter future. Ms. Mimi Lamaute, Board Services Coordinator/Recording Secretary, shared a story about the agency's history.

F. REGULAR AGENDA ITEMS

1. RULES OF PROCEDURE FOR BOARD MEETINGS

Mr. Diego "Woody" Rodriguez, General Counsel, detailed the current CFX Rules of Procedure for Board Meetings ("Rules of Procedure.") He also detailed the requested proposed revisions to the Rules of Procedure.

The board members asked questions which were answered by Mr. Rodriguez.

A motion was made by Mr. Maier and seconded by Mr. Madara to adopt the Central Florida Expressway Authority's Rules of Procedure for Board Meetings as amended. The motion carried unanimously with nine (9) board members in attendance voting AYE by voice vote. Commissioner Siplin was not present.

2. INVESTMENT POLICY

Ms. Lisa Lombard, Chief Financial Officer, detailed the purpose, scope, investment objectives, authorized investments and portfolio composition encompassed in CFX's Investment Policy. Mr. Scott Sweeten, Senior Managing Consultant for PFM Asset Management, LLC explained the authorized investments and portfolio composition.

Ms. Lombard provided a snapshot of CFX's asset allocation as of June 30, 2021.

The board members asked questions which were answered by Mr. Sweeten.

A motion was made by Mr. Madara and seconded by Mr. Martinez to adopt the Central Florida Expressway Authority's Investment Policy as presented. The motion carried unanimously with nine (9) board members in attendance voting AYE by voice vote. Commissioner Siplin was not present.

3. SR 417 WIDENING FROM BOGGY CREEK ROAD TO NARCOOSSEE ROAD

Mr. Will Hawthorne, Director of Engineering, explained the SR 417 widening from Boggy Creek Road to Narcoossee Road project highlights, project timeline and bids received.

A motion was made by Commissioner Constantine and seconded by Commissioner Parks for approval to award of the contract to Ranger Construction Industries, Inc. for the SR 417 Widening from Boggy Creek Road to Narcoossee Road in the amount of \$61,810,653.72. The motion carried unanimously with nine (9) board members in attendance voting AYE by voice vote. Commissioner Siplin was not present.

4. PART-TIME SHOULDER USE PROJECTS

Mr. Will Hawthorne, Director of Engineering, and Bryan Homayouni, Manager of Traffic Operations, detailed how the Part-Time Shoulder Use Projects ("PTSU") have taken shape and how it will be implemented. Mr. Hawthorne stated that the PTSU system will be deployed at the conclusion of each corridor widening on segments of the SR 417 and SR 429 roadways.

Mr. Homayouni explained the existing locations of current PTSU deployments by other agencies, the standards of the project, types of PTSUs and CFX's PTSU design concept. He described the driver experience/incident management, behind-the-scenes efforts, coordination partnerships and next steps.

The board members asked questions which were answered by Mr. Hawthorne and Mr. Homayouni.

(This item was presented for information only. No Board action was taken.)

5. CONSTRUCTION UPDATE

Mr. Jack Burch, Resident Engineer, provided an update on completed, active and upcoming construction projects, including resurfacing and widening projects.

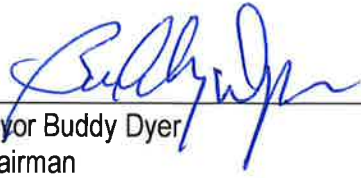
(This item was presented for information only. No Board action was taken.)

G. BOARD MEMBER COMMENT

There were no board member comments.

H. ADJOURNMENT

Chairman Dyer adjourned the meeting at approximately 10:07 a.m.



Mayor Buddy Dyer
Chairman
Central Florida Expressway Authority



Mimi Lamaute
Recording Secretary
Central Florida Expressway Authority

Minutes approved on 9.9., 2021.

Pursuant to the Florida Public Records Law and the CFX Records & Information Management Program Policy, audiotapes of all Board and applicable Committee meetings are maintained and available upon request to the Custodian of Public Records at (407) 690-5326, PublicRecords@CFXway.com, or 4974 ORL Tower Road, Orlando, FL 32807. Additionally, videotapes of Board meetings are available at the CFX website, www.CFXway.com.

Exhibit "A"

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME Maier, Christopher (C.J.)	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Central Florida Expressway Authority
MAILING ADDRESS 1106 Wald Road	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY Orlando	<input type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input checked="" type="checkbox"/> OTHER LOCAL AGENCY
COUNTY Orange	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED August 12, 2021	MY POSITION IS:
	<input type="checkbox"/> ELECTIVE <input checked="" type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Christopher (C.J.) Maier, hereby disclose that on August 12, 20 21 :

(a) A measure came or will come before my agency which (check one or more)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____ ;
- inured to the special gain or loss of my relative, _____ ;
- inured to the special gain or loss of _____, by whom I am retained; or

inured to the special gain or loss of Florida Southeast Connection, LLC, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Item #12 on the consent agenda is a Reimbursement Agreement with Florida Southeast Connection, LLC for Project No. 528-235 with an agreed upon not-to-exceed value of \$750,000 for the relocation of certain utilities. Because my employer, NextEra Energy, Inc. is the parent company of Florida Southeast Connection, LLC I am abstaining from voting on this measure.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.


8/12/21
Date Filed

Christopher J. Maier
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members
CC: Laura Kelley, Executive Director
FROM:  Diego "Woody" Rodriguez, General Counsel
DATE: August 12, 2021
RE: Use of Right-of-Way for High-Speed Rail

BACKGROUND

In the early 90's, the Orlando/Orange County Expressway Authority (CFX's predecessor and hereinafter referred to as "CFX") began the process of acquiring the necessary right-of-way to construct State Road 417.

In October 1992, one of the larger parcels acquired was from American Newland Associates, et al (hereinafter referred to as the "Defendants"). The acquisition was accomplished without the need for a jury trial to determine the valuation of the parcels as the parties voluntarily entered into a Joint Stipulation for Entry of Final Judgment Parcels 45-101, 45-202, 45-706 and 45-806 and Settlement Agreement for the Inverse Claim by the Defendant Arising from the Right-of-Way Reservation Map (hereinafter referred to as the "Joint Settlement Agreement"). The Joint Settlement Agreement was submitted to the circuit court and was approved on October 19, 1992. As is typical it did not resolve the issue of attorney's fees or costs incurred by the Defendants which are compensable, but it did specifically address the issue of a potential rail system in paragraph 4 of the Joint Settlement Agreement as follows:

"Should the Authority, or any successor in title thereto, at some future time permit the use of all or part of the right-of-way taken herein for non-roadway forms of transportation, such as magnetic levitation trains, high speed rail systems, or any other use not contemplated by the plans in evidence in this cause, Owner, for itself an any successors in title, reserves and shall have the right to seek additional compensation for the additional damages imposed on its remaining lands as a consequence thereof." (emphasis added)

LEGAL ANALYSIS

First, it should be noted that the Joint Settlement Agreement did not call for a prohibition of any future "non-roadway forms of transportation." Nor did it deem such uses to be illegal or forbidden. Instead, the language of the Joint Settlement Agreement provides that the Defendants (or their successors in title) reserve the right to seek additional compensation in the future should a rail system be implemented on the property. That additional compensation is not guaranteed and

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certainly the determination on the amount compensation and which successors are entitled to seek such compensation are most likely issues for a future court to decide.

Subsequent to the court's acceptance of the Joint Settlement Agreement, the circuit court heard testimony from both sides in order to determine the amount of attorney's fees and expert costs it was to award in the case. In determining the amount of attorney's fees, there is a statutory formula that calculates the fees based on the monetary benefits obtained for the defendants. The court, however, can also award additional attorney's fees for any "non-monetary" benefits obtained by counsel.

On January 22, 1993, the Judge entered an Order Taxing Reasonable Attorney's Fees and Costs and finding that additional "non-monetary" benefits were obtained. One of those non-monetary benefits was paraphrased by the Court in paragraph 3.B. as "The securing of a binding agreement from the Expressway Authority not to permit the operation of a high-speed rail or other non-roadway use within its right-of-way." At the July 20th CFX Board Meeting a member of the public stated that this provision should be interpreted to mean that CFX was prohibited from using any portion of the parcels acquired for high-speed rail.

However, the "binding commitment" referenced in the Court's Order for Attorneys' Fees does not supplant or replace the mutually agreed upon language contained in the Joint Settlement Agreement. That language specifically spells out that if at some future time CFX were to use the parcels as a high-speed rail, the owners reserved the right to seek additional compensation. The Joint Settlement Agreement unequivocally contemplates this as a potential use and does not otherwise include a prohibition on the use of the parcels in this manner.

CONCLUSION

After reviewing the pertinent legal documents, my legal opinion is that the CFX right-of-way acquired may be used for high-speed rail but, there may need to be compensation to the Defendants, or their successors in title. Subsequent to that July 20th Board meeting, I have also conferred with our outside counsel, Nelson Mullins, who has reviewed this matter independently and come to the same conclusion that no prohibition on the use of the CFX property for high-speed rail exists, but that compensation may subsequently be awarded.

DWR/mi