



Interoffice Memorandum

August 31, 2022

AGENDA ITEM

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

THRU: Lavon B. Williams, Esq., AICP *Lavon B. Williams*
Deputy Director
Community and Family Services Department

FROM: **Matt Suedmeyer, Manager**
Parks and Recreation Division
(407) 836-6202

SUBJECT: **Consent Agenda Item – September 13, 2022**
Notice of Extension between Central Florida Expressway Authority and
Orange County for the Horizon West Trail

Orange County Parks and Recreation Division desires to extend the current Collocation of Bike Path and Transmission Line Agreement with Central Florida Expressway Authority along State Road 429 for an additional 10 years. This extension will provide ample time to secure funding and construct all phases of the Horizon West Trail. Central Florida Expressway Authority is agreeable to this requested extension.

The notice of extension has been reviewed and approved by the County Attorney's Office and Real Estate Management Division.

ACTION REQUESTED: Approval and execution of Notice of Extension by and between Central Florida Expressway Authority and Orange County, Florida permitting Orange County additional time to construct the Horizon West Trail and authorization for the Mayor or designee to execute any further necessary amendments to such Agreement that do not change the scope of the project or increase the overall project budget. District 1.

MS/rr:jamh

Attachment

c: Carla Bell Johnson, AICP, Deputy County Administrator
Dr. Tracy Salem, Deputy Director, Community and Family Services

BCC Mtg. Date: September 13, 2022

This document was prepared by:
Laura L. Kelly
Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, FL 32807

Project State Road 429
Bike Path Property

NOTICE OF EXTENSION

THIS NOTICE OF EXTENSION ("Notice") is made and entered into as of the Effective Date (hereinafter defined) by and between **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body corporate and an agency of the State of Florida, created by Part III of Chapter 348, Florida Statutes, whose address is 4974 ORL Tower Road, Orlando, Florida 32807 ("CFX"), and **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida, whose address is P.O. Box 1393, Orlando, Florida 32801-1393 ("County"). CFX and County are referred to herein sometimes as a "Party" or the "Parties".

RECITALS

WHEREAS, CFX was created pursuant to Part III, Chapter 348, Florida Statutes ("CFX Act") to, among other things, construct, improve, maintain and operate a limited access toll road known as the Central Florida Expressway System, as defined in the CFX Act, and was granted all powers necessary and convenient to conduct its business, including the power to contract with other public agencies; and

WHEREAS, CFX's predecessor in interest, Orlando-Orange County Expressway Authority ("OOCEA"), County, and Florida Power Cooperation ("FPC") entered into that certain Collocation of Bike Path and Transmission Line Agreement dated January 23, 2001 ("Collocation Agreement"), whereby OOCEA agreed to convey to the County the Bike Path Property, as such real property is defined in the Collocation Agreement, for the construction, operation and maintenance of a Bike Path, as defined in the Collocation Agreement; and

WHEREAS, OOCEA conveyed to County the Bike Path Property for the construction, operation, and maintenance of the Bike Path pursuant to that certain Quit-Claim Deed dated January 7, 2003 and recorded January 16, 2004 in Official Records Book 7269, Page 3217, in the Public Records of Orange County, Florida ("Deed"); and

WHEREAS, pursuant to the terms and conditions of the Deed and Section 1.2(d) of the Collocation Agreement, CFX has the right, in its sole option, to require the County reconvey and quit claim to CFX the Bike Path Property in the event the County fails to complete the construction of the Bike Path in accordance with the terms and conditions of the Collocation Agreement within twenty (20) years of the recording of the Deed ("Construction Deadline"); and

WHEREAS, County has been working diligently to commence the design, permitting and construction of the Bike Path on the Bike Path Property; however, due to funding priorities, the County does not anticipate it will complete the construction of the Bike Path on the Bike Path Property by the Construction Deadline; and

WHEREAS, County has requested, and CFX is agreeable to, extending the Construction Deadline for an additional ten (10) years in accordance with the terms and conditions more specifically provided herein.

NOW THEREFORE, for and in consideration of the premises hereof, the mutual covenants herein contained and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Grant of Extension**. CFX and County hereby agree to extend the Construction Deadline in the Deed and Collocation Agreement to January 16, 2034. In no event shall CFX's agreement to extend the Construction Deadline impact any other requirements, obligations, or restrictions of the County more specifically set forth in the Deed or Collocation Agreement, and County shall remain responsible for producing and submitting to CFX and FPC for review and approval the construction plans for the Bike Path and any appurtenant improvements prior to the commencement of construction on the Bike Path. Notwithstanding anything contained herein to the contrary, in the event County fails to complete the construction of the Bike Path on or prior to the extended Construction Deadline, CFX shall have the sole and absolute right to exercise its right to require County to reconvey the Bike Path Property to CFX in accordance with the requirements of the Deed and Collocation Agreement.

3. **Compliance with all Legal Rules**. County shall, at its sole expense, comply with all present and future valid and applicable laws, ordinances, and regulations of the federal government and its agencies, the State of Florida, and Orange County.

4. **Notices**. All notices, demands, approvals, requests, and other communication required or permitted hereunder shall be in writing and shall be deemed to be delivered and received upon the earlier of (i) actual receipt; (ii) the next business day following its deposit with a reputable overnight courier or (iii) the third (3rd) day following its deposit in a regularly maintained receptacle for the United States Mail, as registered or certified mail, return receipt requested, postage fully prepaid, addressed to the addressee as its address is set forth below, or at such other address as such addressee may have specified by notice delivered in accordance with this paragraph and actually received by the addressee

CFX: Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, Florida 32807
Attn: Executive Director
Telephone: (407) 690-5000
Facsimile: (407) 690-5011

With a copy to: Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, Florida 32807
Attn: General Counsel
Telephone: (407) 690-5000

County: Orange County Real Estate Management Division
P.O. Box 1393
Orlando, Florida 32802-1393
Attn: Manager
Telephone: (407)836-7070
Facsimile: (407) 836-5969

With a copy to: Orange County Attorney's Office
P. O. Box 1393
Orlando, Florida 32802-1393
Telephone: (407) 836-7320
Facsimile: (407) 836-5888

5. **Default.** Except as otherwise set forth herein, in the event either of the Parties fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed by said part under the terms and provisions of this Notice, the other party, in its sole discretion, and after thirty (30) days prior written notice and opportunity to cure, shall be entitled to: (i) exercise any and all rights and remedies available to said party at law and in equity, including, without limitation, the right of specific performance, or (ii) terminate this Notice, whereupon the Notice shall be deemed null and void and of no further force and effect, and no party hereto shall have any further rights, obligations or liability hereunder. Upon any such termination, this Notice and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect.

6. **Miscellaneous Provisions.**

a. **No Other Parties.** This Notice is solely for the benefit of the Parties, and no rights are intended, nor shall any rights accrue, to any third party unless expressly provided in this Notice.

b. **Binding Effect.** This Notice shall be binding on the Parties, and upon all entities operating for or on behalf of the Parties pursuant to this Notice. The provisions of this Notice shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns.

c. **Governing Law; Venue.** The Florida law shall govern the validity, enforcement and interpretation of this Notice, and the Parties agree that venue for any action arising hereunder shall lie in Orange County, Florida

d. **Entire Agreement.** This Notice constitutes the entire understanding and agreement between the Parties and shall not be changed, altered, or modified, except by an instrument in writing signed by the Parties.

e. **Non-Waiver.** The failure of any party to insist upon the other party's compliance with its obligations under this Agreement in any one or more instances shall not operate to release such other party from its duty to comply with such obligations in all other instances.

f. Recording. County shall, at its sole cost and expense, cause this Notice to be recorded in the Public Records of Orange County, Florida.

g. Amendments. The rights hereby granted, created and declared shall be perpetual in duration and may not be changed, amended, modified, canceled or terminated other than as expressly provided herein, except by an instrument in writing, executed by the then owners of the benefited property and all mortgagees of any portion thereof.

h. Covenants Running with the Property. The easements, covenants, agreements and conditions contained or expressed herein shall not be personal (except as otherwise expressly provided herein) but shall run with the land and shall be binding upon and inure to the benefit of the owners of all portions of the benefited property and the easement area, their mortgagees, any purchaser at a foreclosure sale, each of the successors and assigns of all such parties, as well as the tenants, agents, licenses, guests and invitees of each of them.

i. Time. Time is of the essence of this Notice.

j. Legal Construction and Headings. Wherever, under the terms and provisions of this Notice, the time for performance falls upon a Saturday, Sunday, or Legal Holiday, such time for performance shall be extended to the next business day. The headings inserted at the beginning of each paragraph are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph.

k. Severability. This Notice is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Notice or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Notice and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

l. Electronic Signatures and Counterparts. To facilitate execution, CFX and Owner agree that this Notice may be executed and transmitted by electronic (including digital) signature in compliance with Chapter 668, Florida Statutes, to the other Party and that the executed electronic or digital shall be binding and enforceable as an original. This Notice may also be executed in as many counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single agreement.

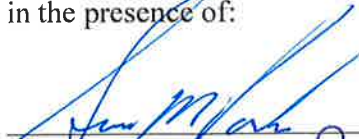
m. Effect on Deed and Collocation Agreement. Except as modified herein, the Deed and Collocation Agreement remain in full force and effect.

n. Effective Date. The effective date of this Notice shall be the date upon which the CFX governing board has approved this Notice and the last of the Parties executes this Notice ("Effective Date").

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Notice to be executed in a manner and form sufficient to bind them on the date set forth herein below.

Signed, sealed, and delivered
in the presence of:


Print Name: Sean Parks


Print Name: Rita Mogre


ATTEST: Regla ("Mimi") Lamaute
Recording Clerk


"CFX"

**CENTRAL FLORIDA EXPRESSWAY
AUTHORITY**

By: 
Laura Kelley, Executive Director

Date: Oct. 21, 2022

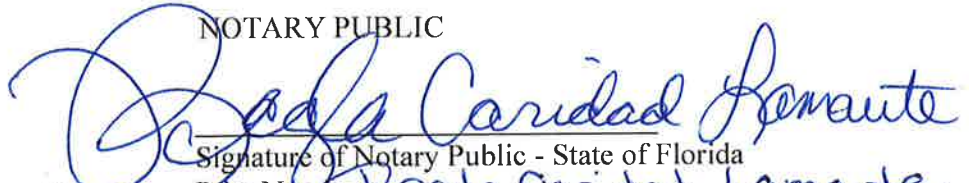
Approved as to form and legality by legal
counsel to the Central Florida Expressway
Authority on this 21st day of September,
2022 for its exclusive use and reliance.

By: 
Diego "Woody" Rodriguez
General Counsel

STATE OF FLORIDA)
COUNTY OF ORANGE)

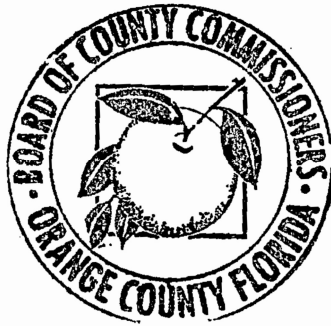
The foregoing instrument was acknowledged before me by means of ☒ physical
presence or ☐ online notarization on this 21st day of October, 2022, by Laura Kelley, as
Executive Director of the Central Florida Expressway Authority, on behalf of the agency. She is
personally know to me OR produced n/a as identification.

NOTARY PUBLIC


Signature of Notary Public - State of Florida
Print Name: Regla Caridad Lamaute
Commission No.: _____
My Commission Expires: _____

REGLA CARIDAD LAMAUTE
Commission # GG 352738
Expires November 6, 2023
Bonded thru Budget/Notary Services





ATTEST: Phil Diamond, CPA, County
Comptroller, Clerk to the Board of County
Commissioners

By: *Phil Diamond*
Deputy Clerk

Print Name: September 13, 2022

"COUNTY"

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: September 13, 2022