



October 15, 2018

TO: Mayor Teresa Jacobs

-AND-

Board of County Commissioners

FROM: Kelly Finkelstein, Communications Division Manager

A handwritten signature in black ink, appearing to read "Kelly Finkelstein", written over the printed name.

SUBJECT: Central Florida Expressway Authority Agreement  
**CONSENT AGENDA ITEM OCTOBER 30, 2018**

The Communications Division is providing production and broadcast services to the Central Florida Expressway Authority. The agreement provides that Orange TV will use equipment and services to record the public hearings and other programs regarding government services, activities, and issues for the Central Florida Expressway Authority.

The initial term of the agreement shall be for a period of one year from the date of execution by the last party or execution by the County, whichever is later. The agreement may be renewed for up to four, one-year renewals by mutual written agreement of the parties, unless otherwise terminated by either party.

Please let me know if you require further information.

**ACTION REQUESTED: Approval and execution of Orange County, Florida and Central Florida Expressway Authority Agreement related to Production and Broadcast Services.**

**ORANGE COUNTY, FLORIDA**  
*and*  
**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**AGREEMENT**  
*related to*  
**PRODUCTION AND BROADCAST SERVICES**

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**THIS AGREEMENT** is made by and between **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body politic and corporate, and an agency of the state under the laws of the State of Florida whose principle business address is 4974 ORL Tower Road, Orlando, Florida 32807, (“CFX”), and **ORANGE COUNTY, FLORIDA** (the “County”), a charter county and political subdivision of the State of Florida, whose address is 201 South Rosalind Avenue, Orlando, Florida 32801. CFX and the County may also be referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

**WHEREAS**, the County believes that providing for transparency of public meetings and hearings is an important governmental goal; and

**WHEREAS**, in furtherance of this goal, the County, through Orange TV (“OTV”), records and broadcasts public hearings and other programs through its public access channels and on the Internet; and

**WHEREAS**, CFX is responsible for the construction, maintenance, and operation of toll roads located within Orange County, Florida; and

**WHEREAS**, CFX has regularly scheduled public meetings and seeks to utilize OTV’s equipment and services in order to record its public hearings and other programs regarding its government services, activities, and issues (collectively referred to as “CFX Meetings” or “Meetings”); and

**WHEREAS**, the Parties have agreed to the County providing the services contemplated under this Agreement for CFX, in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the Parties agree to the following terms and conditions:

**Section 1: Recitals.** The Parties agree that the recitals set forth above are true and correct and are herein incorporated as a part of this Agreement.

**Section 2: County’s Obligations.**

A. County, through OTV, shall provide CFX with a production staff/crew for each CFX Meeting. Production staff/crew shall include:

1. Director/Engineer and Camera Operator both which shall be on site; and
2. Computer Graphics Operator, Master Control Operator, and Audio Engineer which shall be provided at the Orange TV location.

B. OTV post-production services which shall include:

1. Equipment and data package back to OTV;
2. Encoding for web;
3. Mastering of video for DVD and delivery.

C. OTV shall provide an average of five (5) hours pre and post-production services, per CFX Meeting.

D. OTV will broadcast each CFX Meeting live via the internet, a public access channel, or both, at its option, and shall retain the right to re-broadcast CFX Meetings at appropriate times within the OTV program schedule, at its discretion.

**Section 3: CFX's Obligations.**

A. CFX shall provide County and OTV with the schedule day and time of the CFX Meetings at least thirty (30) days in advance and a copy of the agenda for each Meeting at least two (2) days prior to each Meeting. In the event of an unforeseen emergency resulting in the rescheduling of a CFX Meeting, CFX shall provide OTV as much advance notice as possible and shall cooperate with OTV in the rescheduling of such CFX Meeting production.

B. CFX shall provide OTV access to the Meeting room from 7:00 a.m. to 12:00 p.m. on each Meeting day. CFX shall provide OTV additional access time should any Meeting extend beyond the originally scheduled time.

C. CFX shall provide the audio feed from the Meeting room to Orange TV audio engineer and support services, as needed, to allow for set-up and operation of the equipment.

**Section 4. Availability of Resources and Equipment.** County's performance and obligations under this Agreement shall be contingent upon the availability of sufficient personnel and resources. If OTV, its equipment, or resources are not available at the requested time, then CFX may seek to retain alternate services and equipment at its own expense. All services provided under this Agreement shall be contingent upon the necessary appropriation of funding by the Orange County Board of County Commissioners.

**Section 5. Payment and Invoice.**

A. CFX shall pay the County a flat rate of Eight Hundred Seventy-Five Dollars (\$875.00) per Meeting. This rate shall apply to both scheduled and unscheduled Meetings.

**B.** OTV shall be compensated for fees based upon the total of twenty-five (25) production hours which shall include: (i) one-hour for prep, travel and other duties required for the assignment; (ii) a period of two (2) hours for production of the CFX Meeting; and (iii) one-hour for post-production and travel back to the Orange TV station.

**C.** CFX payment under this Agreement shall be based upon a minimum of three (3) hours of work per day for each OTV employee performing under this Agreement, regardless of the actual CFX Meeting run time.

**D.** County shall provide CFX with an invoice for all services provided under this Agreement during the preceding year. County's invoice shall be provided to CFX on an annual basis prior to the end CFX's fiscal year. CFX shall remit its payment to County in accordance with the Florida Prompt Payment Act (Sections 218.70 – 218.80, Florida Statutes).

**Section 6.     Term and Termination.**

**A.** The initial term of this Agreement shall be for a period of one (1) year from the date of execution by the last signing Party or execution by the County, whichever is later.

**B.** This Agreement may be renewed for up to four (4) one-year renewals by mutual written agreement of the Parties, unless otherwise terminated by either Party.

**C.** Either Party may terminate this Agreement upon thirty (30) days prior written notice. Such notice shall be provided in accordance with Section 12. D. of this Agreement.

**D.** In the event of early termination of this Agreement, County shall provide CFX with an invoice which shall be prorated for those Services provided up to the time of termination.

**Section 7:     Insurance.** Without waiving its right to sovereign immunity, as provided for in Section 768.28, Florida Statutes, each party acknowledges to be self-insured for General Liability and Automobile Liability with coverage limits as set forth in Section 768.28, Florida Statutes. Each party agrees to maintain commercial insurance or to be self-insured for Workers' Compensation & Employers' Liability in accordance with Chapter 440, Florida Statutes.

Upon request, each party shall provide an affidavit or Certificate of Insurance evidencing self-insurance or commercial insurance up to the sovereign immunity limits, which each party agrees to find acceptable for the coverage mentioned above.

The failure to request proof of insurance or to identify any deficiency in coverage or compliance with the foregoing requirements shall not relieve either party of its liability and obligations under this Agreement.

**Section 8.     Indemnification.** Each party agrees to defend, indemnify, and hold harmless the other party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs, and expenses (including attorneys' fees) attributable to its

negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this Agreement. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability for the acts, omissions, and/or negligence of the other party.

**Section 9. Limitation of Liability.** In no event shall either the County or CFX be liable to the other for any special, incidental, or punitive damages, or lost profits, arising out of or relating to any breach of this Agreement.

**Section 10. Public Records.**

A. All books, documents, records, and accounts related to this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. All records or documents created by, or provided to, CFX under the terms of this Agreement are public records and CFX agrees to comply with any request for such public records or documents made in accordance with Section 119.07, Florida Statutes.

B. CFX shall make available copies of all records associated with this Agreement for examination and inspection. CFX shall comply with all requests for public records associated with this Agreement in accordance with Florida's Public Records Law and other applicable State law requirements.

C. If CFX has questions regarding the application of Chapter 119, Florida Statutes, regarding CFX's duty to provide Public Records relating to this Agreement, contact the County Procurement Public Records Liaison at 400 East South Street, 2<sup>nd</sup> Floor, Orlando, Florida 32801, [ProcurementRecords@ocfl.net](mailto:ProcurementRecords@ocfl.net), (407) 836-5897.

**Section 11. Force Majeure.** Neither party shall incur any liability to the other under this Agreement if the performance of that party is prevented, interfered with or precluded because of an Act of God, failure of facilities, fire, lockout, strike, action by a government authority, riot or any similar or different cause beyond the control of the party so failing to perform.

**Section 12. Miscellaneous Provisions.**

A. **Headings.** Headings in this Agreement are for the convenience of the parties only and shall not control or affect the meaning or construction of any provision hereof.

B. **Complete Agreement; Amendment.** The County and CFX agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, deleted, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

**C. Waiver; Forbearance.** No waiver by a party of any breach or requirement, or forbearance from enforcing any requirement or provision, shall constitute or require a waiver of any other, or future instance of the same, breach or requirement or require any future forbearance.

**D. Notices.** All notices under this Agreement shall be in writing and delivered by hand delivery, express courier, or United States Postal Service certified mail with return receipt requested, and shall be effective upon receipt of the same. Notices shall be delivered to the parties at the addresses provided herein or such other addresses as specified by written notice in compliance with the terms of this paragraph.

**TO THE COUNTY:** Orange TV  
9860 Universal Boulevard  
Orlando, Florida 32819  
Attention: Orange TV Station Manager

**AND**

Orange County Administrator  
Administration Building, 5th Floor  
201 S Rosalind Avenue  
Orlando, Florida 32801

**TO CFX:** Executive Director  
Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, Florida 32807

**E. No Third Party Beneficiaries.** This Agreement shall not confer any right on any person or entity not a party hereto except as explicitly set forth herein.

**F. Orange County Logo and Orange TV Trademark.** Nothing herein gives CFX the right to use Orange County's official logo or the Orange TV Trademark. Orange County's official logo and the Orange TV Trademark are, and shall remain, the exclusive property of Orange County.

**G. Litigation, Laws, and Venue.** The obligations of CFX under this Agreement are subject to all applicable federal, state, and local laws, rules and regulations, as amended, and this Agreement shall be deemed to have been negotiated and entered into in the State of Florida, and all matters or issues collateral thereto shall be governed by the laws of the State of Florida. This Agreement shall be governed by the laws of the State of Florida. Venue for any litigation involving this Agreement shall be in Orange County, Florida. All rights to a trial by jury are hereby waived by both Parties. Notwithstanding any indemnifications discussed herein, each party shall otherwise be responsible for their own costs and attorneys' fees.

**H. Severability.** If any provision of this Agreement is declared unlawful, invalid, or

unenforceable by any competent legal authority, the remainder of this Agreement shall remain in effect and shall be interpreted to give effect to the maximum extent to the intent of the parties, provided, however, that neither party shall be required to accept alteration of their fundamental economic relationship hereunder.

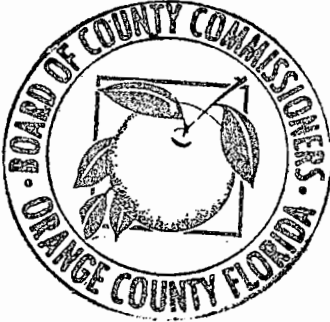
**I. Authority of Signatory.** The individual executing this Agreement for CFX warrants that he or she is authorized and intends to execute this Agreement and to bind the party on whose behalf he or she has signed.

**J. Assignment.** This Agreement shall not be assigned by CFX without the prior written consent of the County.

**K. Independent Contractor.** CFX is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CFX's sole direction, supervision, and control. CFX shall exercise control over the means and manner in which it and its employees perform the work, and in all respects CFX's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees or agents of the County. CFX does not have the power or authority to bind the County in any promise, agreement or representation other than as specifically provided for in this Agreement. Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CFX and the County.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the Parties have executed this Agreement on the dates set forth below.



**ORANGE COUNTY, FLORIDA**

By: Board of County Commissioners

By: Bill Dalachanda  
Teresa Jacobs  
Orange County Mayor

Date: 10.30.18

**ATTEST:**

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

By: Kate Smith  
Deputy Clerk  
Date: OCT 30 2018

**CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY**

By: [Signature]  
Print Name: Kaura Kelley  
Date: \_\_\_\_\_

**ATTEST:**

By: [Signature]  
Print Name: Mimi Lamante  
Title: Board Serv. coordinator

**APPROVED AS TO FORM AND LEGALITY:**

By: Joseph L. Passiatare  
Print Name: Joseph L. Passiatare  
Title: CFX General Counsel