

**MIAMI-DADE EXPRESSWAY AUTHORITY (MDX)**

**BOARD OF DIRECTORS MEETING  
TUESDAY, OCTOBER 25, 2016  
4:00 PM**

**WILLIAM M. LEHMAN MDX BUILDING  
3790 NW 21<sup>ST</sup> STREET  
MIAMI, FLORIDA 33142**

**SUMMARY MINUTES**

**Members Present**

Louis V. Martinez, Esq., Chair  
Shelly Smith Fano, Vice Chair  
Rick Rodriguez Piña, Treasurer  
James Wolfe, P. E., District VI Secretary  
Leonard Boord (vía phone)  
Vincent T. Brown, Esq.  
Maritza Gutierrez (vía phone)  
Javier L. Vázquez, Esq.  
Cliff Walters  
Luz Weinberg

**Members Absent**

Maurice A. Ferré  
Alfredo L. Gonzalez, Esq.  
Arthur J. Meyer

**Staff**

Javier Rodriguez, P.E., Executive Director  
Marie Schafer, Chief Financial Officer  
Juan Toledo, P.E., Director of Engineering  
Steve Andriuk, Director of Toll Operations  
Carlos M. Zaldivar, Esq., General Counsel  
Francine Steelman, Associate General Counsel  
Helen Cordero, Manager of Procurement and Contracts Administration  
Mario Diaz, Public Information Manager  
Maria Luisa Navia Lobo, Board Secretary

**Consultants**

Finance: Randy Topel, First Southwest Co.  
Transportation: Albert Sosa, HNTB (GEC-A)  
Rick Crooks, EAC Consultants (GEC-B)

**CALL TO ORDER & ROLL CALL**

Chair Martinez called the meeting to order. Ms. Navia Lobo called the roll and announced that a quorum of the MDX Board was present.

**PLEDGE OF ALLEGIANCE**

Chair Martinez asked Mr. Brown to lead in the Pledge of Allegiance.

**DECLARATIONS OF VOTING CONFLICTS**

Mr. Zaldivar asked Members if there were any voting conflicts regarding the items on the Board Agenda. No conflicts were declared.

**APPROVAL OF AGENDA**

Agenda item VII. E was pulled from the agenda. The agenda was approved as amended.

**CITIZEN COMMENT**

There were no comments.

**APPROVAL OF SUMMARY MINUTES**

- Board Meeting of August 30, 2016

Ms. Weinberg moved to approve the Summary Minutes of the August 30, 2016 meeting. Mr. Vazquez seconded the motion. The motion was unanimously approved.

- Board Meeting of September 27, 2016

Mr. Vazquez moved to approve the Summary Minutes of the September 27, 2016 meeting. Ms. Weinberg seconded the motion. The motion was unanimously approved.

**EXECUTIVE DIRECTOR'S REPORT**

Mr. Rodriguez briefed Members on the following issues that occurred since that last Board meeting of September 27, 2016.

- Work Program Schedule. The Work Program will be a Discussion item on the Joint Budget & Finance and Operations Committee agenda on November 30, 2016. The Work Program will be endorsed and approved in January 2017.
- The MDX Strategic Master Plan (SMP) presentation and adoption will be on December 6, 2016. There are projects in the SMP that will be moved to the Work Program
- Participated in a teleconference with the Florida Transportation Commission (FTC) regarding the updating of the Performance Measures report. The final report will be approved by the FTC later this year. The Safety Measure was met for the first time this year.
- Hurricane Matthew – MDX was asked to lift tolls pursuant to the protocol set by all the toll agencies and FDOT. Tolls were lifted from Wednesday, October 5<sup>th</sup> to Sunday, October 9<sup>th</sup>. There was a revenue loss of approximately \$2 million for turned off the System for this storm. This estimate does not include the actual 24hrs period of the actual storm impact.
- Participated in the opening of the CCSC in Ocoee, Florida. A customer service site will open in Miami in the Spring of 2017

- At the request of Board Member Boord, we have distributed a report of negotiated acquisition settlements for MDX projects 83628, 87410 and 83611

### **GENERAL COUNSEL'S REPORT**

Mr. Zaldivar referred to the Regular Agenda items as part of his report.

### **MPO REPRESENTATIVE REPORT**

Mr. Rodriguez informed Members the MPO meeting is scheduled for October 26, 2016.

### **TREASURER'S REPORT**

Ms. Schafer reported that for next months' report of October 2016 there will be a \$2 million impact for the lost revenue due to the lifting of the tolls during Hurricane Matthew.

### **COMMITTEE REPORTS**

- Policy & Planning Committee, 10/20/16
- Operations Committee, 10/20/16

The committee reports were waived.

### **REGULAR AGENDA**

Agenda items VIII. A and B were taken together.

A) MDX Procurement/Contract No.: MDX 15-12, Legal Representation in Civil Action Brought Against MDX

- Approval to remove Contract Amount cap due to pending matter related to litigation in Circuit Court (Case No. 15-04267 CA 23) involving a Bid Protest filed by Munilla Construction Management, LLC d/b/a MCM. (Endorsed by the Policy & Planning Committee on 10/20/16)

B) MDX Procurement/Contract No.: MDX 16-03, Legal Representation in Civil Action Brought Against MDX

Approval to remove Contract Amount cap due to pending matter related to litigation in Circuit Court (Case No. 16-1946-CA-01) involving a Bid Protest filed by Munilla Construction Management, LLC d/b/a MCM. (Endorsed by the Policy & Planning Committee on 10/20/16)

Mr. Zaldivar read both agenda items into the record and informed Members both items are bid protest litigation filed by MCM. Staff is requesting removal of contract amount cap due to pending matters.

Mr. Zaldivar informed Members the following regarding the MCM I case: MCM filed a civil action against the Authority in circuit court. On July 17, 2015, Judge Thomas granted MDX's Motion to Dismiss the Complaint with prejudice. MCM filed an appeal on the granted Motion to Dismiss, which was heard by the Third District Court of Appeal on February 29, 2016. A decision from the Court of Appeal was granted upholding the Motion to Dismiss. MDX filed a

Motion for Attorney Fees that was denied by Judge Thomas with instructions to incorporate the fee claim in the appeal. MDX filed an appeal on the denied Motion for Attorney Fees, which remains pending. MDX's fee claim is based on a statutory right to prevailing party fees and the Initial Brief has been filed.

The MCM II case: MCM filed a civil action against the Authority in circuit court. In addition to filing the above noted protest, MCM also filed an Emergency Injunction Motion to stop the award of the contract. In the response Emergency Motion, the Honorable Judge Jose M. Rodriguez ordered that MDX may proceed with their procurement process; however no act shall prejudice MCM's rights under the Motion for Injunction until such can be heard. The parties agreed to stay the execution of the contract until the scheduled hearing of MCM's Motion on March 28, 2016. After significant discovery and a four day trial on the Motion for an Emergency Injunction, MDX's award of the contract to the lowest, responsive, and responsible bidder was affirmed by Judge Rodriguez.

MDX filed a Motion for Attorney Fees and a hearing was held on September 20, 2016. Judge Rodriguez denied the Motion. MDX intends to appeal this ruling.

Mr. Brown directed staff to provide a monthly/quarterly report that informs Members on the amount of attorney's fees being expended on these matters.

Ms. Weinberg moved to approve the removal of Contract amount cap for MDX 15-12 and MDX 16-03. Mr. Brown seconded the motion. The motion was unanimously approved.

C) MDX Procurement/Contract No.: MDX 17-01, Legal Representation in Potential Appeal of Final Judgment Against MDX (Endorsed by the Policy & Planning Committee on 10/20/16)

- Authorization for the Executive Director to enter into a Contract with a highly experienced appellate attorney to provide consultation to the current trial attorneys in preserving the record for appeal and lead all appellate efforts against a potential Final Judgment in the case, Electronic Transaction Consultants Corporation (ETCC) v. MDX(Case No. 12-46272 CA 40)
- Authorization for the Executive Director to compensate other law firms for the time expended in the review of case materials, providing opinions and time spent discussing the appellate process.

Mr. Zaldivar read the agenda item into the record. Ms. Weinberg moved the item for discussion. Mr. Brown and Mr. Rodriguez Piña seconded the motion.

Mr. Zaldivar informed Members that Weiss Serota Helfman Cole & Bierman (Weiss Serota), under contract with MDX for General Counsel Support Services, was tasked to represent and defend MDX in the ETCC litigation. The parties could not agree on a settlement, therefore the matter went to trial. A five (5) week bench trial transpired before the Honorable Judge John Thornton that concluded with closing arguments in December 2015. Following to the close of the trial, the parties were ordered to mediate on four (4) separate instances all of which were unsuccessful. The last mediation was held September 19, 2016.

He further explained that in late August 2016 and prior to the 4<sup>th</sup> mediation, the Executive Director and the General Counsel anticipated that a significant judgment would be entered against MDX. In order to prepare for an appeal, Staff conducted research to seek out the most effective appellate attorneys in Miami-Dade County. After the research was conducted, Staff

contacted numerous attorneys to determine interest and whether there were any conflicts of interest. Staff interviewed several appellate attorneys and five (5) were forwarded documents related to the case.

On September 27, 2016, a Shade Meeting was held to discuss current settlement strategies and legal expenditures. During the meeting, the Board directed Staff to engage an experienced appellate attorney to work with Weiss Serota to preserve the record for appeal, review the matter from an alternate perspective and lead an appellate effort, if necessary.

As a result of prior research conducted, Staff recommends engaging Rodolfo Sorondo of Holland Knight (H&K). Mr. Sorondo is a former appellate judge for the Third District Court of Appeals (Miami) and now, as a partner at H&K, leads the Appellate Practice Group. Mr. Sorondo has agreed to an hourly rate of \$680.00, which represents a 20% discount from his normal hourly rate of \$850.00; and he will be the only attorney engaged until a Final Judgment is entered. If a Final Judgment is entered, the hourly rate for all other H&K attorneys will be discounted by 20%. Mr. Sorondo's rate would be highest rate in the contract.

Staff is recommending that MDX enter into a contract with H&K to immediately engage Mr. Sorondo services. Although no Final Judgment has been entered, the additional time would be advantageous as Mr. Sorondo could consult with the trial attorneys, familiarize himself with the case, and provide guidance in the preservation of the record for appellate review. In addition, in order to prepare for an appeal, Mr. Sorondo will review the entire record, including discovery, and will be in a position to provide a separate perspective on the matter.

In addition, Staff is requesting authorization to compensate the other attorneys for their time in reviewing the materials forwarded, providing opinions and discussing the appellate process. The compensation for each attorney varies depending on the respective hourly rate and amount of time dedicated to the review.

The item was thoroughly discussed at the Policy & Planning Committee of October 20, 2016.

Mr. Rodriguez Piña expressed concern with the monitoring of budget for legal fees.

Mr. Zaldivar entertained questions from Members.

Ms. Weinberg moved to authorize the Executive Director to enter into contract with Rodolfo Sorondo of Holland Knight and authorization to compensate the other attorneys for their time in reviewing the materials forwarded. Mr. Brown seconded the motion. The motion was unanimously approved.

D) Approval of Revisions to MDX Property Acquisition Policy and MDX Delegation of Authority Policy (Endorsed by the Policy & Planning and Operations Committee on 10/20/16)

Mr. Zaldivar read the agenda item into the record. Mr. Brown moved the item for discussion of the proposed revisions to the Property Acquisition and Delegation of Authority policies. Ms. Weinberg seconded the motion.

Mr. Zaldivar explained the proposed revisions to the MDX Delegation of Authority Policy and the MDX Property Acquisition Policy are intended to consolidate all of the policies and provisions related to acquisition of property into the Property Acquisition Policy. Additionally, the proposed revisions to the MDX Property Acquisition Policy also include guidance for Business Damage Claims and Relocation Assistance and minor revisions for settlement authority.

The motion was unanimously approved.

- E) Approval of MDX Resolution No. 16-25 designating SR 836 as the Express Technology Corridor

The item was pulled.

### **INFORMATIONAL ITEMS**

- A) Procurement Report  
B) Communications Report

### **CHAIR'S COMMENTS**

Chair Martinez informed Members that the MDX Small Business Conference was very well attended. In addition, MDX was honored by the Latin Builders Association as the Government Agency of the year.

Mr. Vazquez encouraged Members to attend the next Inter-Governmental Committee Meeting on November 10, 2016.

### **ANNOUNCEMENTS**

- Joint Budget & Finance and Operations Committee Meeting, 11/30/16, William M. Lehman MDX Building – Board Room
- Board of Directors Meeting, 12/6/16 at 4:00 p.m., William M. Lehman MDX Building, MDX Board Room

### **ADJOURNMENT**

Chair Martinez adjourned the Meeting.

Summary Minutes prepared by Maria Luisa Navia Lobo, Board Secretary.