

**COMMITTEE MEETING EXPANDED AGENDA**

**APPROPRIATIONS SUBCOMMITTEE ON  
TRANSPORTATION, TOURISM, AND ECONOMIC  
DEVELOPMENT**

**Senator Brandes, Chair  
Senator Powell, Vice Chair**

**MEETING DATE:** Thursday, February 16, 2017  
**TIME:** 9:00—10:30 a.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Brandes, Chair; Senator Powell, Vice Chair; Senators Artiles, Benacquisto, Gainer, Gibson, Passidomo, Rader, Simpson, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Florida State University, Office of Urban and Regional Planning - Autonomous Vehicles and the Environment		Presented
2	Review of Local Initiatives Evaluations		Not Considered
3	South Florida Regional Transportation Authority - Discussion on Authority's Operations		Presented
Other Related Meeting Documents			

# Envisioning the City with Automated Vehicles


Lindsay Stevens, Esq., AICP & Dr. Tim Chapin, Professor  
*Department of Urban & Regional Planning*  
*Florida State University*



# Today's Big Takeaway



Automated Vehicles will cause the next great transformation in our transportation systems and the built environment

- *Mobility and safety will increase*
  - *Ownership patterns will change*
  - *AVs will impact roadway design, urban form, site design, and parking*
- 









# Autonomous Vehicles

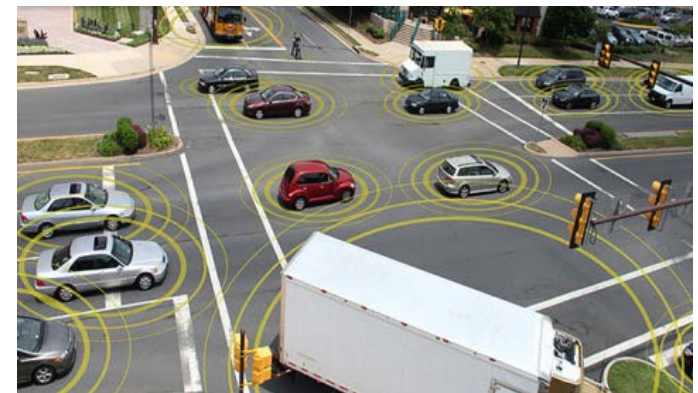
## Autonomous Vehicles

- Standalone Operability
- Vehicle has Situational Awareness



## Connected Vehicles

- Vehicle-to-infrastructure (V2I)
- Vehicle-to-Vehicle (V2V)
- Vehicle-to-Bike/Ped/Other (V2X)





# Shared AVs (SAVs)



## The model of the future

- ⊙ The typical American vehicle is parked 95% of the time
- ⊙ Fewer Millennials want to own cars
- ⊙ On-demand car and ride-sharing models like Zipcar, Uber and Lyft are growing in popularity
- ⊙ Auto manufacturers are investing in AV and car-sharing companies

### THE WALL STREET JOURNAL

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TECH

## GM Invests \$500 Million in Lyft, Plans System for Self-Driving Cars

Auto maker will work to develop system that could have autonomous cars appear at customers' doors

FEB 10, 2017 | SAN FRANCISCO

## FORD INVESTS IN ARGO AI, A NEW ARTIFICIAL INTELLIGENCE COMPANY, IN DRIVE FOR AUTONOMOUS VEHICLE LEADERSHIP

• Ford is investing \$1 billion during the next five years in Argo AI, combining Ford's autonomous vehicle development expertise with Argo AI's robotic experience and

# Safety and Efficiency

**5,500,000**

Automobile crashes every year

**30,000+**

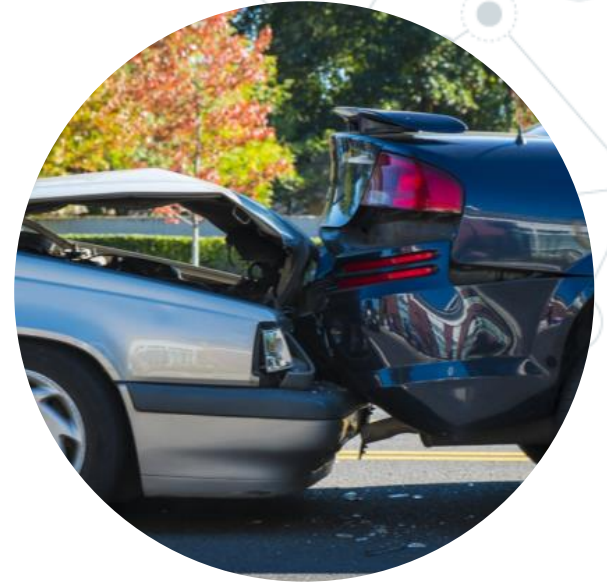
Fatalities per year

**42 hours**

Time an average American sits in traffic each year

**Upwards of \$1 trillion**

In total costs related to damages and lost productivity per year due to crashes



# How Will SAVs Improve Safety + Efficiency?



## Reducing traffic crashes

93% of crashes are caused by human error

## Reduce Numbers of Vehicles

9 to 11 traditional vehicles can be replaced by one shared AV

## Increasing throughput of existing infrastructure



# Potential Changes to the Built Environment



## Road Design

AVs may create narrower and more efficient ROWs



## Signage & Signalization

Virtual infrastructure may replace physical signs and signals



## Bikes & Pedestrians

AVs could support and/or hinder the bike/ped experience



## Parking

AVs could affect the location, design and demand for parking



## Drop-offs

Drop-off areas may replace on-site parking



## Redevelopment

Reduced parking may open redevelopment opportunities

# AV Right-of-Ways (ROW)



## AVs should enable smaller & more efficient ROWs

- ⦿ Smaller vehicles
- ⦿ More precise driving – AVs remove margin of error
- ⦿ Increased throughput – AVs can travel closer together

## Implications

- ⦿ Creates more space for Bike/Ped facilities
  - ⦿ Reduces need to expand roadways
  - ⦿ Potential for road diets
- 

# Drop-offs: The Parking Replacement

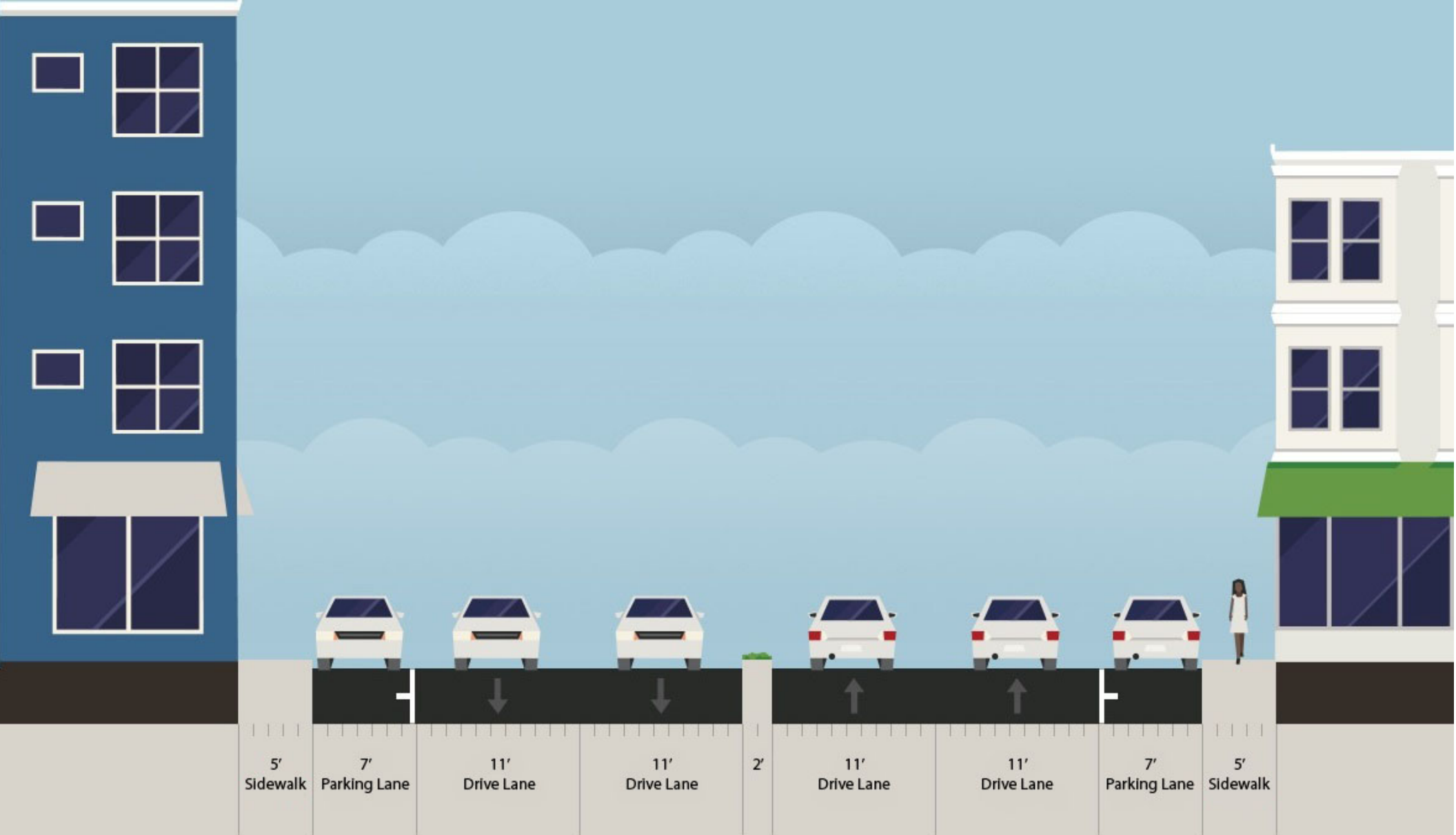
- ◎ Shifted site design priorities from parking to drop-off areas
- ◎ Drop-off Area Design
  - Protected, with easy ingress/egress
  - Safe/comfortable spaces to wait

Drop-Off areas may be created in:

- ◎ Parking Lots
- ◎ On-street Parking
- ◎ Turn Lanes
- ◎ Frontage Roads
- ◎ Service Roads

# How AVs Could Support Bikes & Peds

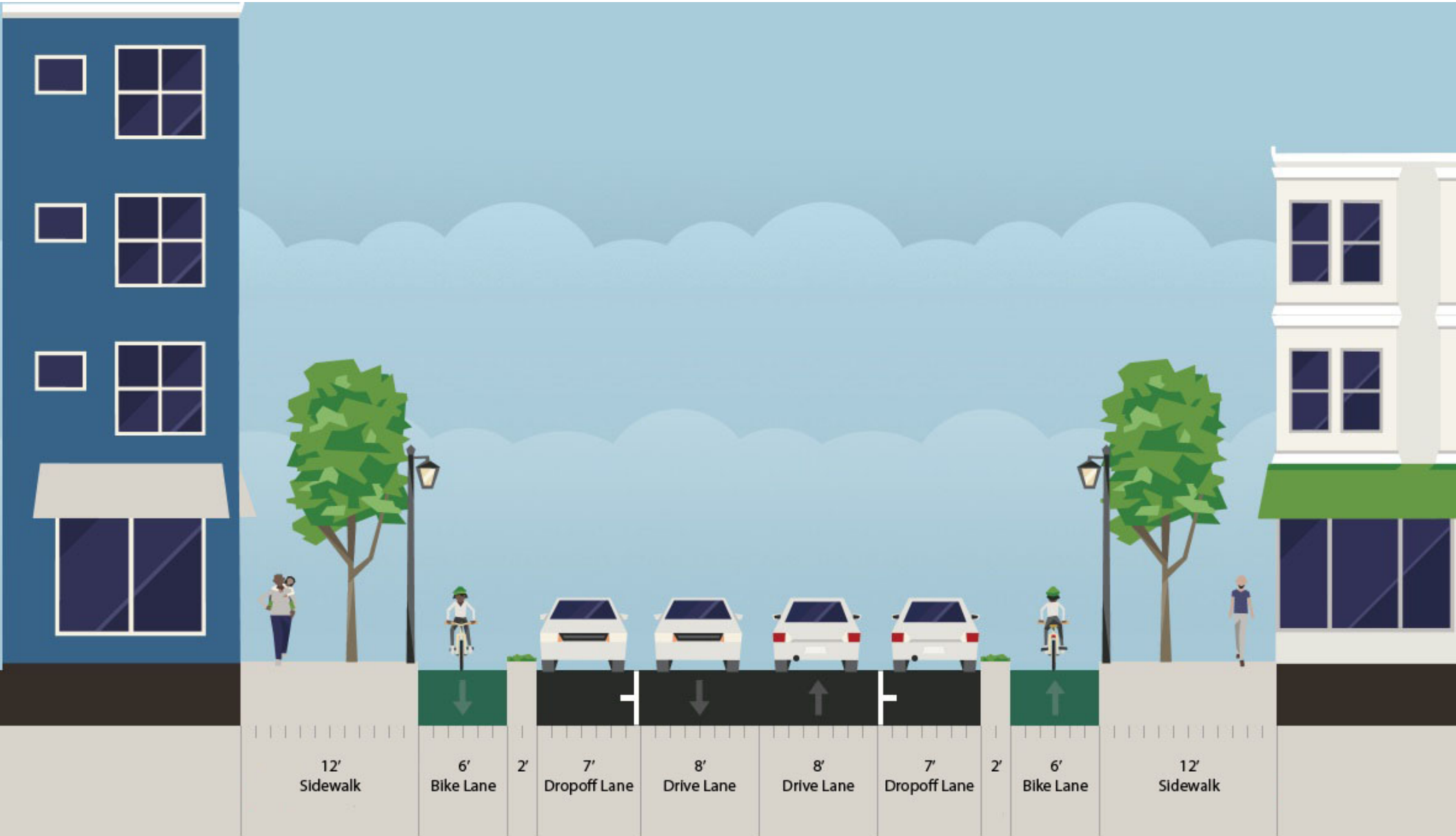
- ◎ AVs require less space within urban settings
- ◎ Narrower lanes makes extra space to retrofit ROWs to provide more pedestrian and bicycle facilities
- ◎ Broadly speaking, there is a great opportunity to pursue *Complete Streets* with separated ROWs for AVs, bicyclists, and pedestrians



## A Common Auto-Centric Streetscape







## An AV Long-Term Streetscape Opportunity



**Figure 3.1 - Redeveloping On-street Parking as Drop-Off Areas:** Drop-offs will be integral in freeing parking for reuse and redevelopment. Here they are seen redeveloped from on-street parking. Additional space from narrower ROWs may also be redeveloped into protected bike lanes or other bike/ped facilities





**AFTER**

# The Future of Parking: Location

- ⦿ Parking is no longer tied to the site
- ⦿ Parking can be moved out of the urban core and other nodes
- ⦿ Parking can be consolidated into district serving facilities



# Site Level Redevelopment Opportunities

**Figure 3.2 - Redeveloping Surface Parking into Commercial Infill Development:** In a fully AV world, large surface parking lots may be redeveloped into better uses such as commercial space, as shown here, or parks and public space.



# Site Level Redevelopment Opportunities



# Corridor Level Redesign Monroe St. in Tallahassee – Current



# Corridor Level Redesign Monroe St. in Tallahassee – Circa 2040





# Corridor Level Redesign Monroe St. in Tallahassee – Circa 2060

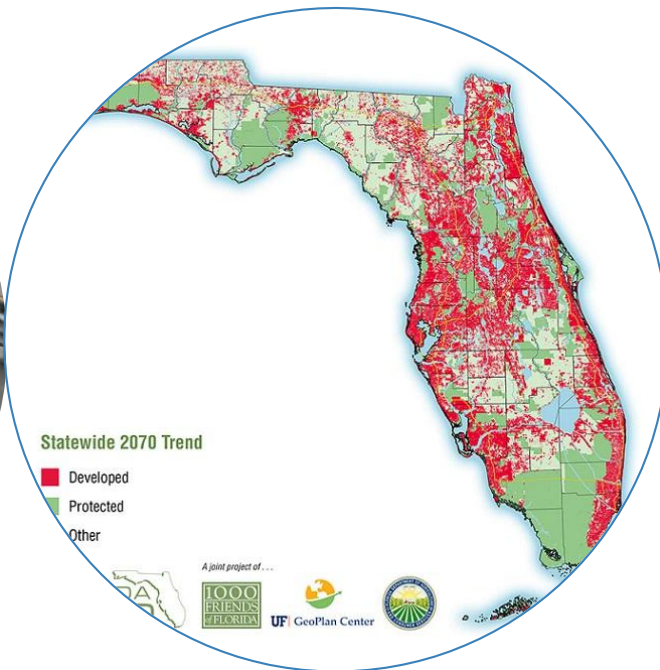


# AV and the Built Environment - What the State Should Be Doing

- ◎ Begin to Fold AVs into Long-Range Land Use and Transportation Plans
- ◎ Revisit Roadway Design Manuals/Standards
- ◎ Revise Parking Requirements in LU Regulations
- ◎ Develop Best Practices and New Site Design Rules in Anticipation of the Drop-Off Revolution
- ◎ Invest in Research into AVs through state agencies like DOT, DEO, and DEM

# Other Policy Considerations that Need More Research

- ◎ Bridging the Transition to an AV World
- ◎ AVs as an Urbanizing Force or an Agent of Sprawl
- ◎ Evacuation Clearance in an SAV World



# Envisioning Florida's Future: Transportation and Land Use in an Automated Vehicle World



**Final Report, April 2016**  
**FDOT Contract #: BDV30 934-10**



## Future of Florida Project



Available for free online at:  
<http://fpdl.coss.fsu.edu/Research-Projects/Envisioning-Floridas-Future>

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/17

Meeting Date

Bill Number (if applicable)

Topic AVs and the Built Environment

Amendment Barcode (if applicable)

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State

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Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/2017

Meeting Date

Bill Number (if applicable)

Topic AV and the Built Environment

Amendment Barcode (if applicable)

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Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing F.S.U.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/17

Meeting Date

Bill Number (if applicable)

Topic SFRTA Procurement

Amendment Barcode (if applicable)

Name Steven L. Abrams

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Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing SFRTA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02-16-17

Meeting Date

Bill Number (if applicable)

Topic SO. FLA. REGIONAL TRANS. AUTHORITY

Amendment Barcode (if applicable)

Name JACK STEPHENS

Job Title EXECUTIVE DIRECTOR

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Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing SARTA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/2017  
Meeting Date

Bill Number (if applicable)

Topic SFR TA - Operations

Amendment Barcode (if applicable)

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Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida State Minority Supplier Development Council

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

These documents were provided to the committee by SFRTA

- **INTRODUCTION**

Good Morning Sen. Brandes and members of the committee. My name is Jack Stephens and I am the Executive Director of the South Florida Regional Transportation Authority or SFRTA. You have requested my appearance here today to address questions the committee may have regarding SFRTA's recent award of its Operating Services Contract to Herzog Transportation Services.

Before I address the award, I'd like to provide you with some brief information about myself and SFRTA.

- **JACK**

- I have almost 35 years of experience in transit and I have served as SFRTA's Executive Director for more than 2 years.

- **SFRTA**

- SFRTA is a small agency that operates the Tri-Rail commuter rail service on the South Florida Rail Corridor under an agreement with the Florida Department of Transportation.
- Tri-Rail service began in 1989 and operates in Miami-Dade, Broward and Palm Beach Counties, and carries more than 4 million riders per year.

- **PROCUREMENT (RFP vs. Low Bid)**

- One of SFRTA's functions is to procure services for the operation of a passenger rail service, including train operations, maintenance of locomotives and passenger cars, train dispatching and station maintenance.

- Traditionally, the rail industry has obtained these services using the procurement method known as a Request for Proposals or RFP, in which proposers are evaluated based on a combination of their technical ability to perform the work and price.
- Although you may have heard from others the term “bid” or “low bid” in this matter, **this was not a low bid procurement.**
- The industry does not use a low bid procurement for these services because it has learned that putting price first leads to poor safety and poor performance **that could place our passengers at risk.**
- The industry’s experience is also reflected in the scoring of proposals, which in this case was 80% for technical ability and 20% for price.
- **RFP PROCESS**
  - The RFP for all 4 of these services began with advertising on September 2, 2016, with proposals due on December 16, 2016.
  - During this 3 ½ month period, proposers could attend a pre-proposal conference and submit written questions.
  - Staff answered over 750 questions via addenda, many of which were legal in nature.
  - Proposers also had the right during this period to protest any language in the RFP or the answers to any question if they felt that the language was unclear or ambiguous, but none did.
- **RESPONSIVENESS**
  - SFRTA received six proposals.
  - After reviewing the proposals and consulting with the agency’s attorneys and myself, SFRTA’s Procurement Director, Chris Bross,

determined that 5 of the 6 had materially and significantly conditioned their proposals, specifically their price, and that they were, therefore, non-responsive and should be rejected.

- Mr. Bross made this decision based on the requirements in the RFP and his 25 years of experience in both federal and local procurements. These 5 proposals were not rejected for mere technicalities, but for substantive changes to the contract provisions in violation of the RFP's instructions.
- Proposers were cautioned 3 times in writing in the RFP and once orally not to condition their price and instead to submit their best offer as SFRTA reserved the right to award the contract based on what they submitted.
- Instead 5 of the proposers chose to submit pages with their price proposals that were labeled for example, "Proposal Exceptions," "Exceptions to the RFP," and "Pricing Assumptions."
- In these extraneous pages, the proposers stated that certain provisions of the RFP were "not acceptable", or that their prices did not include the cost of certain requirements in the RFP or that their price "assumed" certain facts that contradicted the clear meaning of the RFP.
- One of the most significant conditions, made by several of the proposers, was that they assumed that their subcontractors would be covered by the \$295 million liability insurance program offered by SFRTA to the prime contractor.

- All this even though the RFP and answers in the addenda clearly stated that subcontractors were not covered by this liability insurance.
- The reason we cannot do this is because FDOT, who administers the insurance program for the South Florida Rail Corridor, does not provide coverage for subcontractors.
- To reiterate - these proposals were not rejected for mere technicalities; they were rejected because there were real financial consequences to the provisions that they refused to accept and include in their pricing.
- These were changes that attempted to shift the risk and cost of these services to SFRTA and its funding partners, including the State, which ultimately means the taxpayers.
- **PRICE**
  - Despite being only 20% of a proposer's score, concerns have been raised because the other proposers' prices were lower than Herzog's.
  - Prior to the submittal of proposals, an independent engineering firm prepared a detailed cost estimate for all of the services.
  - Herzog's price was about \$28 million less than that estimate over the 10-year contract term, and only about 7% more than two of the other proposers.
  - By accepting Herzog's non-conditioned price, the agency has a firm understanding and expectation as to the cost of the services and eliminates potential future change orders.

- Again, the non-responsive proposers tried to shift liability to the agency (and therefore, the taxpayer) by refusing to accept or price significant provisions of the RFP which could cost the public more money in the future.
- **LAWSUIT**
  - Subsequent to learning that they had been deemed non-responsive, 3 of the proposers (Transdev, Bombardier and First Transit) sued SFRTA and sought a temporary injunction to stop the process.
  - The court ruled in SFRTA's favor after conducting a 4 ½ hour hearing.
  - The Judge agreed with Mr. Bross that the proposals were conditioned and therefore, nonresponsive.
  - Most importantly, the Judge concluded that all delays to this award harm the public by reducing the mobilization time which is necessary for the safety of the service and its passengers.
- **TIMING**
  - While most of my discussion so far has related to the issues surrounding the procurement and the proposals, there is another significant factor here and that is timing.
  - The agency needs to provide a mobilization period to the new contractor before it will take over the services. The industry told us they needed 6 months, and we are now at 4 1/2 months before the current contracts expire.

- To delay this transition any longer and re-procure these services in some fashion would delay the transition and force the agency to negotiate extensions of its existing contracts.
- Three of the proposers are our existing contractors, and they have offered to extend their contracts at the same cost if we re-procure these services.

There are a number of problems with re-procuring.

- First, just because we re-procure doesn't mean there won't be additional time delays due to new protests by those unsuccessful proposers.
- Second, the current contracts do not address the new Downtown Miami Link service SFRTA will be starting this year, so that cost would have to be negotiated with the current contractors which could take additional time.

- **CONCLUSION**

SFRTA's actions in this matter have been affirmed by a Judge, who concluded the proposals should be rejected and award of the contract should not be delayed and by an independent engineering firm whose cost estimate was in excess of the successful proposer's price for performing the services.

In conclusion, SFRTA not only stands by the award, but is confident that we acted appropriately and in the public's best interest in selecting a highly qualified contractor to perform the services.

I appreciate the opportunity to provide you with my statement today and now make myself available for any questions you may have.

IN THE CIRCUIT COURT FOR THE  
17TH JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

TRANSDEV SERVICES, INC, a Maryland  
corporation,  
Plaintiff,

CASE NO: 17-000877 CACE (21)  
JUDGE: BARBARA MCCARTHY

BOMBARDIER MASS TRANSIT  
CORPORATION, intervenor,

and

FIRST TRANSIT, INC., intervenor,

vs.

SOUTH FLORIDA REGIONAL  
TRANSPORTATION AUTHORITY, a State  
Agency,  
Defendant.

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**ORDER ON SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY'S  
MOTION TO DISSOLVE EX PARTE PRELIMINARY INJUNCTION**

THIS CAUSE came before the court on Defendant South Florida Regional Transportation Authority's Motion to Dissolve Ex Parte Preliminary Injunction. The court, having reviewed the motion, evidence and testimony presented, the record, and being otherwise duly advised in the premises, finds and decides as follows:

This is a pre-award bid protest brought by Plaintiff Transdev Services, Inc. ("Transdev") challenging its elimination from a competition for a public contract pursuant to Request for Proposals No. 16-010 for Operating Services (the "RFP") issued by Defendant South Florida Regional Transportation Authority ("SFRTA"). On January 17, 2017, the court granted ex parte Transdev's Motion and Memorandum of Law in Support of the Verified Complaint for Injunctive and Relief ("Motion for Preliminary Injunction"), which temporarily enjoined the rejection of



Transdev's proposal. Bombardier Mass Transit Corporation and First Transit, Inc. have intervened without objection and join Transdev's request for relief. On January 19, 2017, SFRTA filed its Motion to Dissolve Ex Parte Preliminary Injunction and Memorandum in Opposition to Motion for Preliminary Injunction ("Motion to Dissolve"). On January 20, 2017, the court held an evidentiary hearing, at which the court heard the testimony of Richard Alexander, Transdev, and Christopher Bross, SFRTA, as well as entering exhibits into evidence. After considering the arguments put forth by Transdev and SFRTA, reviewing the record and evidence presented, and weighing the credibility of all witnesses who testified, the Court finds that a preliminary injunction is not appropriate

**I. Background**

***A. The Procurement***

SFRTA currently has four contractors responsible for the services included in the RFP: maintenance of equipment (Bombardier), train operations (Transdev), station maintenance (Meridian), and dispatching services (Amtrak). These are all essential services required by SFRTA to operate its Tri-Rail commuter rail passenger service. The four contracts are all due to expire on June 30, 2017. The purpose of this procurement is to bundle these services into one contract whereby the new contractor would be ready to assume responsibility for all four services on July 1, 2017. RFP, at p. 7.<sup>1</sup>

SFRTA only conducts competitive procurements pursuant to its own Procurement Policy.<sup>2</sup> Thus, the RFP provided: "SFRTA, at its sole and absolute discretion, reserves the right to reject

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<sup>1</sup> Pagination per Bates numbers in lower right corner.

<sup>2</sup> SFRTA is not an executive branch agency subject to the provisions of Ch. 287, Fla. Stat., with the exception of § 287.055, Fla. Stat. which contains a separate definition for "agency" than the general definition that applies to the other provisions of Ch. 287. See § 287.012(1), Fla. Stat. Also, SFRTA is not an executive branch agency as enumerated in § 20.04, Fla. Stat.

any or all proposals and reserves the right the right to make an award based solely on the written proposals as submitted.” RFP, at p. 9. The RFP also provides:

1.10.2 Responsiveness of Proposals and Disqualification. All Proposals must be in writing. A responsive Proposal is an offer which complies with and conforms to the requirements of the RFP. Proposals which, in the opinion of SFRTA, are non-responsive will be rejected. Proposals may be rejected if found to be conditional, irregular or not in conformance with the requirements and instructions contained herein. A Proposal may be found to be irregular or non-responsive for reasons including failure to utilize or complete forms, conditional Proposals, incomplete Proposals, indefinite or ambiguous Proposals and improper and/or undated signatures. All Proposals must be typed.

SFRTA Procurement staff shall perform an initial responsiveness determination of Proposals received.

1.10.3 Conditions Causing Disqualification of Proposers. Other conditions, which may cause rejection of Proposals, include, but are not limited to, a Proposer submitting more than one Proposal, qualified or contingent proposals, evidence of collusion among Proposers, obvious lack of experience or expertise to perform the Work, failure to perform or meet financial obligations for previous contracts, or evidence that a Proposer has a financial interest in another Proposer for the Work under this RFP.

RFP, at pp. 9-10 (emphases added).

In addition, in this procurement, the SFRTA warned proposers during the pre-proposal conference not to condition their bids (and this was also included in the minutes of this meeting which were made a part of Addendum No. 3):

SFRTA reserves the right to reject any or all proposals, including proposals that are conditioned. If there are any questions regarding the RFP terms and conditions, please submit those during the question and answer period.

*Proposals submitted with conditions are subject to rejection.*<sup>3</sup> (emphasis added)

Prior to submitting their proposals, potential proposers were given an opportunity to submit written question to obtain clarifications to the RFP. In response to the questions received from the proposers, SFRTA amended the RFP nine times. In addition, each proposer was afforded the ability to protest the terms of the RFP and each addendum within 72 hours of its issuance. None of the proposers protested the terms of the RFP or any of the addenda.

**1.16 Protest Procedures**

(2) Filing a Protest: Only an Interested Party may file a Protest regarding the Solicitation Documents issued by SFRTA by filing a written Notice of Protest with SFRTA within seventy-two (72) hours from the availability date of the Solicitation Documents set forth in the advertisement posted on SFRTA's website, excluding Saturdays, Sundays and legal holidays observed by SFRTA *or from the date of the issuance of any Addenda if specifically relating to the content of the Addendum. Failure to file a Notice of Protest within the provided timeframes, for any reason whatsoever, shall constitute a complete and absolute waiver of Protest rights.*

RFP at p. 10 (emphasis added)

Six firms submitted proposals in response to the RFP: National Railroad Passenger Corp. ("Amtrak"); Bombardier Mass Transit Corp. ("Bombardier"); First Transit, Inc. ("First Transit"); Herzog Transit Services, Inc. ("Herzog"); SNC-Lavalin Transit LLC ("SNC"); and Transdev. Despite the cautionary statements in the RFP against conditioning proposals, Transdev attached to its Price Proposal a document titled "Pricing Assumptions." Interveners Bombardier and First

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<sup>3</sup> RFP No. 16-010 "OPERATING SERVICES," SUMMARY OF PRE-PROPOSAL CONFERENCE/INDUSTRY FORUM MINUTES, September 29, 2016 (issued with Addendum Number 3, Exhibit 7).

Transit included similar pricing assumptions in their proposals. This informed SFRTA that Transdev's proposed prices were based on three assumptions. SFRTA ultimately determined that several of them were inconsistent with RFP and rejected Transdev's, Bombardier's, and First Transit's proposals as non-responsive.

***B. Insurance***

Section 2.9 of the RFP/General Terms and Conditions, entitled, "Insurance" outlined the general commercial liability requirements of the Contractor. Section 2.10 entitled "Insurance Miscellaneous" addressed miscellaneous insurance issues. Section 2.11, entitled, "Liability Protection" addresses the two liability insurance programs that are in effect for services performed on the South Florida Rail Corridor and the Downtown Miami Link. SFRTA operates on the 72-mile South Florida Rail Corridor ("SFRC"), owned by the State of Florida, pursuant to an Operating Agreement between SFRTA and the Florida Department of Transportation ("FDOT") (the "Operating Agreement"). SFRTA will begin operations on the Downtown Miami Link service this year on 8.5 miles of rail corridor owned by both Florida East Coast Railway ("FECR") and All Abroad Florida ("AAF"), referred to herein as the "FECR/AAF Corridor", pursuant to an agreement with AAF and FECR (the "Downtown Miami Link Agreement"). Under the Operating Agreement, FDOT provides SFRTA and its contractors with a liability insurance program, which affords up to \$295 million in coverage for liabilities for loss, damage, injury or death arising out of or connected with services provided on the South Florida Rail Corridor under the Contract Documents ("FDOT/SFRC insurance program"). Under this program, FDOT covers only those contractors in privity with SFRTA, not their affiliates or subcontractors. SFRTA will be providing a similar insurance program, with the same insurance limits and restrictions regarding

subcontractors and affiliates, for the Downtown Miami Link service on the FECR/AAF Corridor (the "SFRTA Downtown Miami Link insurance program").

During the procurement, several addenda were issued with questions and answers relating to insurance:

**Questions and Answers 5:**

**Question 70:** Is SFRTA's \$295 million policy written to cover 1) the Contractor's negligent operation of a train, 2) the Contractor's gross negligence and 3) punitive damages assessed against the Contractor?

**Answer:** The FDOT/SFRC insurance program, and the SFRTA/Downtown Miami Link insurance program, including the self-insurance portion, will both cover the Contractor for negligence. The self-insurance amount under the FDOT/SFRC insurance program is \$10 million and is \$5 million under the SFRTA/Downtown Miami Link insurance. The total coverage amount for both programs is \$295,000,000, but the excess policies cover the remaining amount, less the self-insurance portion. Only the excess insurance under both programs will cover gross negligence and punitive damages.

**Question 71:** a) In view of FDOT's/SFRTA's sovereign immunity and questionable ability to indemnify, what real protection would SFRTA's self-insurance provide to the Contractor if SFRTA's \$295 million insurance were cancelled? b) What are the components (e.g., what assets comprise) the State/SFRTA's "self-insurance retention fund" other than the \$295 million insurance policy?

Answer: SFRTA does not agree to indemnify the Contractor. See 2.11.1.A. On the SFRC, the insurance program is provided pursuant to authorization in Section 341.302(17), F.S. The self-insurance portion of that coverage is also provided via the same statutory authority with a \$10 million self-insurance retention fund provided by FDOT.

For the Downtown Miami Link service, SFRTA will be maintaining a self-insurance retention account of \$5 million and excess liability insurance coverage for a total of \$295 million in coverage.

However unlikely it may be that these insurance programs were cancelled, then SFRTA would be unable to operate and would have to terminate its contract with the Contractor.

RFP Q&A 5, Questions and Answers 70 and 71.

#### Question and Answers 6

**Question 64:** (a) Are maintenance of equipment contractors and station management contractors “covered” by the agency provision in the sovereign immunity statute (Fla. Stat. 768.28(10)(d))? If so, could you please provide an Attorney General opinion to that effect?  
(b) Would a station maintenance subcontractor and any “permitted MOE subcontractors” be considered agents of the Contractor for purposes of Fla. Stat. 768.28(10)(d)?

Revised Answer: (a) It is SFRTA’s interpretation that maintenance of equipment contractors are “operators” pursuant to Fla. Stat.

768.28(10)(d) and station maintenance subcontractors and any “permitted MOE subcontractors” are “rail facility maintenance providers” under the statute. There is no Attorney General opinion to that effect.  
(b) See answer to (a) above.

RFP Q&A 6, Question and Answer 64.

### Question and Answers 18

**Question 34:**        **Would the SFRTA allow the Railroad Liability program and Self-Insurance Retention Account to also cover subcontractors hired by the Contractor to perform station maintenance?  
Will the Railroad Liability program and Self-insurance Retention Account cover Contractor’s affiliated companies that are utilized to satisfy the Railroad Retirement requirements of Section 3.0 Labor Relations and Employment?**

**Please note that the use of affiliated companies is specifically contemplated in Section 3.0.**

**Answer:**            See Addendum No. 7 page GTC – 5 of 18.  
No.

RFP Q&A 18, Question and Answer 34.

Under the title “Railroad General Liability,” Transdev’s Price Proposal included the following assumption:

*Transdev has not included in its pricing the placement of Railroad General Liability Insurance or corresponding indemnification obligations of its affiliates or subcontractors for the Project **on the understanding that each will be protected by the sovereign immunity protections of FS 768.28(10) (d) and the Liability***

**Protections of Section 2.11 of the General Terms and Conditions.**

The Prime Contractor, which we understand will be protected in accordance with Section 2.11, will be the only entity with the financial capacity to place a Railroad General Liability Policy and impart additional insured benefit to its affiliates and subcontractors, but doing so would be duplicative of insurance coverages and contractual protections already provided by the SFRTA. This interpretation is based on a reasonable construction of Question and Answer No. 6, Question 64; and Question and Answer No. 5, Questions 70 and 71. (*emphasis added*).

SFRTA determined that if it had accepted Transdev's Price Proposal with its Pricing Assumptions and Transdev was awarded the contract, it would have allowed Transdev to later claim that SFRTA accepted its assumption "that each [of its affiliates and subcontractors] will be protected by ... the Liability Protections of Section 2.11 of the General Terms and Conditions." However, as stated in the RFP and the Questions and Answers, SFRTA will not provide, and in fact cannot provide, any liability protection to a proposer's affiliates and subcontractors. The FDOT/SFRC insurance program is controlled by FDOT. FDOT will not allow SFRTA to insure any affiliates or subcontractors of any of SFRTA's contractors. The SFRTA/Downtown Miami Link insurance program uses the same limits and restrictions. SFRTA would then be placed in a position of breaching its contract with Transdev by refusing to provide liability protection to Transdev's affiliates and subcontractors. If SFRTA provided the liability coverage to Transdev's affiliates and subcontractors at SFRTA's cost, it would be providing a benefit to Transdev that would not have been enjoyed by other proposers that agreed to the terms of the RFP without that condition because it would have relieved Transdev of a cost that they would have built into their line item prices.

As made clear in RFP Q&A 18, Question and Answer 34, Transdev's assumption that the Liability Protection program under Section 2.11 is applicable to its affiliates and subcontractors is incorrect. Instead of accepting SFRTA's answer or protesting SFRTA's response, it chose to



rewrite the RFP through its assumptions to make SFRTA responsible for providing insurance to its affiliates and subcontractors after SFRTA clearly indicated it was not providing liability insurance coverage to its affiliates or subcontractors.

**C. *Physical Property Insurance***

As to Physical Property Insurance, Transdev's proposal included the following assumption:

Transdev has not included in its pricing the placement of Property Insurance for the system assets or Physical Damage coverage for the equipment. This assumption is based on the facts that (1) the Addendum 9 eliminated the previously proposed property-loss regime and distributed the SFRTAs property policies for review, but did not contain relevant information (property schedules, values, or loss runs) necessary to obtain accurate quotes, and (2) the SFRTA will waive subrogation against Transdev in accordance with General Terms and Conditions 2.11 (H) and (I), thereby making any insurance placed by Transdev duplicative. Transdev has likewise not factored in the cost of any deductible responsibility under insurance provided by SFRTA, but could do so with loss run information.

**Exhibit 5.**

Transdev once again cites information, or lack of information, contained in Addendum No. 9 as a basis of inserting assumptions in its Price Proposal. As noted above, Transdev had the option of protesting the content of any of the addenda, but elected not to do so. Further, as a result of this lack of information, Transdev complains that it could not "obtain accurate quotes" and that it "has likewise not factored in the cost of any deductible responsibility under insurance provided by SFRTA". These assumptions may affect Transdev's performance obligations or costs during its performance of the potentially ten year contract (seven years plus one, three year option period) that provides it with a competitive advantage over any other proposer that did not caveat its price proposal with similar assumptions or conditions.

***D. Diesel Multiple Units***

As to DMUs, Transdev's proposal included the following assumption:

Transdev has included pricing for the maintenance of the DMUs which is supported by almost no information concerning the operational capacity of the fleet, but based on the assumption that the fleet has received regular preventive maintenance (which may not be correct) and upon a very limited opportunity to visually inspect the fleet. To prevent implementation of what may be a substantially inadequate or excessive price for this work, Transdev proposes that a qualified third party equipment maintenance firm be engaged as soon as possible after contract award to conduct an objective comprehensive assessment (off-site at a facility that can accommodate the necessary requirements for a comprehensive inspection) of the condition of the DMU fleet, and that such assessment be used to adjust Transdev's proposed DMU pricing, upwards or downwards, depending on the outcome of this assessment. We would be happy to discuss this proposal (including the responsibility for the cost of conducting the assessment, and logistics) with the SFRTA during an interview or negotiation stage of the RFP process

**Exhibit 5.**

The RFP included the maintenance of diesel multiple units ("DMU"s) and required proposers to price the maintenance of DMUs as a separate line item. RFP, at pp. 78, 317. In its Pricing Assumptions Transdev stated that it made assumptions regarding the condition of SFRTA's DMUs in developing its price. It also stated that Transdev "proposes that a qualified third party equipment maintenance firm be engaged as soon as possible after contract award to conduct an objective comprehensive assessment ... of the condition of the DMU fleet, and that such assessment be used to adjust Transdev's DMU pricing, upwards or downwards, depending on the outcome of the assessment." It also proposes discussing the matter with "SFRTA during an interview or negotiation stage of the RFP process."

Transdev and the other proposers were provided an opportunity to inspect SFRTA's facilities and rolling stock, including the DMUs, during the solicitation and were required by the

RFP to include the cost of maintenance of the DMUs in their Price Proposals. As to the DMUs, SFRTA determined that if it had accepted Transdev's proposal with its assumptions and awarded the contract to Transdev, Transdev could take the position that SFRTA accepted Transdev's assumptions and had committed to having a comprehensive assessment performed, presumably at SFRTA's cost, and to an adjustment in Transdev's price after the contract was issued. SFRTA has no way of knowing whether Transdev underpriced the DMU work in anticipation of SFRTA agreeing to this proposal, which would have allowed an increase in Transdev's price after the contract was awarded.

*E. SFRTA's Rejection Of Transdev's Proposal, The Ensuing Protest, And This Lawsuit*

By including its Pricing Assumptions, Transdev submitted a proposal that SFRTA determined was "conditional, irregular or not in conformance with the requirements and instructions" in violation of RFP Section 1.10.2. Indeed, Transdev admitted as much in the introduction to its Pricing Assumptions when it wrote: "If any of our assumptions are incorrect, we hope to have the opportunity to discuss and correct them during an interview or during negotiations for this contract."

Transdev now claims that its pricing assumptions were not "conditions" or "exceptions" to the RFP, but merely informational statements to be discussed during negotiations. But SFRTA made no commitment to conduct interviews or negotiate terms with the proposers (somethings referred to as a BAFO or Best and Final Offer process). Therefore, to keep this procurement fair to all other proposers, SFRTA determined that the assumptions rendered Transdev's proposal non-responsive. Indeed, it is SFRTA's long-standing practice to not engage in interviews or negotiations with the proposers in an RFP process. By placing these assumptions in its proposal,

demonstrates that Transdev's proposal is not ready for an award, and gives it a competitive advantage not available to the other offers.

Transdev had its opportunity to obtain clarifications and changes to the RFP during the procurement through the question and answer process, and SFRTA received and answered more than 750 questions and issued nine addenda containing numerous clarifications and some changes to the RFP. Transdev also had an opportunity to submit a proposal that just accepted the terms of the RFP without comment. Instead, Transdev made a business decision to submit a proposal to SFRTA stating that it had not built certain RFP-required items into its pricing because of its interpretation of the RFP, and that it would discuss these assumptions during negotiations if they were wrong. Regardless of the label Transdev chose to use, SFRTA need not, and does not, accept proposals that are conditioned in this manner.

On January 11, 2017, Transdev was notified that its proposal had been rejected as non-responsive. On January 13, 2017, Transdev filed a Notice of Protest pursuant to the SFRTA's Procurement Policy (which were included in the RFP, at pp. 16-17) which challenged the rejection of its proposal as non-responsive. These policies provide:

Only an Interested Party may file a Protest regarding the Solicitation Documents issued by SFRTA by filing a written Notice of Protest with SFRTA within seventy-two (72) hours from the availability date of the Solicitation Documents set forth in the advertisement posted on SFRTA's website, excluding Saturdays, Sundays and legal holidays observed by SFRTA or from the date of the issuance of any addenda if specifically relating to the content of the addendum. Failure to file a Notice of Protest within the provided timeframes, for any reason whatsoever, shall constitute a complete and absolute waiver of Protest rights.

With respect to any Protest of Contract award, the Notice of Protest shall be filed *within the Protest Period*.

SFRTA Procurement Policy, Ch. 6, Section 2 (emphasis added). The Procurement Policy also provides:

“Protest Period” means three (3) business days following the date of the posting of the Intent of Contract Award on SFRTA’s website or the date of the issuance of an addendum as to the content of such addendum or the date of issuance of the Solicitation. A “business day” means normal business hours of 9 a.m. to 5 p.m. local time.

Procurement Policy, Ch. 1, Section 2(t). Furthermore, the Procurement Policy’s protest provisions are all reproduced in the RFP itself. RFP, at pp. 16-17. As SFRTA has not yet posted a notice of intent to award to anyone, it dismissed Transdev’s protest as premature and advised it that it could file again once a notice of intent to award was posted.

Rather than wait for an opportunity to file another administrative protest, on January 16, 2017, Transdev filed its Complaint and Motion for Preliminary Injunction, and its complaint was verified by Ken Westbrook “to the best of [his] knowledge and belief.” On January 17, 2017, the Court entered an *ex parte* preliminary injunction which states in its entirety:

THIS CAUSE came before the Court on January 17, 2017 on Plaintiff’s Verified Complaint for Injunctive and Related Relief, and the Court having *ex parte*, reviewed the file, and being otherwise fully advised, it is ORDERED AND ADJUDGED as follows: Granted. SFRTA is enjoined from rejecting Plaintiff’s proposal and from enjoining the evaluating of other proposals until this Court can hold a hearing.

On January 20, 2017, the court held an evidentiary hearing, and heard testimony from Richard Alexander, Transdev’s Executive Vice President for business development, and Chris Bross, Transdev’s Procurement Director. For the reasons that follow, this injunction shall be dissolved and this action dismissed.

**II. Transdev's Challenges To SFRTA's Protest Process Are Untimely**

At the hearing, Transdev essentially argued that SFRTA's bid protest procedures are meaningless because they neither provide for an automatic stay of award, nor guarantee that a successful protester will be awarded a contract. However, both SFRTA's Procurement Policy and the RFP clearly both clearly state that an award will not be automatically stayed in the event of a protest:

Continuation of Performance: [In the event of a Protest, t]he Procurement Director shall determine whether SFRTA will proceed with Contract Award or, if the Contract has been awarded, whether to suspend performance of the Contract, pending a decision on the Protest. **SFRTA has no obligation, however, to suspend award or performance of the Contract in the event of a Protest.**

RFP, at p. 17; SFRTA Procurement Policy, Ch. 6, Section 4 (emphasis added).

The RFP also make quite clear that a successful protester has absolutely no guarantee that it will be awarded a contract:

If SFRTA determines that a Protest is valid, the Executive Director, at his or her sole discretion, may: (i) Direct the Procurement Director to issue a new or amended Solicitation; (ii) award the Contract or recommend that the Board award the Contract, if the Contract amount exceeds the Executive Director's approval authority; (iii) terminate or suspend performance of the Contract that is the subject of the Protest; or (iv) take any other action permitted by law to promote compliance with SFRTA policies and applicable law.

RFP, at p. 17; SFRTA Procurement Policy, Ch. 6, Section 5.

As a matter of law, Transdev waived its right to challenge the lack of an automatic stay or the potential remedies available under the Procurement Policy and the RFP by not filing a challenge to the specifications of the RFP or the addenda. SFRTA Procurement Policy, Ch. 6, Section 2; RFP, at p. 16. *Optiplan, Inc. v. School Bd. of Broward County*, 710 So. 2d 569, 572 (Fla. 4th DCA 1998) (contractor waived right to challenge constitutionality of specifications by

waiting to raise challenge until after submitting a proposal). Even if Transdev had not legally waived its challenges, as a matter of equity this Court could not allow them. Transdev was more than willing to play by these rules when it thought it was going to win by them, and will not be allowed to complain about them now that it knows it has lost.

**III. Transdev Has Failed To Show Any Entitlement To A Preliminary Injunction**

- A. A preliminary injunction may not stand unless the plaintiff proves: (1) that it is substantially likely to prevail on the merits; (2) that it will be irreparably harmed if an injunction is not granted because there is no adequate remedy at law; and (3) an injunction will serve the public interest. *Minty v. Meister Financial Group, Inc.*, 97 So. 3d 926, 929-30 (Fla. 4th DCA 2012) (reversing order denying of motion to dissolve preliminary injunction which failed to list facts showing plaintiff proved entitlement to injunction); *Jouvence Center for Advanced Health, LLC v. Jouvence Rejuvenation Centers, LLC*, 14 So. 3d 1097, 1099 (Fla. 4th DCA 2009) (same).

A public body in the state of Florida has no common law obligation to procure goods or services competitively. *Fla. Dep't of Transp. v. Groves-Watkins Constructors*, 530 So. 2d 912, 913 (Fla. 1988). When an agency does competitively procure goods or services, it "has wide discretion in soliciting and accepting bids for public improvements and its decision, when based on an honest exercise of this discretion, will not be overturned by a court even if it may appear erroneous and even if reasonable persons may disagree." *Liberty Cnty. v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982). Therefore, a firm that has been eliminated from a competition fails to demonstrate a substantial likelihood of successfully challenging the elimination unless it shows the agency's actions were arbitrary and capricious, illegal, fraudulent, or the result of misconduct. *Miami-Dade Cnty. v. Church & Tower, Inc.*, 715 So. 2d 1084, 1088-92 (Fla. 3d DCA 1998) (reversing entry of preliminary injunction where plaintiff had failed to show its elimination from competition was arbitrary and capricious, illegal, fraudulent, or the result of misconduct). In the instant action, there were no allegations or evidence presented that SFRTA acted illegally, fraudulently, or engaged in misconduct.

Under Florida law, a proposal contains a material exception to the terms of a solicitation and cannot form the basis of an award if it contains an exception that affects price. *Harry Pepper & Assocs., Inc. v. City of Cape Coral*, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1977) (reversing decision of trial court to allow city to award a contract to a bidder who had submitted a non-responsive proposal). Transdev argues that SFRTA's rejection of its proposal must have been arbitrary and capricious because its proposal contained only "assumptions" and no "exceptions" or "conditions." Transdev also argues that its assumption regarding insurance could not have affected price because offerors were not submitting line item prices for insurance. Both arguments are without merit.

In *Kratos Defense & Rocket Support Services, Inc.*, B-413143.2, 2016 WL 4524228, at \*3-4 (Comp. Gen. Aug. 23, 2016), the Navy issued an RFP for systems engineering, design, and technical direction agent engineering, configuration management, and logistics support services. The RFP specifically provided that at least 90% of the work had to be performed at government facilities requiring security clearance, and that only 10% of the work could be performed at an alternative site. The RFP also specifically provided that no government work space would be provided by the government at its facilities, and did not identify any equipment that the government would provide to the selected contractor. The Navy selected URS for award even though its proposal stated: "For Government/Client site rates, URS assumes that the Government/Client will provide working space, computers and telephones for the proposed staff at no cost to URS in order to use the Government/Client site rates." Kratos protested at the United States Government Accountability Office, asserting that by building this assumption into its pricing URS took exception to the RFP's requirement offerors provide their own workspace and equipment at government sites. The GAO's Comptroller General, noting material terms of a solicitation are



those which affect the price, quantity, quality, or delivery of the goods or services being provided, agreed and sustained the protest.<sup>4</sup>

Here, Transdev's proposal stated that its prices were based on the assumption that it did not have to purchase certain insurance policies because such coverage would be provided by SFRTA, and also stated Transdev looked forward to clarifying the matter with SFRTA during negotiations. Naturally, and as Mr. Alexander testified, the numeric price assumption rests on the secondary assumption that SFRTA intended to conduct negotiations with offerors and allow them to submit revised proposals. As it turns out, both assumptions were wrong. RFP, at p. 9. ("SFRTA [. . .] reserves the right the right to make an award based solely on the written proposals as submitted.").

Although proposers were not given separate line item price for insurance, SFRTA could reasonably presume that proposers, including Transdev, built the cost of insurance into their line item prices. Moreover, SFRTA reasonably found that Transdev's price assumption regarding liability coverage affects its price, because, as stated in the price assumption itself, Transdev's based its price on the assumption it would receive protection for its subcontractors and affiliates under the Liability Programs offered by SFRTA, despite language to the contrary in the RFP and addenda. SFRTA, therefore, reasonably found Transdev was caveating its offered line item prices on the validity of its price assumption. From SFRTA's point of view, if it had accepted Transdev's

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<sup>4</sup> The GAO hears more than 90% of all bid protests relating to federal contracts, and its decisions are generally accorded great respect by the judiciary because of its expertise. *Centech Grp., Inc. v. U.S.*, 554 F.3d 1029, 1038 n.4 (Fed. Cir. 2009) ("While not binding authority on this court, the decisions of the Comptroller General are instructive in the area of bid protests."); *Supreme Foodservice GmbH v. U.S.*, 112 Fed. Cl. 402, 434 n.22 (2013) ("Given the diverse factual scenarios that appear before GAO, its decisions traditionally have been accorded a high degree of deference by the courts, particularly those involving bid protests. While GAO decisions are not binding upon this court, they may be considered as expert opinion, which the court should prudently consider.") (internal quotations omitted).

proposal with this assumption it would have had to provide Transdev either: (1) an opportunity to revise its price that SFRTA was not going to give to other proposers; or (2) free insurance coverage SFRTA was not going to give to other proposers. Either one would have been unlawful. *Harry Pepper*, 352 So. 2d at 1192-93 (“The test for measuring whether a deviation in a bid is sufficiently material to destroy its competitive character is whether the variation affects the amount of the bid by giving the bidder an advantage or benefit not enjoyed by the other bidders”); *Kratos*, 2016 WL 4524228, at \*3-4. Transdev has, therefore, failed to show that the rejection of its proposal was arbitrary and capricious, fraudulent, illegal, or the result of misconduct. *Church & Tower.*, 715 So. 2d 1at 1089-90 (“while C & T’s bid protest shows substantial disagreement with the action of the commission, it falls far short of a showing of arbitrary or capricious action, much less illegality, fraud, oppression or misconduct”). In the same manner, SFRTA reasonably found that Transdev’s line item prices for DMUs were caveated on the validity of its assumptions, and rejecting the proposal on that basis was not arbitrary and capricious.

Mr. Christopher C. Bross is the Director of Procurement for SFRTA. He has more than 20 years of experience in government procurement both with the federal government and with SFRTA. During that time, in addition to his experience, he has received training in procurement processes. Under the RFP, it was his obligation to make an initial review of the responsiveness of the proposals. Upon reviewing the Pricing Assumptions of Transdev and the other proposers (whether referred to as “Costing Assumption” in the case of Bombardier, or “Points of Discussion” as referred to by First Transit) that were included in the price proposals, technical proposals, or both, he determined that they conditioned the proposals. While the RFP gives him the discretion to not reject all proposals that contain conditions, if such conditions render a proposal nonresponsive, he must reject the proposals. Mr. Bross reasonably concluded that the Pricing

Assumptions may affect the price of the proposal and would have the potential to give Plaintiff and Intervenor the ability to seek change orders during contract performance over the potential 10 year term of the contract. Further, even though the price proposals included declarations that they would provide all the services at the prices on the Price Proposal Form, such declarations were compromised by the inclusion of the Pricing Assumptions.

While the Court agrees with Mr. Bross's conclusion that the Pricing Assumptions conditioned the proposals and made them non-responsive, even if it did not, Plaintiff and Intervenor still have not established a likelihood of success on the merits. Mr. Bross's responsiveness determination was based on an honest exercise of discretion. He reasonably explained the factors he considered in making his decision, and he consulted with SFRTA legal counsel to assist him in making such decision. The RFP gave him the authority to reject conditional proposals and required him to reject nonresponsive proposals. Transdev understood these terms. Indeed, in a prior procurement with SFRTA, it had placed similar conditions on its proposal, and SFRTA had rejected it as nonresponsive. Thus, even if the Court did not agree with Mr. Bross's determination such determination was based on an honest exercise of discretion, and such will not be overturned by a court even if it may appear erroneous and even if reasonable persons may disagree. *Liberty Cnty. v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982).

The Fourth DCA has made clear "[i]rreparable injury will not be found if money damages are available as a remedy." *S. Fla. Limousines, Inc. v. Broward Cnty. Aviation Dep't*, 512 So. 2d 1059, 1061-62 (Fla. 4th DCA 1987) (affirming denial of injunction: "The appellant contends it suffered irreparable harm from the contract being illegally awarded to Yellow Limousine [. . .] Mere loss of business because of a competitor will not suffice to demonstrate irreparable injury.").

Furthermore, a protester who establishes that an agency wrongfully awarded a contract to a competitor may recover its bid preparation costs as damages. *Miami-Dade Cnty. Sch. Brd. v. J. Ruiz Sch. Bus Service, Inc.*, 874 So. 2d 59, 64-65 (Fla. 3d DCA 2004). Thus, there is no showing of irreparable harm.

***B. Transdev Has Not Proven That An Injunction Would Serve The Public Interest***

Transdev has failed to prove that an injunction would serve the public interest. *Minty*, 97 So. 3d at 929-30; *Jouvence*, 14 So. 3d at 1099. It is not in the public interest to permit Transdev or others who conditioned their proposals to remain in the procurement where at least one other proposer did not condition its proposal. Such would compromise the integrity of the procurement process, give the proposers who submitted conditional proposals an unfair competitive advantage, and prevent a true apples-to-apples comparison of price. SFRTA advised proposers that SFRTA could make an award on initial proposals so the initial proposals should include their best terms as to technical qualifications and price. Indeed it is SFRTA's standard practice to make award on the initial proposals rather than seek best and final offers from responsive offers because such practice ensures that SFRTA gets the most competitive pricing initially and does not have to delay contract award due to potentially lengthy negotiations. As such, in the present case, even though only one responsive proposer remains, SFRTA has received adequate competition and may proceed with the procurement.

Further, an injunction is not in the public interest because an injunction could jeopardize the timely award of this important contract, which could in turn jeopardize the SFRTA/Tri-Rail commuter rail service, including the future Downtown Miami Link Service scheduled to begin in 2017. SFRTA needs to have this contract in place by July 1, 2017, and intended on being able to give the awardee a mobilization lead time of 6 months. However, this procurement is now a month

behind schedule, and only 5 months can be provided. Furthermore, because these services are currently being provided by 4 different contractors and only for the South Florida Rail Corridor, SFRTA may be unable to negotiate bridge contracts for these services. Therefore, all delays reduce the necessary mobilization time of the awardee and its time to prepare to perform these services, which are necessary for the safety of the SFRTA/Tri-Rail commuter rail service and its passengers. Therefore, an injunction harms the public interest and should not be entered.

Accordingly, it is hereby:

ORDERED that Defendant South Florida Regional Transportation Authority's Motion to Dissolve Ex Parte Preliminary Injunction is GRANTED and the January 17, 2017 Ex Parte Order on Verified Complaint for Injunctive and Related Relief is DISSOLVED and VACATED. Plaintiff's request for temporary injunctive relief is DENIED.

IT IS FURTHER ORDERED that ruling is DEFERRED as to the issue of Defendant's entitlement to attorney's fees and costs pending a future hearing.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 23 day of January, 2017.

  
BARBARA MCCARTHY  
CIRCUIT COURT JUDGE

Copies to:  
Counsel of record.

# CourtSmart Tag Report

**Room:** EL 110

**Case No.:**

**Type:**

**Caption:** Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development **Judge:**

**Started:** 2/16/2017 9:00:40 AM

**Ends:** 2/16/2017 10:30:22 AM

**Length:** 01:29:43

9:00:46 AM Sen. Brandes (Chair)  
9:01:27 AM TAB 1 - Florida State University, Office of Urban and Regional Planning - Autonomous Vehicles and the Environment  
9:02:11 AM Dr. Tim Chapin, Interim Dean, College of Social Sciences and Public Policy, Florida State University  
9:08:17 AM Lindsay Stevens, Planner in Residence, Florida State University  
9:27:30 AM Sen. Passidomo  
9:28:56 AM L. Stevens  
9:30:17 AM Sen. Rader  
9:32:16 AM L. Stevens  
9:32:57 AM T. Chapin  
9:34:39 AM Sen. Gainer  
9:35:56 AM T. Chapin  
9:36:15 AM Sen. Gainer  
9:36:21 AM Sen. Powell  
9:37:15 AM L. Stevens  
9:39:00 AM Sen. Powell  
9:39:55 AM T. Chapin  
9:40:51 AM Sen. Powell  
9:41:16 AM T. Chapin  
9:41:42 AM TAB 3 - South Florida Regional Transportation Authority - Discussion on Authority's Operations  
9:42:31 AM Sen. Brandes  
9:43:58 AM Steven Abrams, Vice Chairman, South Florida Regional Transportation Authority  
9:45:15 AM Jack Stephens, Executive Director, South Florida Regional Transportation Authority Board of Directors  
9:52:17 AM Sen. Brandes  
9:52:29 AM J. Stephens  
10:05:18 AM Sen. Brandes  
10:05:29 AM J. Stephens  
10:05:41 AM Sen. Brandes  
10:05:47 AM J. Stephens  
10:06:11 AM Sen. Brandes  
10:06:20 AM J. Stephens  
10:06:55 AM Sen. Brandes  
10:07:07 AM J. Stephens  
10:07:24 AM Sen. Brandes  
10:07:35 AM J. Stephens  
10:08:21 AM Sen. Brandes  
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10:11:40 AM J. Stephens  
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10:19:03 AM Sen. Brandes  
10:19:15 AM J. Stephens  
10:19:37 AM Sen. Artilles  
10:20:49 AM J. Stephens  
10:20:54 AM Sen. Artilles  
10:21:03 AM J. Stephens  
10:21:21 AM Sen. Artilles  
10:21:27 AM J. Stephens  
10:21:59 AM Sen. Artilles  
10:22:05 AM J. Stephens  
10:22:29 AM Sen. Artilles  
10:22:36 AM J. Stephens  
10:22:59 AM Sen. Artilles  
10:23:11 AM J. Stephens  
10:23:25 AM Sen. Brandes  
10:23:54 AM J. Stephens  
10:25:16 AM Sen. Brandes  
10:25:23 AM Sen. Gainer  
10:25:28 AM J. Stephens  
10:26:17 AM Sen. Gainer  
10:26:25 AM Sen. Thurston  
10:26:41 AM Sen. Brandes  
10:26:51 AM Sen. Thurston  
10:27:51 AM J. Stephens  
10:29:14 AM Rachael Favors, Northern Certification and Corporate Services Manager, Florida State Minority Supplier  
Development Council