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 **MERITAS LAW FIRMS WORLDWIDE**

**MEMORANDUM**

TO: Central Florida Expressway Authority Board (the "Board")

FROM: James Spoonhour, Special Right-of-Way Counsel  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A. 

DATE: November 25, 2014

RE: SR 429 Wekiva Parkway; Project 429-203: Settlement with tenants on Parcel 197

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Lowndes, Drosdick, Doster, Kantor & Reed, P.A. ("LDDKR"), special right-of-way counsel to the Central Florida Expressway Authority (the "Authority"), submits the following proposed settlement and requests that the Board approve the proposed settlement. The Right-of-Way Committee unanimously approved this settlement by a 5-0 vote on November 24, 2014.

**BACKGROUND:**

LDDKR has been in negotiations with counsel for Alfred Kager, Sr., Alfred Kager, Jr., and Kager Hill Ranch (collectively the "Kagers"). The Kagers held a lease on part of the land known as Parcel 197, and therefore all three are parties in the condemnation action as to parcel 197. The Kagers ran a horse boarding business and raised hay on this leased property.

This condemnation action was filed on May 23, 2014, and an Order of Taking was entered as to Parcel 197 on September 8, 2014. CFX took title to the property known as Parcel 197 upon its good-faith deposit in the registry of the Clerk of Court on September 9, 2014. The proposed settlement discussed below includes the claims all three parties (the Kagers), including legal fees and costs.

**SUMMARY OF SETTLEMENT NEGOTIATIONS AND AGREEMENT:**

Counsel for the Kagers proposed a settlement offer which included payment for loss of hay crop, payment for loss of income from a commercial horse boarding facility, and payment for replacement of fencing related to the commercial horse boarding facility. The total settlement offer from counsel for the Kagers was \$92,138.50. This was not an official business damages claim offer, but we treated it as such for purposes of negotiations.

After discussion with Joe Passiatore and Glenn Pressimone of CFX, LDDKR counter-proposed a total, all-inclusive settlement offer of \$14,400. This accounted for payment for a portion of the

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perimeter of the fence, as well as a small payment for both commercial operations claimed by the Kagers. This proposal also agreed to allow the Kagers to remove and re-use any fencing in their leased area which now lies within the property taken by the Authority. After additional settlement negotiations, the Kagers agreed to a total settlement amount of \$16,400 for all claims, including fees and costs related to the taking.

In short, the tenants (Kagers) proposed a settlement offer of \$92,138.50. We ultimately agreed on payment of \$16,400 for all claims for the Kagers, along with the Kagers' ability to remove and re-use any fencing in the portion of the taking area which they had under lease. This settlement agreement is inclusive of all fees and costs (including attorney fees) for the Kagers. We made clear that this proposed settlement was subject to approval by the Right-of-Way Committee and the CFX Board. Upon approval by the Board, LDDKR will prepare a Final Judgment for presentation to the Court.

Approval of this settlement offer with the Kagers is in the best interest of CFX. Not only is it a fair and reasonable settlement, but it will also eliminate the cost of preparing a full business damages appraisal report as to the Kagers' business activities, as well as eliminate the cost of right-of-way counsel spending additional time on negotiations with these tenants.

**REQUESTED ACTION:**

Right-of-way counsel respectfully requests that the Board approve the settlement agreement outlined above with tenants Alfred Kager, Sr., Alfred Kager, Jr., and Kager Hill Ranch. Upon approval, right-of-way counsel will prepare a Final Judgment as to these Defendants for presentation to the Court.

JMS/SBL