

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: Central Florida Expressway Authority Board Members

FROM: Glenn Pressimone, Director of Engineering
Linda S. Brehmer Lanosa, Deputy General Counsel

DATE: November 17, 2015

RE: State Road 528 Airport Plaza Demolition and Ramp Plaza Construction Project
Property Access License Agreement with the Greater Orlando Aviation Authority

To improve safety and efficiency, CFX is in the process of removing the SR 528 (also known as the Martin B. Andersen Beachline Expressway) Airport Mainline Plaza. The toll currently collected at this plaza will be collected at the existing SR 528 West Main Plaza and at four (4) new ramp plazas. The new ramp plazas will feature both exact change and dedicated E-PASS lanes. Two (2) ramp gantries providing an electronic toll rebate will also be constructed.

As part of the project, CFX needs permission to enter upon GOAA property for the purpose of temporarily relocating a portion of North Frontage Road and using the relocated roadway for maintenance of traffic during construction.

CFX staff has worked in conjunction with GOAA to prepare the attached License Agreement. The term is only one hundred eighty (180) days or until June 30, 2016, unless terminated sooner.

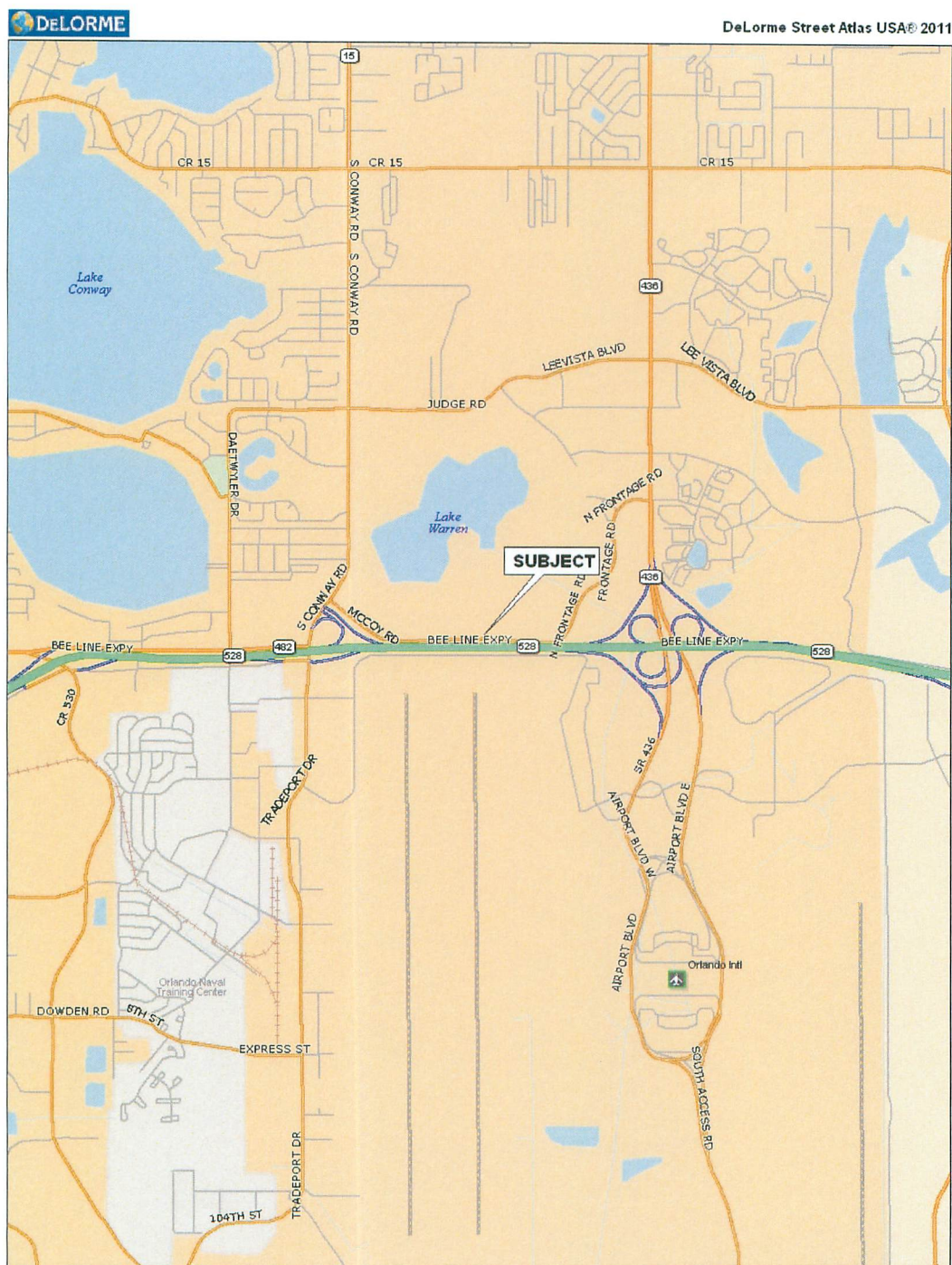
RECOMMENDATION

We request the Board approve the attached Property Access License Agreement with the Greater Orlando Aviation Authority for a period of one hundred eighty (180) days or until June 30, 2016.

ATTACHMENTS

Map
Aerial
Property Access License Agreement

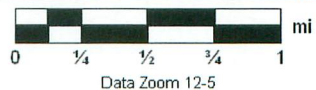
LOCATION MAP



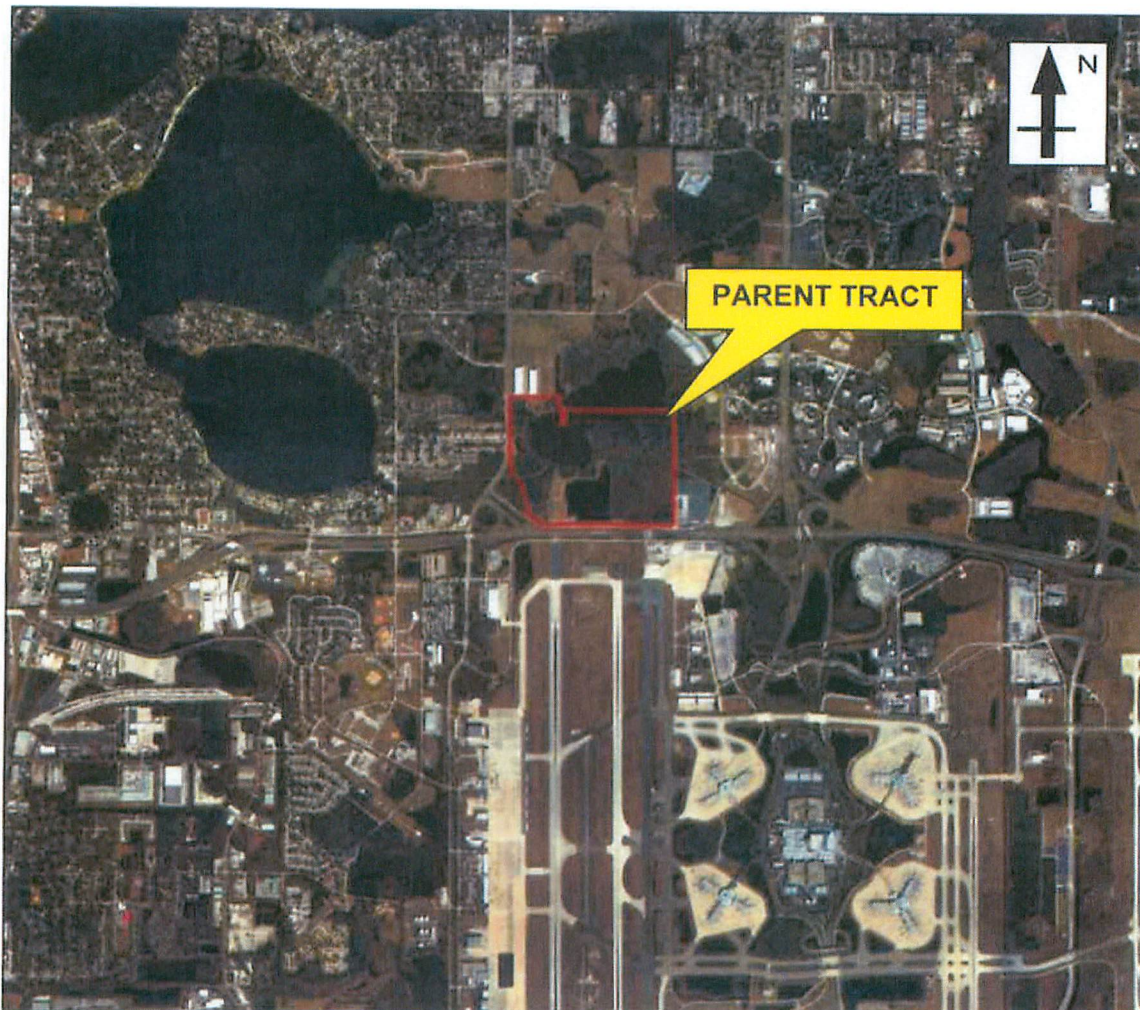
Data use subject to license.

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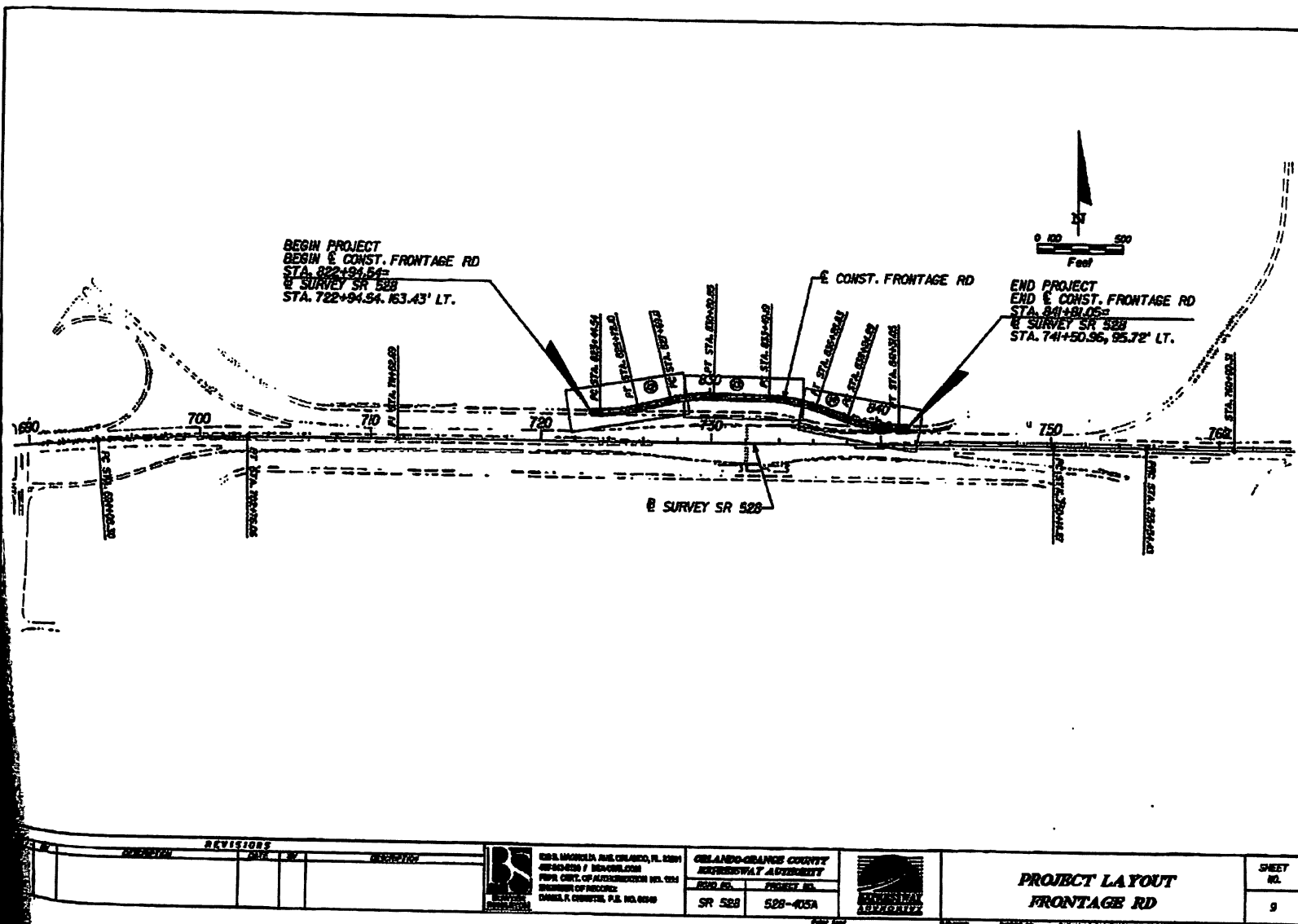




GOAA LAND CONSISTING OF
PERMANENT EASEMENTS – PARCEL 101 (2.176 AC) AND PARCEL 801 (1.371 AC)
ORLANDO, ORANGE COUNTY, FLORIDA



Approximate Representation
Source: Orange County Property Appraiser

ORLANDO INTERNATIONAL AIRPORT



REVISIONS				 <small>STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION</small>	<small>DESIGNED BY</small> <small>DATE</small>		<small>PROJECT NO.</small> <small>DATE</small>		 <small>FLORIDA DEPARTMENT OF TRANSPORTATION</small>	PROJECT LAYOUT FRONTAGE RD	SHEET NO. 9
NO.	DESCRIPTION	DATE	BY		NO.	DATE	NO.	DATE			
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PROPERTY ACCESS LICENSE AGREEMENT

THIS PROPERTY ACCESS LICENSE AGREEMENT ("License") is made and entered into as of the ____ day of _____, 2015, by and between the **GREATER ORLANDO AVIATION AUTHORITY**, a public body corporate and politic with a principal address of One Jeff Fuqua Boulevard, Orlando, FL 32827-4399 ("GOAA") and the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body politic and corporate, and an agency of the state, under the laws of the State of Florida with a principal address of 4974 ORL Tower Road, Orlando, FL 32807 ("CFX"). GOAA and CFX, are sometimes collectively referred to herein as the "Parties".

WITNESSETH:

WHEREAS, GOAA is a public body corporate and politic duly organized and validly existing under Chapter 98-492, Special Laws of Florida 1998, as amended (the "Act"), as an independent special district and agency of the City of Orlando, Florida; and

WHEREAS, the City of Orlando, a Florida municipal corporation existing under the laws of the State of Florida with a principal address of 400 South Orange Avenue, Orlando, FL 32801 is fee owner of that certain real property located in Orange County, Florida, consisting of approximately 3.547 acres, being more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Property"), and

WHEREAS, GOAA occupies, controls, and operates the Property pursuant to that certain Amended and Restated Operation and Use Agreement by and between GOAA and City, effective October 1, 2015, (the "Operating Agreement"); and

WHEREAS, CFX is undertaking the widening and improvement of S.R. 528 (a/k/a the Martin Andersen Beachline) ("Project") (also known as CFX Project 528-405), including, without limitation, the construction, installation, removal and relocation of roads, toll facilities, swales, wires, conduits, utilities and other improvements and appurtenances thereto along S.R. 528; and

WHEREAS, CFX's Project timing requires CFX to enter onto the Property to allow use of the Project by the general public and, due to such Project timing, GOAA desires to grant CFX the right and license of entry upon such portions of the Property as may be necessary for maintenance of traffic for the Project for a one hundred eighty (180) day period; and

WHEREAS, CFX was created by Part III, Chapter 348, Florida Statutes to construct, hold, improve, maintain and operate a road network in Orange, Seminole, Lake and Osceola Counties, Florida, known as the Central Florida Expressway Authority system; and was granted all powers necessary and convenient to conduct its business, including the power to contract with other public agencies; and

NOW THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) in hand paid by CFX to GOAA, the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the parties hereto, CFX and GOAA hereby covenant and agree as follows:

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

2. **Term.** The term of this License is defined as a one hundred eighty (180) day period (the "Term") beginning on the date that is ten (10) days after written notice is provided from CFX to GOAA and shall expire on the earlier of (1) the one hundred eighty (180) day period or (2) June 30, 2016, unless sooner terminated in accordance with the terms and provisions hereof.

3. **Grant of Right of Entry for the Property.** It is acknowledged and agreed by the Parties that CFX's Project timing requires CFX to enter onto the Property for use as maintenance of traffic. By execution of this License, GOAA hereby grants to CFX, its employees, agents, engineers, contractors, assigns, and other representatives, and the general public lawfully utilizing McCoy Road or S.R 528 / the Beachline, for the Term and subject to the other terms and conditions herein set forth, a non-exclusive right and license to enter upon, over, under, and through the Property as may be necessary or desirable for the Project and related infrastructure for the sole purpose of maintenance of traffic for the Project. The right of entry shall specifically include construction, installation, preparation of the road for use by the general public (such as pavement markings), maintenance, and removal of pavement and other improvements. The right of entry shall specifically exclude the right to enter upon, over, under, and through the Property for the purposes of excavation, grading, clearing, grubbing, relocating utilities (including the removal and installation thereof by such utility providers), storage of materials and equipment, other than as necessary to remove the improvements. Upon expiration of the Term, the Property shall be blocked and traffic redirected to the existing McCoy Road, the roadway surface removed and the area returned its pre-construction condition including sod. The written notice required in Section 2 shall also provide proof of insurance as required below. This License and the attendant privileges granted hereby may be revoked by GOAA upon default by CFX hereunder and delivery of written notice to CFX; provided, however, that CFX's obligations to indemnify GOAA as set forth herein shall survive such revocation. Upon termination or expiration of this License agreement, CFX, at its sole cost and expense, shall vacate the Property and promptly remove any and all property placed thereon by or on behalf of CFX during the

Term and restore any damage or disturbance to the Property caused by CFX during the Term.

4. **Indemnification.** Subject to the limitations in Section 768.28, Florida Statutes and law, CFX shall indemnify, defend and hold completely harmless GOAA and the members (including, without limitation, all members of the governing board of GOAA, and its advisory committees), officers, agents and employees (the "Indemnified Parties") from and against any and all third-party claims, suits or demands resulting in judgments, losses, costs, fines, penalties, damages, liabilities (including without limitation statutory liability, liability under Worker's Compensation Laws and liability related to environmental issues), and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, reasonable expert witness fees and Attorney's Fees) (collectively, "Claims") which are actually incurred by, charged to or recovered from any of the Indemnified Parties and which arise on the Property (1) out of the use, occupancy or maintenance of the Property, including any improvement thereto or (2) in connection with any of CFX's rights and obligations contained in this License, including, but not limited to, any and all Claims for damages as a result of the injury to or death of any person or persons, or damage to any property which arises out of the use, occupancy, or maintenance of the Property on the part of CFX or its officers, partners, employees, agents, contractors, or subcontractors regardless of where the damage, injury or death occurred, unless any such Claim was caused solely by (A) the negligence, gross negligence or willful misconduct of any Indemnified Party or by (B) the joint negligence, gross negligence or willful misconduct of any Indemnified Party and any person other than CFX or CFX's officers, partners, employees, agents, contractors, or subcontractors.

GOAA shall give CFX reasonable notice of any Claim for which indemnification will be sought under this Section 4., allow CFX or its insurer to compromise and defend the same to the extent of its interests (subject to GOAA's right to approve any proposed settlement, which approval shall not be unreasonably withheld) and reasonably cooperate with the defense of any such suit or claim. GOAA's failure to promptly notify CFX of a Claim will not act as or constitute a waiver of any rights of GOAA under this License, except to the extent that CFX is prejudiced as a result of such failure. In carrying out its obligations under this Section 4., CFX shall use counsel reasonably acceptable to GOAA. Notwithstanding the foregoing or anything to the contrary in this Agreement, (i) the CFX's duty to indemnify, defend and hold the Indemnified Parties harmless hereunder shall not make the CFX liable for any Claims for which GOAA or any Indemnified Party is immune pursuant to applicable law, including section 768.28, Fla. Stat., or the then current version of same, (ii) nothing in this Section 4. shall be construed as a waiver or attempted waiver by GOAA or any Indemnified Party of its sovereign immunity under applicable law and (iii) in no event shall the requirements of this Section 4. be construed to provide an independent legal basis to hold the CFX or an Indemnified Party liable to any other person or entity for any damages, whether direct, indirect, punitive, special or consequential damages (including, but not limited to, loss of profits, interest or earnings).

5. Insurance. The following insurance is required under this Agreement:

a. General Liability Insurance. On or before providing the written notice above and during the entire Term, CFX or its general contractor for the Project (the "Contractor") shall obtain and maintain, at its sole cost and expense, commercial general liability insurance, a per occurrence basis, under one or more policies covering CFX and, by endorsement, the Additional Insureds (as hereinafter defined) against loss or liability in connection with bodily injury, personal injury, death, or property damage occurring on or about the Property caused in whole or in part by or through CFX or its employees, agents, contractors, or subcontractors made in connection with CFX's use of the Property, or any part thereof, or CFX's construction, operation, or maintenance of the Project. For the purposes of this Section 5, the "Additional Insureds" shall mean GOAA, and its members (including, without limitation, all members of the governing board of GOAA, and its advisory committees), officers, agents and employees. During the Term, CFX's Contractor's commercial general liability insurance coverage shall be in an amount of not less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) combined single limit per occurrence for bodily injury, personal injury, death and property damage, which limit may be provided by a combination of primary and excess/umbrella coverage. The commercial general liability coverage, shall not exclude, or restrict coverage, on the basis that construction, demolition or other operations are in connection with traffic operations, or in some proximity to, any easement or property or affecting road.

The foregoing policy or policies under which such commercial general liability coverage is provided by CFX or its Contractor may include a deductible or self-insured retention not in excess of TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) on the condition that:

i. During any time period that a commercial general liability insurance policy required hereunder is in effect, it shall explicitly provide that, notwithstanding the applicability of any deductible or self-insured retention to the coverage for any other person or organization, no such deductible or self-insured retention shall apply to the coverage applicable to the Additional Insureds and, further, that the failure by any other person or organization to pay any of the deductible or self-insured retention shall not in any way diminish the coverage provided to the Additional Insureds. Upon request by GOAA, CFX or its Contractor will provide assurance to GOAA's reasonable satisfaction that the self-insurance arrangements adequately protect GOAA against liability for bodily injury, personal injury, death and property damage.

b. Additional Insurance. CFX shall require its Contractor to maintain any additional insurance policies as required by GOAA's Risk Management/Safety policies and procedures contained in the GOAA's Policy and Procedure Manual, such required insurance coverage to be maintained with insurance companies that are insurers of recognized reputation. CFX shall cause its contractors,

subcontractors, and agents accessing the Property to maintain insurance coverage in accordance with this License and GOAA's Risk Management/Safety policies and procedures contained in the GOAA's Policy and Procedure Manual.

c. Required Insurance Primary and Noncontributory. The insurance required to be carried herein shall be on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the Additional Insureds.

d. Required Insurance Additional Remedy. Compliance with the insurance requirements of this License shall not limit the liability of CFX to any Additional Insured. Any remedy provided to an Additional Insured by the insurance shall be in addition to and not in lieu of any other remedy available under this Agreement (including CFX's indemnity obligations), or otherwise,.

e. Qualification of Insurers. All insurance policies required by this Section 5. shall be on forms reasonably acceptable to GOAA and shall be issued by insurance companies authorized by subsisting certificates of authority issued to the companies by the Department of Insurance of the State of Florida or an eligible surplus lines insurer under Section 626.918, Fla. Stat., or with respect only to Workers' Compensation Insurance, authorized as a group self-insurer pursuant to Section 440.572, Fla. Stat. which has been in continuous operation in the State of Florida for five (5) years or more or authorized as a commercial self-insurance fund pursuant to Section 624.462, Fla. Stat. which has been in continuous operation in the State of Florida for five (5) years or more. In addition, such insurers other than those authorized by Section 440.572 F.S. (individual self-insurers) or Section 624.462, Fla. Stat. (commercial self-insurance funds), shall have and maintain throughout the period for which coverage is required, a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to the most recent edition of "Best's Key Rating Guide" for insurance companies.

f. Evidence of Insurance. CFX or its Contractor shall furnish to GOAA, together with the written notice required by Section 2, and thereafter before the expiration of each policy, true and correct certificates of insurance, using the appropriate ACORD form of certificate or its equivalent, and the necessary endorsements that are required to evidence the coverages required under this Section 5. with a copy of each policy, if requested by GOAA (with the exception of workers' compensation insurance and professional liability insurance on account of which the Additional Insureds shall not be additional insureds). Such certificates shall provide that should any policies described therein be cancelled before the expiration date thereof, notice will be delivered to the certificate holder by the insurer in accordance with the policy provisions regarding same. Further, CFX agrees that the insurance coverage required from the CFX hereunder shall not be terminated or modified in any material way without twenty (20) days advance written notice from CFX to GOAA and that CFX shall require the Contractors performing the foregoing work for or on behalf of CFX to provide CFX and GOAA with renewal or replacement evidence of insurance at least twenty (20) days prior to the expiration or termination of such insurance.

g. In the event CFX shall fail to procure insurance required under this Section or fail to maintain the same in full force and effect continuously during the Term or fail to meet its obligations with respect to any deductible or self-insured retention amount under this Agreement, GOAA shall be entitled, after thirty (30) days prior written notice to CFX of CFX's default hereunder and CFX's failure to cure such default within said thirty (30) days, to require CFX to immediately discontinue all use of the Property until CFX has provided GOAA reasonably satisfactory evidence that the required insurance has been obtained and the other obligations of CFX under this section have been met. No cessation of construction or operations required by GOAA under this section shall relieve CFX of any of its other obligations under this Agreement.

6. Notices. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

CFX: CENTRAL FLORIDA
EXPRESSWAY AUTHORITY
4974 ORL Tower Road
Orlando, Florida 32807
Attn: Executive Director

Copy to: Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, Florida 32807
Attn: General Counsel

GOAA: GREATER ORLANDO AVIATION AUTHORITY
One Jeff Fuqua Boulevard
Orlando, Florida 32827-4399
Attn: Executive Director

Copy to: MARCHENA AND GRAHAM, P.A.
976 Lake Baldwin Lane, Suite 101
Orlando, Florida 32814
Attn: Marcos R. Marchena, Esq.

or to such other address as any party hereto shall from time to time designate to the other party by notice in writing as herein provided.

7. General Provisions. This License may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same agreement. This License contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No amendment to this License shall be

binding upon any of the parties hereto unless such amendment is in writing and executed by GOAA and CFX. The provisions of this License shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns. Time is of the essence of this License. Wherever under the terms and provisions of this License the time for performance falls upon a Saturday, Sunday, or legal holiday, such time for performance shall be extended to the next business day. This License shall be interpreted under the laws of the State of Florida. The undersigned officer of CFX hereby further warrants and certifies to GOAA that he or she, as such officer, is authorized and empowered to bind the corporation to the terms of this License by his or her signature thereto. The parties hereto agree that the exclusive venue for any legal action authorized hereunder shall be in the appropriate court situated in Orange County, Florida.

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

9. Waiver of Jury Trial. THE PARTIES VOLUNTARILY WAIVE A TRIAL BY JURY IN ANY LITIGATION OR ACTION ARISING FROM THIS LICENSE AGREEMENT.

[SIGNATURE PAGES FOLLOWING]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names as of the date first above written.

**“GOAA”
GREATER ORLANDO AVIATION
AUTHORITY**

ATTEST:

Dayci S. Burnette-Snyder,
Assistant Secretary

By: _____
Phillip N. Brown, A.A.E.,
Executive Director

Date: _____, 2015

APPROVED AS TO FORM AND
LEGALITY this ____ day of
_____, 2015, for the use and
reliance by the GREATER ORLANDO
AVIATION AUTHORITY, only.
Marchena and Graham, P.A., Counsel.

By: _____
Marchena and Graham, P.A.

**“CFX”
CENTRAL FLORIDA EXPRESSWAY
AUTHORITY, a body politic and
Corporate, and an agency of the state, under
the laws of the State of Florida**

ATTEST:

Darleen Mazzillo, Executive Secretary

By: _____
Laura Kelly, Executive Director

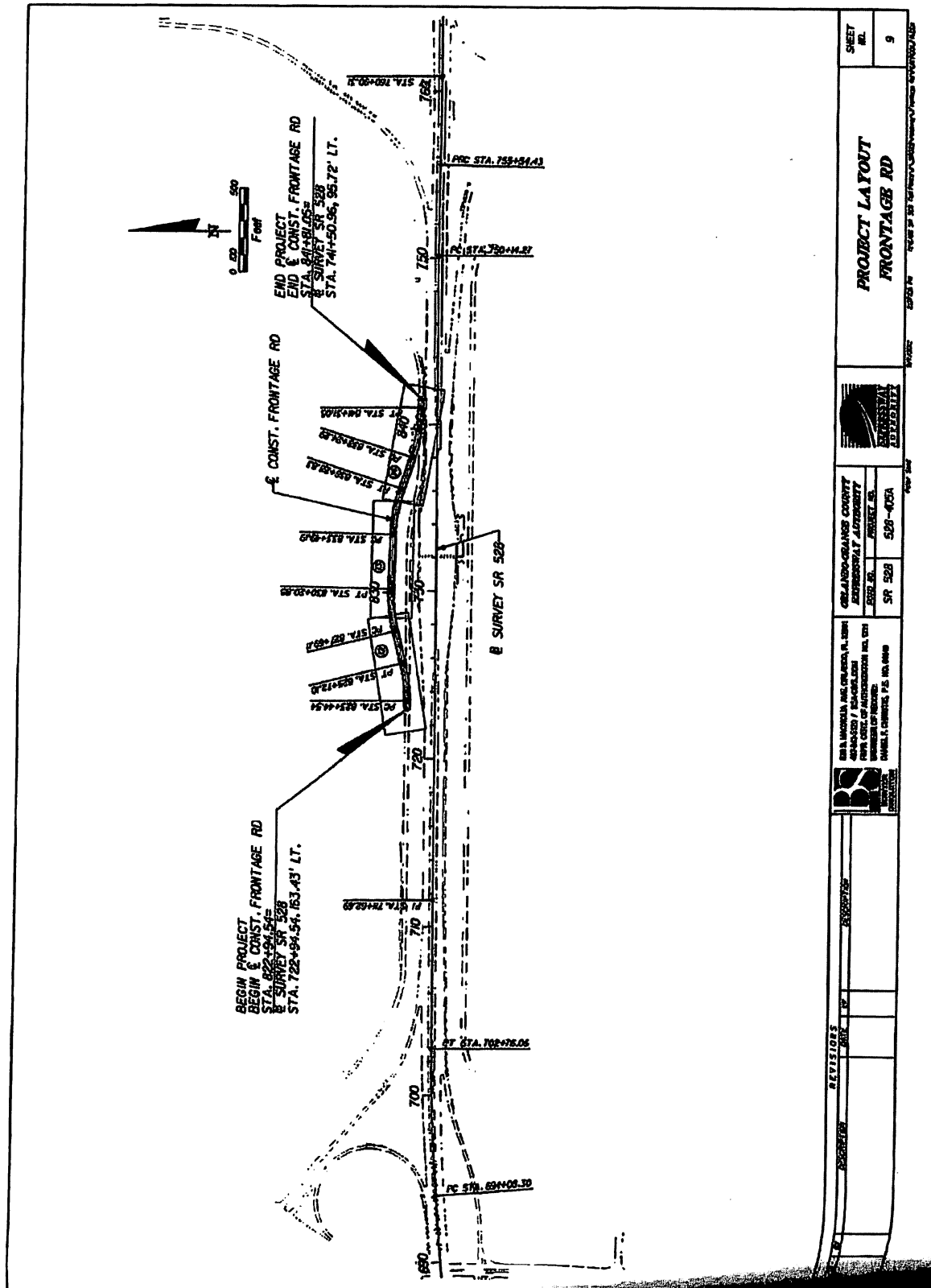
Date: _____, 2015

APPROVED AS TO FORM AND
LEGALITY this ____ day of
_____, 2015, for the use and
reliance by the CENTRAL FLORIDA
EXPRESSWAY AUTHORITY only.

By: _____
Print: _____
Date: _____, 2015

**EXHIBIT “A”
(the “Property”)**

EXHIBIT A



PROJECT LAYOUT FRONTAGE RD		SHEET NO.	9
GILAND-GRANGE COUNTY EXPERIMENTAL AUTHORITY		SR 528	528-475A
DANIEL L. CHAMBERS, P.E. NO. 0000		DATE	10/10/00
REVISORS		DATE	
REVISION		DATE	