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MEMORANDUM

TO: Central Florida Expressway Authority Board Members

FROM: James Edward Cheek, III, Right of Way Counsel
Winderweedle, Haines, Ward & Woodman, P.A. 

DATE: February 24, 2015

RE: S.R. 429 Wekiva Parkway, Project 429-202; Parcel 154 (Miller) - Approval for Settlement

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks the Board's approval of a settlement with John and Cynthia Miller (the "Owner"), for the acquisition of Parcel 154 (the "Taking" or "Property") for the construction of the S.R. 429 Wekiva Parkway, Project 429-202. The Central Florida Expressway Authority ("CFX") took Parcel 154 on July 23, 2014 through a Stipulated Order of Taking.

DESCRIPTION and BACKGROUND:

Parcel 154 is a partial taking of land located along the south side of West Ponkan Road, west of Plymouth Sorrento Road, in the Apopka area of Orange County. CFX acquired 2.751 acres from the 4.696 acre property ("parent tract"), leaving a 1.945 acre remainder. The Property is currently improved with three manufactured homes, a pole barn/workshop and other related agricultural/rural residential type improvements described in more detail below. See attached Exhibit "A."

CFX's appraisal of the property was prepared by Chad G. Durrance of Durrance & Associates, with a date of value of February 10, 2014. Mr. Durrance estimated that the amount of compensation owed to the landowner was \$155,500, based on the following calculations:

Value Estimates:	Before Value	\$210,000
	After Value	<u>54,500</u>
	Difference	\$155,500

The Property is zoned A-1, Citrus Rural District, by Orange County. The future land use designation is R-Rural/Agricultural. Mr. Durrance concluded that the Property's highest and best use as though vacant would be for residential use. However, the subject is improved with a double-wide manufactured residence built in 1980, as well as two (2) additional single-wide

manufactured homes built in 1960. Additional improvements include a pole barn/workshop, dry storage containers, a tarp-covered carport, a storage shed, animal pens, and various other site improvements. The improvements positively contribute value to the property over and above the value of the land "as though vacant." As such, Mr. Durrance opined that the highest and best use "as improved" is continued use of the existing improvements.

In order to come up with a land value, Mr. Durrance used the Sales Comparison Approach and considered eight land sales ranging from \$17,100 per acre to \$27,600 per acre. Mr. Durrance ultimately reconciled on a value of \$27,500 per acre, noting the recent upswing in market conditions that justified a favorable adjustment for the subject property over less recent sales. This resulted in a finding of \$129,000 for the total land value of the subject property, and a compensation claim for **\$75,700** for the value of the land taken (\$27,500 per acre x 2.751 acres of property).

In addition, Mr. Durrance considered comparable improved sales in order to ascertain the value of the improvements on the subject property. He considered five comparable manufactured home sales that ranged in value from \$13 per square foot to \$32 per square foot. Mr. Durrance also consulted NADA (National Automobile Dealers Association) Guides, which indicated a value of the subject double-wide to be about \$21,500, and a value of about \$4,500 for the second manufactured home. A third manufactured home is currently uninhabitable and is in poor condition, and therefore has not been valued. He also considered the contributory value of the other minor improvements mentioned above (pole barn, carport, well, fencing, gate, animal pen, storage containers, etc.), and found that the total value of all of the improvements was \$81,000. The contributory value of the improvements within the area of take was **\$47,800**.

The remainder will require a cure to reestablish the well and other items necessary to restore function to the remainder improvements. The net cost to cure has been estimated to be \$17,000. In addition, the value of the remainder was adjusted downward by \$15,000 to account for the expressway location influence. This results in a total damage estimate and/or net cost to cure of **\$32,000**. Mr. Durrance concluded that the total value for the part taken, including land taken, improvements, damages and cost to cure, is **\$155,500** (\$75,700 for the land taken + \$47,800 for improvements + \$32,000 for damages and net cost to cure). Mr. Durrance's valuation considers the real estate only, and not any business damages or relocation costs.

The landowner retained the services of appraiser Rick Dreggors, from Calhoun, Dreggors and Associates, Inc. Mr. Dreggors estimated that the value of the land taken is \$110,000, based on a \$40,000 per acre land value (2.751 acres x \$40,000 per acre). He also estimated the value of the improvements to be \$103,000. Mr. Dreggors damages the remainder property by 40%, to yield \$48,900 in severance damages, plus an additional \$51,800 for cost to cure. This results in a total value for the part taken and damages of **\$313,700**, as summarized below:

Miller's Compensation Estimate:	Land Taken	\$110,000
	Improvements	103,000
	Sev. Damages	48,900
	Cost to Cure	<u>51,800</u>
	Total	\$313,700

In addition to owing compensation to the Owner for the value of the Taking, CFX will also be required to pay damage claims to two businesses that operate on the property: Miller's Truck Repair and John F. Miller Jr. Trucking, Inc. Both companies have operated at the subject location for more than five (5) years. The business damage claims submitted by the business owners are summarized as follows:

Miller's Repair	\$46,000
Miller Trucking	<u>\$102,000</u>
Total	\$148,000

Miller's Repair is a company that offers local truck repair services. The company will cease operations as a direct result of the taking. To determine the value of the business, the firm of McGladrey, LLP considered the past five (5) years of income and expenses. Using both the Income Approach and Market Approach to value, McGladrey concluded that Miller's Repair had an Operating Enterprise Value of **\$46,000**.

John F. Miller Jr. Trucking, Inc., ("Miller Trucking") offers local trucking services and serves mostly agricultural companies within the Central Florida area. Miller Trucking has continued operating its business after the taking, but has moved to a new location approximately 20 miles away. Miller Trucking has claimed that the total incremental operating costs of trucking will increase by \$19,440.00 per year, and the total incremental operating costs of servicing the trucks will increase by \$1,164.38 per year. This creates a total increased incremental operating cost of \$20,604.38 per year, projected in perpetuity (using a discount rate of 20.2%) totaling **\$102,000**.

The owner has submitted expert invoices in the amount of **\$30,000** (rounded from \$29,789.24: \$23,432.50 for appraisal fees plus \$6,356.74 for business damage fees). The affected parties would also be eligible to receive relocation benefits. These were estimated to be approximately **\$50,000**. Attorneys fees in this case, if settled for the below stated amount, would be approximately **\$60,000** (statutory based on betterment, plus \$7,000 for the business damage claim). Thus, a summary of the total compensation claims being made by the landowner on this parcel is:

Landowner's Appraisal	\$313,700
Business Damages	148,000
Expert invoices	30,000
Relocation Benefits	50,000
<u>Attorney's Fees</u>	<u>60,000</u>
Total Landowner Claim	\$601,700

The parties have been participating in settlement negotiations and have reached a proposed agreement on the purchase price for the acquisition of Parcel 154. The parties have conditionally agreed to the following settlement terms, subject to Right of Way Committee recommendation and final CFX Board approval:

Total Amount to Owner (land value and business damages)	\$315,000
Attorneys fees	60,000
<u>Expert fees and costs</u>	<u>25,000</u>
Total Settlement Proposal	\$400,000

As previously stated, the property owner operated two (2) businesses at the site. In addition to the above settlement amount, the Owner is entitled to business relocation benefits for both businesses. Miller Trucking has submitted a claim for \$27,990. In addition, Miller Truck Repair has submitted a claim for \$10,999. These payments are in addition to the payments received as it relates to the acquisition.

In sum, CFX would pay the Owner, John and Cynthia Miller, \$315,000.00, less its good faith deposit of \$155,500, leaving a remaining balance of \$159,500. CFX would pay statutory attorneys' fees and expert fees in the amount of \$85,000.00 in accordance with Florida Statutes §73.092(1)(a) and §73.091(1). CFX would pay Miller Trucking a total of \$129,990 for its business damage and relocation claims, and Miller's Repair a total of \$56,999 for its business damage and relocation claims.

Acceptance of the proposed settlement is recommended and is in CFX's best interest. Prolonging litigation will subject CFX to additional attorney's fees and costs as well as additional expert fees and costs, which CFX would ultimately be responsible for as part of the landowner's compensation as provided by Florida Statutes §73.091 and §73.092. Acceptance of the proposal will eliminate further risk and unnecessary expenses for CFX in this case. The proposed settlement will resolve all pending matters in this case, including the property owner's attorneys fees and expert costs.

RECOMMENDATION:

The proposed settlement was recommended for approval by the Right of Way Committee at the February 25, 2015 meeting. We respectfully request the Board's approval of the proposed settlement in the amount of \$438,989.00 in full settlement of all claims for compensation for the acquisition of Parcel 154.

ATTACHMENT:

Exhibit A-Sketch of Subject Property



AERIAL MAPS