CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Agenda CENTRAL FLORIDA EXPRESSWAY AUTHORITY RIGHT-OF-WAY COMMITTEE November 24, 2014 2:00 p.m. Room 107

1. CALL TO ORDER

2. PUBLIC COMMENT

Pursuant to Florida Statute 286.0114 (2013) the Right of Way Committee will allow public comment on any matter either identified on this meeting agenda as requiring action, or anticipated to come before the Committee for action in reasonable proximity to this meeting. Speakers shall be limited to three minutes per person and the assignment of one person's time to another or designation of group spokesperson shall be allowed at the discretion of the Committee Chairman.

3. APPROVAL OF MINUTES - October 22, 2014

TAB A

Requesting approval of the 10/22/14 minutes. Action Item.

4. S.R. 429 / PARCEL 197 - WEKIVA PARKWAY PROJECT (KAGER) PROJECT

TAB B

<u>429-203</u> – James Spoonhour, Lowndes, Drosdick, et. al. Requesting the Committee's recommendation for Board approval of

Requesting the Committee's recommendation for Board approval of the proposed settlement agreement. **Action Item.**

5. COMMITTEE PROCEDURES / ENHANCED FIRST WRITTEN OFFERS

TAB C

Joseph L. Passiatore, CFX, Deborah Long, RTD Group and David Shontz, Shutts & Bowen, LLP

Discussion on utilizing enhanced first written offers. Discussion Item.

6. COMMITTEE PROCEDURES / UPDATE ON NEGOTIATING LUMP SUM INVOICING FOR APPRAISAL SERVICES - David Shontz, Shutts & Bowen, LLP Discussion on budget for future appraisal services and negotiations on lump sum amounts for appraisal services. (There are no backup materials for this item). Discussion Item.

7 COMMITTEE PROCEDURES / PROPERTY ACQUISITION & DISPOSITION

TAB D

PROCEDURES MANUAL - Joseph L. Passiatore, CFX

Requesting the Committee's recommendation for Board approval for the adoption of Resolution amending the procedure for disposition of surplus property and incorporating other housekeeping changes to the manual. **Action Item**

8. OTHER BUSINESS

9. ADJOURNMENT

This meeting is open to the public.

Note: Any person who decides to appeal any decision made at this meeting will need record of the proceedings and for that purpose, may need to ensure that a verbatim record of the proceedings is made which includes the testimony any evidence upon which the appeal is to be based, per Florida Statute 286.0105.

MEETING NOTICE

RIGHT-OF-WAY COMMITTEE MEETING

DATE: November 24, 2014 (rescheduled from 11/26 due to Holidays)

TIME: 2:00 p.m.

LOCATION: Central Florida Expressway Authority

4974 ORL Tower Road Orlando, FL 32807

Pelican Conference Room 107

Members of the Right-of-Way Committee:

David May, Osceola County Representative, Committee Chair Brett Blackadar, Seminole County Representative Laurie Botts, City of Orlando Representative Sandy Minkoff, Lake County Representative John Terwilliger, Orange County Representative

Section 286.015, Florida Statutes states that if a person decides to appeal any decision made by a board, agency, or commission with respect to any matter considered at a meeting or hearing, he will need a record of the proceedings, and that, for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act (ADA), if any person with a disability as defined by the ADA needs special accommodation to participate in this proceeding, then not later than two (2) business days prior to the proceeding, he or she should contact the Central Florida Expressway Authority at (407) 90-5000.

Posted 10/28/2014 at CFX Administration Building

Tab A

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES CENTRAL FLORIDA EXPRESSWAY AUTHORITY Right of Way Committee Meeting October 22, 2014

Committee Members Present:

David May, Osceola County Representative, Committee Chair Brett Blackadar, Seminole County Representative Laurie Botts, City of Orlando Representative Sandy Minkoff, Lake County Representative John Terwilliger, Orange County Representative

OOCEA Staff Present:

Joseph L. Passiatore, General Counsel
Joseph A. Berenis, Deputy Executive Director of Engineering, Operations, Construction & Maintenance
Mimi Lamaute, Paralegal/Recording Secretary
Jeff Marshall Grainger, Sr. Communications Coordinator
Laura Kelley, Deputy Executive Director of Finance & Administration
Linda Brehmer Lanosa, Future CFX Deputy General Counsel
Glenn Pressimone, Director of Engineering

Also Present:

Patti Harker, Lake County
Jere Daniels, Winderweedle, Haines, Ward & Woodman, P.A.
Trippe Cheek, Winderweedle, Haines, Ward & Woodman, P.A.
Rob Simon, Winderweedle, Haines, Ward & Woodman, P.A.
Tracy de Lemos, Winderweedle, Haines, Ward & Woodman, P.A.
Ken Wright, Shutts & Bowen
David Shontz, Shutts & Bowen
Deborah Keeter, Atkins
Deborah Poindexter, Atkins

Item 1: CALL TO ORDER

The meeting was called to order at 2:00 p.m. by Chairman May.

Item 2: PUBLIC COMMENT

There was no public comment.

MINUTES
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
RIGHT OF WAY COMMITTEE MEETING
October 22, 2014

Item 3: APPROVAL OF MINUTES

A motion was made by Mr. Terwilliger and seconded by Ms. Botts to approve the minutes of the September 4, 2014 Right of Way Committee meeting as presented. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Mr. Sandy Minkoff requested that an itemization of the settlement be reflected not only in the memorandum from Right of Way Counsel to the Committee but also in future minutes.

Item 4: ORIENTATION ON RIGHT OF WAY COMMITTEE CHARTER / SUNSHINE LAW MEETING REQUIREMENTS

Mr. Passiatore provided the Committee with an overview of the Right of Way Committee Charter. The Committee serves at the pleasure of their respective jurisdictions with a designated substitute. The Chairman is the designated liaison and must attend the monthly CFX Board meetings.

The Committee by consensus agreed that Mr. Minkoff would attend the November Board meeting in Mr. May's absence.

The Authority's General Counsel and Right of Way Counsel serve as advisors to the Committee. The Committee shall conduct business in accordance with the Property Acquisition & Disposition Procedures Manual.

Mr. Passiatore distributed a copy of Florida Statute 286.011 and briefed the Committee on their responsibilities and ethics. Mr. Passiatore advised the Committee that they cannot discuss with any other member any item that is under consideration by the Committee or that might foreseeably come before the Committee for consideration but the Committee can, however, have conversations with their respective Commissioners.

Mr. Minkoff requested that the monthly Committee meeting notices be included in the Committee members' Right of Way Committee Meeting Agenda packages.

Mr. Passiatore inquired of the Committee their disposition on completing and submitting the Potential Conflict Disclosure form. The Committee by consensus agreed that all Committee members would complete and submit the disclosure form before the next Right of Way Committee meeting of November 24th.

This was an informational item. No action was taken.

Item 5: INTRODUCTION OF RIGHT OF WAY COUNSEL, ACQUISITION COORDINATOR AND PROJECT MANAGER FOR THE WEKIVA PARKWAY ACQUISITION AND RELOCATION

Mr. Passiatore introduced the CFX Right of Way Legal Counsel, Winderweedle Haines, Ward & Woodman and Shutts & Bowen, P.A.. Although not in attendance Mr. Passiatore introduced Lowndes, Drosdick, Doster, Kantor & Reed, P.A. Each firm provided a synopsis of their staff, assignments and processes.

Winderweedle provided the following breakdown of parcels assigned to them:

429-202

55 parcels initially (see breakdown below)

20 parcels not impacted or being handled through ROW agent

35 parcels to be acquired (see breakdown below)

5 parcels settled pre-suit (property acquired through transactional closing-conveyance complete)

30 parcels acquired through OT (see breakdown below)

9 parcels settled (Final Judgments acquired)

2 parcels noticed for trial (trial dates pending)

1 parcel set for trial

18 parcels – litigation pending/settlement negotiations ongoing

429-203

NONE – no parcels assigned to WHWW for Project 429-203.

429-204

9 parcels assigned to WHWW (# only represents parcels assigned to WHWW; refer to breakdown provided by Shutts & Bowen for the total # of parcels in Project 204)

- 1 parcel settled pre-suit (property acquired through transactional closing-conveyance complete)
- 1 parcel acquired through OT (litigation pending/settlement negotiations ongoing)
- 2 parcels litigation pending/settlement negotiations ongoing
- 1 parcel offer served/eminent domain proceedings to be initiated when pre-suit requirements are met.
- 4 parcels offers recently served or pending service/eminent domain proceedings to be initiated when pre-suit requirements are met.

429-205

1 parcel assigned to WHWW (# only represents parcels assigned to WHWW; refer to breakdown provided by Shutts & Bowen for the total # of parcels in Project 205)

1 parcel settled – conveyance complete

429-206

NONE – no parcels assigned to WHWW for Project 429-206.

Shutts & Bowen provided the following breakdown of parcels assigned to them:

429-203

```
61 parcels initially
26 parcels dismissed (not impacted, not needed or to Winderweedle)
35 parcels to be acquired
35 parcels – acquired through OT (including 5 settled parcels which were named in suits)
5 parcels settled
20 parcels – litigation/negotiation on-going
10 parcels – noticed for trial
6 parcels set for trial – 2 in February and 4 in April 2015
4 parcels pending trial dates
```

429-204

33 parcels initially

12 parcels dismissed (not impacted, not needed)

21 parcels to be acquired

2 parcels settled

19 parcels to be acquired (litigation or negotiation)

429-205

7 parcels initially

2 parcels dismissed (not impacted, not needed)

5 parcels to be acquired

0 parcels settled

5 parcel to be acquired (litigation or negotiation)

429-206

24 parcels initially

6 parcels dismissed (not impacted, not needed)

18 parcels to be acquired

0 parcels settled

18 parcels to be acquired (litigation or negotiation)

Discussion ensued as to the hiring and the roles of CFX appraisers.

Mr. Passiatore introduced the following personnel:

- Glenn Pressimone, Director of Engineering detailed the Wekiva Parkway Project schedule;
- Deborah Poindexter, Project Manager for the Wekiva Parkway Acquisition and Relocation discussed the relocation process;
- Deborah Keeter, Acquisition Coordinator;
- Joseph A. Berenis, Deputy Executive Director of Engineering, Operations, Construction & Maintenance;
- Laura Kelley, Deputy Executive Director of Finance & Administration; and
- Linda Brehmer Lanosa, Future CFX Deputy General Counsel.

MINUTES
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
RIGHT OF WAY COMMITTEE MEETING
October 22, 2014

There was discussion on the process of first written offers and global offers.

This was an informational item. No action was taken.

Item 6: WEKIVA PARKWAY PROJECT / PROJECTS 429-202; 429-203; 429-204; 429-205; 429-206 / PINEL & CARPENTER, INC. SECOND ADDENDUM TO AGREEMENT

Mr. Shontz is requesting the Committee's recommendation for Board approval of the Second Addendum to the Agreement for Appraisal services by Pinel & Carpenter. He explained the role of the appraiser as not only providing appraisals but as pre-condemnation consultation services, appraisal services and litigation support services, including testifying at order of taking hearings and trial for the Wekvia Parkway Project. He explained Pinel & Carpenter provided appraisal reports for 18 properties most were larger parcels and with complex appraisal issues. These parcels are currently in litigation and will require testimony by the appraiser in depositions and at trial. They have been assigned to provide appraisal reports for an additional nine (9) properties. These additional properties are larger tracts with complex issues to be evaluated during the appraisal process.

Mr. Minkoff requested that on future requests the cost for appraisal services be provided per parcel.

Lengthy discussion ensued as to the method of compensation for appraisers, hourly versus lump sum.

Committee directed outside legal counsel to, on all future appraisal assignments, negotiate on a flat fee basis unless there are extenuating circumstances unique to certain parcels which justify an hourly rate method of compensation.

Committee further directed staff to bring to the Right of Way Committee and ultimately the Board a full budget on appraisal fees.

A motion was made by Ms. Botts and seconded by Mr. Minkoff to recommend to the Board approval of the proposed Pinel & Carpenter Second Addendum to Agreement for Appraisal Services. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 7: WEKIVA PARKWAY PROJECT / PROJECTS 429-202; 429-203; 429-204; 429-205; 429-206 / CONSORTIUM APPRAISAL, INC. SECOND ADDENDUM TO AGREEMENT

Mr. Shontz requested the approval of the Second Addendum to Agreement for Appraisal Review Services by Consortium Appraisal, Inc.

Committee reiterated the direction given to Staff in the previous item.

MINUTES
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
RIGHT OF WAY COMMITTEE MEETING
October 22, 2014

A motion was made by Mr. Minkoff and seconded by Ms. Botts to recommend to the Board approval of the proposed Second Addendum to Agreement for Appraisal Services by Consortium Appraisal, Inc. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 8: PROPERTY ACQUISITION & DISPOSITION PROCEDURES MANUAL

Mr. Passiatore described the recommended changes in the manual. He discussed the Board's concerns with Section 5-6.04 Procedure for Disposition (d) Surplus Property Sold to a Public/Non Profit Entity.

Discussion ensued as to the process and alternative language. Each Committee member provided staff with their suggested proposed changes. The Committee directed staff to provide them with proposed language for several sections of the manual.

This item was tabled for further review by the Committee. Staff is directed to provide the Committee with proposed language for consideration by the Committee. This item will be reconsidered at the November's Right of Way Committee meeting.

No action was taken.

Item 9: OTHER BUSINESS

INCENTIVE OFFERS

Mr. Blackadar inquired about the Authority adding incentive amounts to initial offers on parcels. Incentives would be an amount of money above established just and full compensation. Discussion ensued as to the Federal Loan requirements, federal relocation act requirements and meeting schedules of the Committee and Board for item approvals.

By consensus the Committee agreed that the incentive method would not be beneficial on the Wekiva Parkway Project at this juncture.

Item 10: ADJOURNMENT

Chairman May adjourned the meeting at 4:00 p.m.

Pursuant to the Florida Public Records Law and OOCEA Records Management Policy, audio tapes of all Board and applicable Committee meetings are maintained and available upon request to the Records Management Liaison Officer at publicrecords@CFXWay.com or 4974 ORL Tower Road, Orlando, FL 32807.

Tab B



JAMES M. SPOONHOUR

james.spoonhour@lowndes-law.com 215 North Eola Drive, Orlando, Florida 32801 T: 407-418-6300 | F 407-843-4444

MERITAS LAW FIRMS WORLDWIDE

MEMORANDUM

TO: Central Florida Expressway Authority

Right-of-Way Committee (the "Committee")

FROM: James Spoonhour, Special Right-of-Way Counsel

Lowndes, Drosdick, Doster, Kantor & Reed, P.A.

DATE: November 12, 2014

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

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 Committee approve the proposed settlement for presentation to the Authority's

Board.

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.

November 12, 2014 Page 2

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 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 both this Committee and the Authority 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 Committee 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 present the settlement agreement to the Authority Board at the next Board meeting.

JMS/SBL

Tab C

Mimi Mederos-Lamaute

From:

Long, Deborah < Deborah.Long@dot.state.fl.us >

Sent:

Thursday, November 20, 2014 10:20 AM

То:

Mimi Mederos-Lamaute

Subject:

FW: Message from KM_C224e

Attachments:

STP_HQ_ROW314112009540.pdf

Mimi, The acronyms are: Federal Highway Administration (FHWA) which promulgated the rules (Uniform Act) we use on the Wekiva Project. International Right of Way Association (IRWA) is the international professional organization for Right of Way Professionals. They (IRWA) have educational and all types of seminars for Right of Way Professionals. This presentation was given in Atlanta in 2011 to assist states and other agencies that use Federal dollars in completing transportation facilities across the nation. Please note, that in order to carry out the "Incentive Program", FHWA has very specific requirements. These requirements were not submitted and approved by FHWA prior to start of the Project. Also note, that this presentation was several hours long the whole presentation included just pictures, etc. I have attached only those slides that pertain to the question(s) at hand.

If you have any other questions please do not hesitate to contact me.

Deborah S. Long

Property Management Consultant/RTD GROUP

Florida's Turnpike Milepost 263, Building 5315 PO BOX 613069 Ocoee, Florida 34761

Tel (407) 264-3618 - Mobile (813) 997-4811

Deborah.Long@dot.state.fl.us

From: Deborah.long@dot.state.fl.us [mailto:Deborah.long@dot.state.fl.us]

Sent: Thursday, November 20, 2014 9:55 AM

To: Long, Deborah

Subject: Message from KM_C224e





Guidance on Incentive Payments

Why Was It Developed & How Can It Expedite the Relocation for the Project?

Marshall Wainright

FHWA Office of Real Estate Services

1200 New Jersey Ave., SE

Washington, DC, 20590

Marshall.Wainright@dot.gov

(202) 366 -4842

Thank You!

Acquisition & Relocation Incentives Policy Overview & Background

- Federal funds may participate in acquisition and relocation incentive payments
- Incentive payments can decrease project delivery time
- Consistent with the Uniform Act by encouraging expeditious acquisition of real property
- Cannot result in reducing entitlements to property owners or displacees

Prior to Implementation

State must:

- 1. Assure that use of incentive payments is permissible under State law
- 2. Assure availability of decent, safe, and sanitary comparable replacement dwelling units
- 3. Identify market trends such as escalating property values and increasing right-of-way costs
- 4. Determine the propriety of using acquisition and/or relocation incentive payments
- Make a public interest finding that clearly demonstrates that the use of incentive payments is cost effective 2011 Annual IRWA Conference-Atlanta

Implementation of Incentives Policy

- 1. This is a voluntary program; States are not required to provide incentive payments
- 2. State must submit request in writing to FHWA
- 3. FHWA will evaluate merits, determine if proposal is appropriate and cost effective
- 4. FHWA may approve as a permanent policy or trial basis
- 5. FHWA will monitor results the first 2 years
- 6. INCENTIVES MUST NOT BE USED AS A SUBSTITUTE FOR GOOD PROJECT PLANNING AND SCHEDULING ADEQUATE LEAD TIME

Factors to Be Addressed

State's request must include:

- An identification and discussion of factors to be considered
- Description of how payment amounts will be determined
- Description of safeguards in place to ensure there is no coercion
- Description of actions to monitor implementation
- Identification of specific performance measures to evaluate effectiveness

Acquisition Incentives Guidance

- 1. Must present acquisition incentive offers to all project property owners on project
- 2. Acquisition incentive must not be coercive in nature
- 3. Can still do administrative settlements based on merit, which is documented
- 4. Acquisition incentive does not affect owner's entitlement to relocation assistance

Relocation Incentives Guidance

- These are additions to, not in place of, traditional relocation entitlements
- These must be made available to all eligible displaced persons on the project
- The acquisition incentive will NOT affect or reduce the relocation housing payment calculation

Tab D

A RESOLUTION OF THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY, AMENDING SECTION 5-6.04 OF THE PROPERTY ACQUISITION AND DISPOSITION PROCEDURES MANUAL AND REFERENCING CFX AS THE GOVERNING AUTHORITY

WHEREAS, the Central Florida Expressway Authority (CFX) governing board is desirous of amending its policy regarding conveyances of surplus property to governmental entities and not for profit organizations;

WHEREAS, other housekeeping amendments are required to update the CFX Property Acquisition and Disposition Procedures Manual to correctly reference CFX as the governing Authority:

NOW, THEREFORE, BE IT RESOLVED BY THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY as follows:

Section 1. <u>ADOPTION</u>. The CFX Property Acquisition and Disposition Procedures Manual is hereby amended and adopted per the attached Exhibit "A." The amendments reflect the change in process for the disposition of surplus parcels to governmental entities and not for profit organizations and all references in the Manual are corrected to reflect CFX as the current Authority.

Section 2. <u>EFFECTIVE DATE.</u> This Resolution shall become effective upon adoption by the CFX governing Board.

1 CD 1 2014

	Welton G. Cadwell
	CFX Board Chairman
ATTEST:	
Darleen Mazzillo	
Executive Assistant	
	Approved as to form and legality
	Joseph L. Passiatore
	General Counsel

ORLANDO-ORANGE COUNTY CENTRAL FLORIDA EXPRESSWAY AUTHORITY

PROPERTY ACQUISITION & DISPOSITION PROCEDURES MANUAL 2013

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APPROVED
By The Orlando-Orange
County Expressway Board
December 12, 2013
Approved by ROW
Committee (date)
To be presented to the
CFX Board for approval
12/11/14

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Part 1: INTRODUCTION

5-1.01 Purpose

The Orlando-Orange CountyCentral Florida Expressway Authority (OOCEACFX) Property Acquisition and Disposition Procedures Manual ("Manual") is intended to provide recommended procedures to OOCEACFX employees and consultants for (i) obtaining necessary rights of way, easements and other property rights for roadway improvement projects and other projects for which OOCEACFX may be authorized to acquire such property rights and (ii) disposing of property rights deemed available for disposal by OOCEACFX. The Manual is intended for use in all projects for which OOCEACFX is the acquiring agency, unless the project is required by law or contract to be governed by Florida Department of Transportation procedures or other procedures.

This Manual and the guidelines presented herein are official OOCEACFX policy and shall provide the basic structure for conducting right of way and other property acquisition and disposition efforts for OOCEACFX authorized projects. Notwithstanding the foregoing, where deemed in the best interest of OOCEACFX and the public, subject to approval by the OOCEACFX Board, the OOCEACFX may waive the procedures set forth herein in a particular circumstance; provided that such waiver shall not be in conflict with state or federal law.

5-1.02 Statement of Policy

The policy of OOCEACFX shall be to acquire all properties in fee simple, easement, or other property interest deemed to be necessary for the implementation of an authorized project. If acquisition of only part of a property would leave its owner with an uneconomic remnant, OOCEACFX will consider acquisition of the entire property. It is further the policy of OOCEACFX that every property owner shall receive full, just and adequate compensation for the property, in accordance with the laws of the State of Florida. OOCEACFX shall attempt to negotiate in good faith to obtain a voluntary purchase from the property owner which may include providing non-monetary consideration as compensation for the property interests acquired.

5-1.03 OOCEACFX

Chapter 348, Part III, Florida Statutes provides authority for OOCEACFX to acquire property and to exercise the right and power of eminent domain for acquiring rights of way and other properties for OOCEACFX purposes. Moreover, other statutes, including, without limitation, Chapter 369, Part III, provide authority for OOCEACFX to acquire property for other purposes.

Part 2: ORGANIZATION AND COORDINATION

5-2.01 General Organization

OOCEACFX is organized into several operating divisions under the direction of the OOCEACFX Board and the Executive Director. A standing Right of Way Committee provides oversight and control of the property acquisition and disposition process.

5-2.02 OOCEACFX Board Oversight

The OOCEACFX Board has sole and final responsibility for all decisions related to project approval and authorization, expenditure of funds, consultant selection and contracting, property purchases, settlements, and authorization of eminent domain proceedings. OOCEACFX delegates certain authorities and responsibilities to the Executive Director who in turn authorizes various OOCEACFX staff or consultants to conduct the day-to-day operations, including right of way acquisition. In relation to right of way acquisition, the OOCEACFX Board shall approve the following actions:

- Approval of preliminary PD&E documents, alignment and right of way plans, design documents and construction and project cost estimates.
- 2. Authorization to initiate right of way acquisition activities.
- Authorization of right of way acquisition services including appraisals, review appraisals, acquisition consultants, and other right of way contractors.
- 4. Authorization to initiate eminent domain proceedings.

OOCEACFX delegates authority to the Executive Director, or the Executive Director's designee, to make purchase offers, negotiate settlements, approve mediation and condemnation settlements, execute purchase agreements and decide other matters pertaining to property acquisition and settlements for projects approved by OOCEACFX, provided, however, that the property acquisition process is conducted in accordance with the policies and procedures set forth in this Manual. The Right of Way Committee shall oversee and direct OOCEACFX's delegation of this authority.

OOCEACFX's delegation of authority for right of way acquisition activities recognizes the practical need to conduct negotiations for property acquisition, business damage claims and other matters pertinent to real estate transactions in confidence until such time as a settlement is reached. This need is recognized in Section 119.0711, Florida Statutes which exempts "...all appraisals, other reports relating to value, offers, and counteroffers..." from public disclosure until execution of a valid option contract or conditional acceptance of a written offer to sell by OOCEACFX, subject to final OOCEACFX Board approval.

5-2.03 Right of Way Committee

A standing Right of Way Committee is appointed by OOCEACFX to oversee and direct the right of way acquisition process. The purpose of the Right of Way Committee is to provide a forum for review and approval of property acquisition negotiations, proposed settlements, review of condemnation proceedings and mediation, and other matters related to acquisition negotiations and settlements. The Right of Way Committee is composed of two (2) OOCEACFX Board Members and a resident of Orange County selected and appointed by the OOCEACFX Board that serves on an annual basis. Two members of the Right of Way Committee must be

physically present at a meeting to constitute a quorum necessary to conduct business of the Right of Way Committee. During right of way acquisition projects, the Right of Way Committee shall meet as required to review negotiations and provide direction to the acquisition staff and consultants. OCEACEX General Counsel shall also attend Right of Way Committee meetings and shall serve as an advisor to the Right of Way Committee.

5-2.04 Executive Director and General Counsel

The Executive Director is responsible for the daily operations of the OOCEACFX. The Executive Director has delegated the authority and responsibility for right of way acquisition. The Executive Director or the Deputy Executive Director of Engineering and Operations are authorized to execute purchase and other agreements related to property acquisition or disposition.

The OOCEACFX General Counsel is responsible for, among other things, advising the OOCEACFX Board on legal matters, supervising OOCEACFX outside counsel, Right of Way Legal Counsel and the Acquisition Coordinator.

5-2.05 Right of Way Services

Without limiting anything herein, the Executive Director has specifically designated responsibility to conduct the routine and day-to-day functions of the property acquisition and disposition process to OOCEACFX staff or consultants, including through the Acquisition Coordinator and Right of Way Legal Counsel, subject to oversight by the General Counsel's office, the Right of Way Committee and the OOCEACFX Board as provided herein. These specific responsibilities include, without limitation:

- Approval of property acquisition plans, subject to final authorization by the OOCEACFX.
- 2. Approval of consultant work scope for right of way appraisals, appraisal reviews and acquisition after approval of consultant selection.
- 3. Authorization of specific work items as called for in the consultant contract, including authorization of appraisals, business damage assessment reports, special studies relating to property acquisition impacts and valuation, environmental studies and mitigation, relocation payments and other special services which may be called for in the consultant contract.
- 4. Authority to negotiate settlements or purchase agreements to acquire property above appraised value when such actions are adequately justified, subject to final approval by the Right of Way Committee and OOCEACFX Board.
- Authority to mediate cases prior to eminent domain valuation trials, settlement at mediation being subject to final approval by the Right of Way Committee and OCCEACEX Board.

- Approval of payment requests for right of way purchases and other purposes authorized herein.
- Day-to-day management of the right of way work effort, including review of progress, schedule and cost adherence, and approval of technical products.
- 8. Coordination of right of way activities with other OOCEACFX divisions (Planning, Design, Construction, Finance) and consultants.
- Coordination of acquisition and condemnation activities with OOCEACFX Right of Way Legal Counsel, the Right of Way Acquisition Coordinator and/or designated brokers and consultants.
- 10. Participation in design plan reviews.
- Coordination of property disposition activities with OOCEACFX Right of Way Legal Counsel.
- 12. Such other responsibilities as the Executive Director may assign to staff or consultants with the approval of the Right of Way Committee.

The property acquisition process shall be monitored by the Right of Way Committee, and all actions resulting in final settlement of property acquisition or disposition matters shall be reviewed with and reported to the Committee and the Executive Director prior to execution of agreements, subject to final approval by the OOCEACFX Board.

5-2.06 Contract Services

OOCEACFX may select consultants to providing various right of way services as required by the complexity and magnitude of the property acquisition program being undertaken. The following types of consultant services may be used, depending on the nature of the acquisition program.

5-2.061 Right of Way Legal Counsel - The OOCEACFX Right of Way Legal Counsel will be selected by OOCEACFX. The Right of Way Legal Counsel shall be responsible for all legal matters pertaining to the property acquisition process, subject to oversight by the General Counsel's office and the Right of Way Committee. Specific responsibilities and authority include the following, without limitation.

- 1. Obtaining and processing title search, ownership and encumbrance reports and other due diligence information as required for both engineering and property acquisition purposes, including, without limitation, those reports specified in Section 5-2.05, paragraph 3 above.
- Preparing of all legal instruments and documents required for right of way
 acquisition, including, without limitation, purchase and settlement
 agreements, option agreements, satisfactions of mortgages, release
 instruments, deeds, easements, and other documents deemed necessary and
 proper for each transaction.

- 3. Closing property purchases and obtaining title insurance.
- Preparing, filing and prosecuting eminent domain proceedings, upon approval by OOCEACFX.
- 5. Negotiating property acquisitions.
- 6. Conducting property disposition activities.
- **5-2.062** <u>Acquisition Coordinator</u> The Acquisition Coordinator provides the technical work associated with property acquisition projects, assists with pre-condemnation negotiations and property disposition. The Acquisition Coordinator reports to the General Counsel's office and Right of Way Committee and may be a consultant selected by OOCEACFX. The Acquisition Coordinator services may be performed by a firm or individual or as part of the OOCEACFX's General Consulting Engineering Contract. Responsibilities of the Acquisition Coordinator include, without limitation:
 - 1. Assisting in the development of work programs.
 - 2. Conducting pre-condemnation negotiations for property acquisition subject to supervision of the General Counsel's office.
 - Assisting Right of Way Legal Counsel in the preparation and submittal of interim progress reports, negotiation reports, recommended settlement actions and recommendations for initiation of eminent domain proceedings to the Executive Director and Right of Way Committee.
 - Conducting property disposition activities subject to the supervision of the General Counsel's office.
 - 5. Accepting and executing the Review Appraiser's Certification and making statutory first written offers to property owners at appraised value.
- **5-2.063** <u>Consultants</u> <u>OOCEACFX</u> may elect to utilize the services of qualified technical consultants during the property acquisition process. Technical consultant services required for an acquisition program may include, without limitation, the following.
 - Property Appraisal and Appraisal Review
 - 2. Acquisition/Negotiation/Right of Way Coordination
 - 3. Business Damage Assessment and Report Preparation
 - 4. Relocation and Advisory Services as OOCEACFX may elect from time to time
 - 5. Eminent Domain Support
 - 6. Property Management

- 7. Environmental Consulting
- 8. Land Use and Planning Consulting

Part 3: CONSULTANT OPERATIONS

5-3.01 General Requirements

Consultants engaged in right of way services and real property acquisition and disposition services shall be selected in accordance with OOCEACFX policies and procedures for consultant selection described in this section, however, in the event of any direct conflict with OOCEACFX procurement policies, the policies and procedures set forth in the procurement policy shall prevail. It is the policy of OOCEACFX to provide the maximum opportunity to qualified individuals and businesses to provide goods and services to OOCEACFX, consistent with appropriate quality at the most reasonable cost.

Consultants shall be technically qualified to perform the right of way services, shall have the proper business and professional licenses and registrations and shall meet OOCEACEX's requirements for insurance coverage. Consultant responsibilities, scope of services and compensation shall be specified in a written contract approved by OOCEACEX. The consultant shall provide adequate, qualified personnel to accomplish the scope of services and to staff its offices during normal hours of operation. The consultant will provide ongoing project management personnel necessary to coordinate, plan, direct and control the assignment and all customary administrative services.

5-3.02 Consultant Selection and Contracts

OOCEACEX's Board shall approve the selection of the Acquisition Coordinator and Right of Way Legal Counsel. At the request of the General Counsel's office, OOCEACEX may solicit proposals for consultants, including the Acquisition Coordinator and Right of Way Legal Counsel. OOCEACEX's Board has designated the Right of Way Committee to evaluate proposals and make recommendations to the Board for approval of such consultants.

General Counsel's office may confer with the Right of Way Committee and Right of Way Legal Counsel from time to time to determine what type of consultant services are required to accomplish right of way and real property acquisition and disposition services. The General Counsel's office may acquire such services through direct negotiations with qualified consultants, or the General Counsel's office may authorize and designate Right of Way Legal Counsel to retain sub-consultants necessary to perform such services, subject to the following.

 Each such consultant or sub-consultant shall negotiate a written contract setting forth the scope of services and compensation. The scope of services shall define the responsibilities of the consultant, the scope of work to be performed, the resultant deliverables and requirements,

- invoicing procedures, and authorizations required. The contract shall be authorized by the OOCEACFX Board.
- 2. Approval of the OOCEACFX Board shall be obtained for any consultant or sub-consultant contract fee anticipated to exceed \$25,000.

Part 4: PROPERTY ACQUISITION PROCEDURES

This section provides an outline of the property acquisition process as it relates to OOCEACFX's property acquisition program. The outline is not meant to be an all encompassing description of the responsibilities and duties; rather it is meant as a general guide to the process.

5-4.01 Right of Way Determinations The following shall be prepared or obtained for OOCEACFX, if available:

- 1. Maps depicting preferred corridors and/or routes;
- 2. Right of Way maps;
- 3. Parcel sketches;
- Legal description of parcels to be acquired;
- 5. Property interest(s) to be acquired; and,
- 6. Project background reports and data.

5-4.02 <u>Title, Ownership, and Tenant Information</u> - Right of Way Legal Counsel is responsible for securing title search and title information. Upon commencement of property acquisition activities, the General Counsel's office will oversee:

- The provision of maps, plans, legal descriptions and parcel sketches, and the obtaining of updated title information for the parcels in the project area;
- 2. Development of a list of property owners by parcel number; and,
- Identification of parcels that may be appropriate for early acquisition and/or acquisition as total takes through negotiation or eminent domain and the commencement of negotiations.

5-4.021 Negotiated Acquisition — Notwithstanding anything to the contrary contained in this Manual, the Right of Way Committee and OOCEACFX Board may authorize obtaining property in advance of completing its acquisition procedures, provided that any negotiated purchase price of the property obtained is based on a reasonable determination of the fair market value of the property as established by an appraisal. In determining whether early acquisition is appropriate with respect to any such property, the Right of Way Committee and OOCEACFX may consider, without limitation, savings and planning efficiencies which result from the early acquisition, any

efforts to develop or improve the property, any proposed or pending sale of the property, any potential business damage claims, or any other circumstance that establishes that early acquisition of the property is in the best interest of the OOCEACFX.

5-4.03 Appraisals

5-4.031 <u>Appraisal Reports</u> — It is the policy of <u>OOCEACFX</u> that any and all appraisals used in the acquisition of property rights reflect the fair market value of the property or rights to be acquired, including any severance damages, less special benefits accruing to the property. Appraisals shall be prepared by qualified appraisers and shall conform to the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation. All appraisers will be selected on the basis of their experience, demonstrated quality of work, licensing and reputation. Appraisers must be qualified to give expert testimony in support of their value estimates in the event of eminent domain proceedings. Appraisals shall be certified to <u>OOCEACFX</u>.

Where deemed appropriate by the General Counsel's office and the Right of Way Committee, OOCEACFX may agree upon a single OOCEACFX/landowner appraiser to perform an appraisal certified to both parties, may accept an appraisal prepared for a landowner by an OOCEACFX-approved appraiser meeting the standards set forth herein or may accept an appraisal prepared by any appraiser deemed acceptable to Right of Way Legal Counsel and the Right of Way Committee based on the appraiser's experience, quality of work and reputation. OOCEACFX may also negotiate a proposed settlement or purchase price subject to confirmation by an appraisal performed in accordance with these policies.

5-4.032 Appraisal Review - The appraisal report(s) prepared on behalf of OOCEACFX will be reviewed by a qualified Review Appraiser for conformance with the Uniform Standards of Professional Appraisal Practice and to further assure that all compensable items have been included in the appraisal report. The review shall include a thorough check of all mathematical calculations, a review of the completeness of the appraisal, and a review of the reasonableness of the appraiser's conclusions.

5-4.033 Review Appraiser's Certification - The Review Appraiser's written report will certify that the appraisal report conforms to the Uniform Standards of Appraisal Practice and that the value estimate is either reasonable or unreasonable. The Review Appraiser shall document in writing that he or she has reviewed each appraisal report prepared on behalf of OOCEACETX.

5-4.04 Acquisition

5-4.041 Negotiation — In accordance with 73.015, Florida Statutes, each property owner should be given full information as to the acquisition, the necessity of the proposed improvement and the potential impact of the improvement on the subject parcel. OOCEACFX may seek donation of rights of way where appropriate or may negotiate property exchanges or non-monetary consideration for acquisition of property interests.

Property acquisition negotiations are conducted under the supervision of the General Counsel's office. Staff or consultant negotiators may be assigned to specific parcels, depending on the

perceived difficulty of the negotiations, number of parcels involved in the assignment, and other factors as appropriate.

If during the course of negotiations, certain factors or conditions concerning the property were not known or not evident at the time of valuation, proper consideration and weight should be given to these matters, and they should be brought to the attention of the Right of Way Committee, which may request a reappraisal of the property or may authorize an administrative settlement or agreement based on the facts submitted by the negotiator.

5-4.042 <u>Settlement Justification</u> — The negotiator may present counteroffers to the Right of Way Committee and shall present proposed negotiated purchase or settlement agreements for consideration by the Right of Way Committee for recommendation to the <u>OOCEACFX</u> Board and then to the <u>OOCEACFX</u> Board for final approval.

Settlement memoranda shall be prepared for all recommended acquisition settlements. The memoranda will document the basis for settlements and specifically point out the facts and circumstances justifying the settlement.

5-4.043 <u>Documentation of Negotiations</u> - The negotiator shall maintain accurate, written records of all negotiations, including:

- Persons contacted.
- Potential settlement terms discussed with landowners before and after any first written offer.
- 3. Written offers and counteroffers.
- Results of the discussions.
- 5. Any other data pertinent to the negotiation and settlement of the parcel.
- 6. Copies of written contact records shall be maintained in the negotiators working file, in chronological order, so that the negotiation process can be readily reviewed throughout the acquisition program.

5-4.044 <u>Settlements and Closings</u> - Upon reaching a negotiated settlement with the property owner in the form of a signed agreement, the negotiator will:

- Provide a statement of justification for the settlement and a recommendation to accept or reject the agreement to the Right of Way Committee and OOCEACFX Board.
- Upon final approval of the settlement agreement, submit the agreement to the Executive Director for execution reflecting final approval by OOCEACFX.

Closing services shall be performed by the Right of Way Legal Counsel who shall be responsible for recording of the executed deed and other documents. The Right of Way Legal Counsel shall provide copies of the closing statement, deed, title insurance policy and other pertinent closing documents to the OOCEACFX's designated custodian of records.

5-4.05 Eminent Domain Proceedings

Before initiating a condemnation action as to any property interest, Right of Way Legal Counsel shall consult with the General Counsel's office and Right of Way Committee and shall act in accordance with Chapter 73 and 74, *Florida Statutes*.

The Right of Way Committee shall have the authority to approve initial offers of compensation in any amount deemed to be in the best interest of the OOCEACEX and shall have the authority to approve any terms deemed necessary to obtain a Stipulated Order of Taking of the property to be acquired.

Right of Way Legal Counsel, with oversight from General Counsel's office, is responsible for negotiating settlement agreements achieved after the filing of eminent domain proceedings, and will be responsible for securing approvals of such settlements, through the Right of Way Committee and OOCEACFX Board. If a settlement agreement cannot be reached, the Right of Way Legal Counsel will be responsible for obtaining a final verdict as to compensation to be paid for the property interests to be acquired.

5-4.06 Property Management

- **5-4.061** <u>Inventory and Inspection</u> <u>OOCEACFX</u> staff or consultants will inspect the property and coordinate post-acquisition maintenance and/or disposition of buildings and personal property acquired and shall maintain records documenting same.
- **5-4.062** <u>Interim Use/Extended Possession</u> In certain instances, <u>OOCEACFX</u> may acquire a property in advance of the construction schedule and may authorize an interim use of the property. All interim uses shall be approved by the Right of Way Committee.
- **5-4.063** Repairs and Maintenance As required, the OOCEACFX may authorize contractors to clear properties, mow and clean, affect building repairs, board and secure vacant structures, and undertake other ongoing maintenance activities as may be dictated. Properties will be maintained in a safe and secure manner.
- **5-4.064** <u>Sale of Improvements</u> Sale of improvements for removal or salvage may be authorized when it is in the best interest of OOCEACFX to affect such a sale, and when project schedules permit such actions. Sale of improvements will be conducted in compliance with Florida law and appropriate bond documents related to the expressway project.

5-4.07 Acquisition and Disposition Records and File Maintenance

5-4.071 Records to be Maintained - In accordance with Chapter 119, Florida Statutes, and existing OOCEACFX policy, files documenting property acquisition and disposition shall be established and maintained at OOCEACFX headquarters. Individual files for each parcel should be established by assigned parcel number. Original documents pertaining to property acquisition and disposition are to be included in the parcel file when available.

The available documents and records to be maintained by OOCEACFX for each parcel are identified on checklists, Forms 1-3: 1) Real Estate Acquisition Closing Binder Checklist for Non-Litigation Parcels: 2) Real Estate Acquisition Closing Binder Checklist for Litigation Parcels; and, 3) Real Estate Sale Closing Binder Checklist for Surplus Parcels. The documents and records identified on the Checklists are not intended to be exhaustive but represent the most common documents involved in OOCEACFX's property acquisition and disposition activities. On a parcel by parcel basis, Right of Way Legal Counsel shall include other documents used and available that may be particular to the parcel acquisition and disposition activity. The Checklists should be revised by OOCEACFX staff on a regular basis to maintain complete parcel records and are not intended to be included as part of this Manual.

5-4.072 Identification of Parcels - At the beginning of a new project requiring the acquisition of right of way, the Acquisition Coordinator shall develop a master list of parcels to be acquired, identified by parcel number, and shall provide the list to the OOCEACFX Records Custodian. From time to time during the project, the list shall be revised to reflect changes in the parcels that are to be acquired. OOCEACFX records shall be documented by memo if parcels are identified as no longer necessary for acquisition for the project.

5-4.073 <u>Delivery of Acquisition and Disposition Records</u> – Right of Way Legal Counsel shall deliver the complete parcel file to the <u>OOCEACFX</u> Records Custodian no later than six (6) months from the date of final parcel activity. This deadline may be extended as necessary by General Counsel's office upon written request.

Part 5: ADVANCE ACQUISITION

It is expressly found and declared by OOCEACFX that, in certain circumstances, it is necessary and appropriate for OOCEACFX to obtain or acquire rights of way or other property interests prior to the time that funding for ana OOCEACFX authorized project is finalized ("Advance Acquisition"). The purpose of this section is to set forth the policies and procedures whereby OOCEACFX may authorize and implement such advance acquisition of rights of way or other property interests.

5-5.01 Planning for Advance Acquisition

5-5.011 Planning Program - In conjunction with its annual and long-range transportation planning and budgeting programs, OOCEACFX may consider opportunities to acquire or reserve rights of way or property rights in advance of the date when the total funding for a particular project will be available.

5-5.012 <u>Funding Analysis</u> - As a part of its review of opportunities for advance acquisition of rights of way and property interests, staff shall prepare an analysis of potential funding sources,

both public and private, to defray all costs of such advance acquisition pending total funding for the applicable project.

5-5.02 Determination of Need for Advance Acquisition

5-5.021 Review by Right of Way Committee - As far in advance of any particular project as is practical, the Right of Way Committee may review all available information relating to the project, to determine whether Advance Acquisition is appropriate with respect to the project or any portion thereof. In making such determination, the Right of Way Committee shall consider, without limitation, the following factors:

- I. The likelihood that property values in the proposed project route will substantially appreciate prior to the anticipated date for construction and that savings will result from a program for Advance Acquisition.
- Savings and planning efficiencies which would result from Advance Acquisition in conjunction with other OOCEACFX projects and/or coordination with planning or improvement projects by other governmental agencies.
- 3. The potential for future development within the proposed project corridor or area which would conflict with or impede the proposed project.
- Environmental considerations which may support advance acquisition of right of way.
- 5. The availability of additional and alternative funding sources for advance right of way acquisition, including, without limitation, the commitments of financial support and/or right of way donations by other governmental bodies or private entities.
- The necessity to acquire additional property and/or right of way to preserve availability of previously acquired or donated rights and/or rights of way.
- 7. Other financial savings and logistical benefits achieved by advance acquisition of right of way.
- 8. The impact, if any, of acquiring rights of way not in accordance with guidelines from the Federal Highway Administration or other applicable federal agency and the necessity, if applicable, of obtaining a waiver to any such guidelines.
- Express authorizations by law or agreement for acquisition of property interests in advance of OOCEACFX funding of a related expressway project.

- 5-5.022 <u>Projected Budget</u> To assist the Right of Way Committee in its determination as to whether advance acquisition of Right of Way is appropriate for any project, staff or consultant personnel shall prepare a projected time schedule for the Advance Acquisition program. The time schedule shall include a proposed estimate of costs of such Advance Acquisition and the revenues and funds which are or will be available for such acquisition prior to full funding of any particular project.
- **5-5.023** Recommendation by Right of Way Committee The Right of Way Committee shall recommend to OOCEACFX whether a particular project is appropriate for Advance Acquisition. Based upon such recommendation, OOCEACFX may authorize the Advance Acquisition program for a particular project.
- **5-5.024** Advance Right of Way Pre-Acquisition Upon approval by OOCEACFX, staff or consultant personnel shall commence any additional pre-acquisition activities required by Part 4 of this Manual.
- 5-5.025 Negotiation for Advance Acquisition Where applicable, a proposed purchase agreement shall contain provisions that (i) funding has not been completed for the subject project and that the contract is subject to funding by an OOCEACFX bond issue or other applicable sources, (ii) the design and location of any contemplated or proposed roadway systems or access scenarios are not guaranteed unless otherwise expressly provided, and (iii) OOCEACFX shall be released from any other claims by the landowner relating to the property acquisition and/or the applicable project, including, without limitation, claims for loss of access, air, light or view or other severance, business and consequential damages.
- **5-5.026** Advance Acquisition by Eminent Domain To the extent that OCEACFX has actual funds available and budgeted, and upon authorization by OCEACFX to proceed with condemnation, the Right of Way Legal Counsel, at the direction of the General Counsel's office, may institute eminent domain proceedings for potentially necessary rights of way for any project prior to the date when the total proceeds for a particular project are available.
- 5-5.027 Retention of Consultants by Right of Way Legal Counsel It is acknowledged that it may be necessary for Right of Way Legal Counsel to employ consultants for the acquisition process and the attendant eminent domain proceedings. Right of Way Counsel, with the supervision of General Counsel's office, shall be authorized to employ such consultants as may be required to assist in the acquisition process and eminent domain proceedings, if applicable, subject to the requirements of 5-3.02. Such consultants may include, but are not limited to, appraisers, engineers, land planners, market consultants or others who may be required to testify as expert witnesses in required judicial proceedings.

Part 6: POLICY REGARDING THE DISPOSITION OF EXCESS LANDS

5-6.01 Purpose and Authority.

The purpose of this policy is to establish a procedure for disposition of excess real property unnecessary or unsuitable for the OOCEACFX's use. OOCEACFX is authorized by Florida Statutes, Section 348.754, to implement all necessary procedures incident to the creation and maintenance of the expressway system.

Notwithstanding anything provided herein, the disposition or conveyance of any property acquired after May 11, 2006, by OOCEACFX through eminent domain shall be made in accordance with the provisions of Section 73.013, Florida Statutes.

5-6.02 Definitions.

- a. <u>Excess Property</u>. Real property, of any monetary value, located outside of the current operating Right of Way limits of <u>OOCEACFX</u> not currently needed to support existing expressway facilities as determined by staff. Excess Property may include excess property with economic value created when design or construction requirements change after acquisition. Excess Property may or may not be needed for future expressway purposes.
- b. Expressway Facility/Expressway Facilities. Any and all lands, fixtures, improvements, roadways and toll plazas which may be constructed, operated or maintained in whole or in part with OOCEACFX funds.
- c. <u>Inequitable Sale</u>. A sale of Surplus Property which would unfairly or unjustly affect an adjacent property owner's ultimate or present use of the owner's property to the extent that the property owner is or will be hindered or prevented from full use of such property.
- d. OCEACFX's Standard Written Contract. An agreement for sale and purchase of Surplus Property made between a potential purchaser and OCEACFX being materially in OCEACFX's standard form and content which contains the terms of the sale.
- e. <u>Surplus Property</u>. Excess Property declared by <u>OOCEACFX</u>'s Board to no longer be essential to, or have any present or future use or purpose for <u>OOCEACFX</u> and the Expressway Facility.

5-6.03 Determination of Excess Property.

The OOCEACFX Board may from time to time, direct the Executive Director or the Right of Way Committee to review property holdings of OOCEACFX to determine if Excess Property exists. The Board shall determine whether Excess Property is essential for present or future construction, operation or maintenance of an Expressway Facility or essential for OOCEACFX purposes. A determination that Excess Property is non-essential shall be made by a resolution of the Board. If a parcel of property is determined to be non-essential, it will be designated as Surplus Property. If the Surplus Property is subject to a Lease Purchase Agreement with the Florida Department of Transportation (the "FDOT") then OOCEACFX shall file with the FDOT a certificate signed by the Chairman of the Board stating that (1) OOCEACFX is not in default of any covenants or provisions of the Master Resolutions with the Junior and Senior Bond Holders, and (2) in the opinion of the General Consulting Engineers, OOCEACFX is in compliance with the applicable Sections of the Master Resolutions with the Junior and Senior Bond Holders.

5-6.04 Procedure for Disposition.

After the Board has determined a parcel of property is Surplus Property, OOCEACFX may, but is not required to, dispose of the Surplus Property in the following manners. In determining whether to dispose of Surplus Property, the Board may consider, but is not limited to considering, the current market conditions and whether the cost to dispose of the Surplus Property outweighs the price which may be obtained from the sale of the Surplus Property. OOCEACFX may sell less than a fee simple interest in Surplus Property. Surplus Property may be sold to, or exchanged with, private entities and persons. When deemed by the OOCEACFX Board to be in the public interest, OOCEACFX may also sell, give or exchange Surplus Property to or with another public or quasi-public entity or a charitable or other non-profit organization governmental entity.

- a. <u>Surplus Property Valued Under \$25,000</u>. Where Surplus Property has an estimated value of less than \$25,000, as set forth in a written good-faith estimate by <u>OOCEACFX</u>'s appraisal consultant or other qualified agent selected by the Right of Way Committee, the Board shall choose one of the following procedures for the disposition of such Surplus Property:
 - (1) Public sale as provided in 5-6.06 below; or
 - (2) Negotiated sale as provided in 5-6.07 below.
- b. <u>Surplus Property Valued Over \$25,000</u>. Where Surplus Property has an estimated value greater than \$25,000, it shall be disposed of by public sale as provided in 5-6.06 below.
- c. <u>Inequitable Sales</u>. Where the sale of Surplus Property would be an Inequitable Sale, regardless of the value of the property, the Surplus Property may be sold to an adjacent affected property owner by a negotiated sale. If more than one adjacent property owner desires to purchase the property, it shall be sold by a public sale. Without limiting anything else contained in this policy, if no adjacent property owner desires to purchase the property, then the Authority may elect to dispose of such land by public sale, negotiated sale, exchange, donation or any other manner contemplated in this policy. Nothing in this paragraph is intended to eliminate the requirements of subparagraphs 5-6.04 (a) or (b) above.
- d. <u>Surplus Property Sold to a Public/Non-Profit Entity</u>. If Surplus Property is to be sold to another public or quasi-public entity, or a charitable or other non-profit organization, it may be disposed of by a negotiated sale.
- e. <u>Surplus Property Given to a Public/Non-Profit Entity</u>. If Surplus Property is to be given to a public or quasi-public entity, or a charitable or other non-profit organization, the Board shall determine if the gift of the Surplus Property is appropriate under all of the circumstances.
- If the United States, or any department or agency thereof, the state or any
 political subdivision or agency thereof, or any municipality of this state, or

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corporation or other organization not for profit which may be organized for the purpose of promoting community interest and welfare, should desire any real or personal property that may be owned by CFX, for public or community interest and welfare, then the United States, or any department or agency thereof, state or such political subdivision, agency, municipality, corporation or organization may apply to the governing board of CFX for a conveyance or lease of such property. After receiving a recommendation from the CFX Right of Way Committee, the governing board if satisfied that such property is required for such use and is not needed for CFX purposes, may thereupon convey or lease the same at private sale to the applicant for such price, whether nominal or otherwise, as such board may fix, regardless of the actual value of such property. The fact of such application being made, the purpose for which such property is to be used, and the price or rent therefor shall be set out in a resolution duly adopted by such board. In case of a lease, the term of such lease shall be recited in such resolution. No advertisement shall be required.

Notwithstanding a. through fd. above, upon recommendation of the Right of Way Committee and Executive Director, and where deemed in the best interest of OOCEACFX and the public, the Board may waive the procedures for disposition of Surplus Property in a particular circumstance. Such waiver shall be by Board resolution. Without limiting anything contained herein, to maximize revenues to OOCEACFX, OOCEACFX may market its surplus property, including through marketing and/or listing with a licensed real estate broker or brokers approved by the Board.

5-6.05 Appraisals.

Except as provided herein, prior to closing on the sale or exchange of Surplus Property, OOCEACFX shall obtain an appraisal. If deemed appropriate by OOCEACFX, in light of all the circumstances, the appraisal may be in the form of a summary or letter appraisal confirming the proposed transaction price is a reasonable market price. Appraisal costs shall be payable by the purchaser of any Surplus Property.

If the sale of Surplus Property is initiated by OOCEACFX, an appraisal shall be obtained by OOCEACFX prior to closing on a sale or exchange of any Surplus Property and the purchaser shall pay for the appraisal cost at closing. If a prospective purchaser solicits OOCEACFX regarding the purchase of Surplus Property, the prospective purchaser shall be responsible for obtaining and paying for an appraisal prepared by an appraiser selected and approved by OOCEACFX. Where deemed appropriate by General Counsel's office and the Right of Way Committee, OOCEACFX may accept an appraisal prepared for a landowner by an OOCEACFX approved appraiser meeting the standards set forth in Section 5-4.03 of this Manual. Appraisal costs shall be payable by the purchaser of the Surplus Property. If a prospective purchaser solicits OOCEACFX regarding the purchase of Surplus Property and provides an approved appraisal but is subsequently not the highest bidder or proposer at a public sale, the successful

bidder shall reimburse the cost of the approved appraisal which shall be paid to the original prospective purchaser as a condition to the purchase of the Surplus Property.

If Surplus Property valued at \$25,000 or less is sold by a negotiated sale, a formal appraisal does not need to be obtained provided that OOCEACFX shall obtain a written good-faith estimate by OOCEACFX's appraisal consultant that the property value does not exceed \$25,000. However, the OOCEACFX Board, General Counsel's office, or Right of Way Legal Counsel may require an appraisal for Surplus Property valued at less than \$25,000 if it is determined a formal appraisal is appropriate under the circumstances. An appraisal shall not be dated more than ninety (90) days prior to the date of the sale.

5-6.06 Public Sales.

In order to sell Surplus Property by public sale, OOCEACFX shall utilize either the bid or proposal procedures set forth below:

Bid Procedure:

- a. OCCEACFX shall advertise the sale, including at a minimum an advertisement in a newspaper of general circulation in the area where the property is located, and shall post the advertisement on OCCEACFX's internet web site. The advertisement shall state the date, time and place of the proposed auction, bid due date, bid opening or other method of buyer and price selection. The advertisement shall briefly describe the property, the minimum bid amount, and the location of where to obtain additional information. The advertisement shall run in the newspaper at least one (1) day, which must occur at least fourteen (14) calendar days prior to the date of the public sale. At the election of OCCEACFX, more notice may be afforded, but not less. OCCEACFX shall reserve the right to reject any or all bids, to request and consider additional information from any bidder and to waive minor irregularities and technical defects in any bid.
- b. The public sale shall be held at OOCEACFX offices or such other place designated by OOCEACFX.
- c. The public sale shall be in sealed bid, auction format, or such other method determined by <u>OOCEACFX</u> and shall be conducted by a designated representative of <u>OOCEACFX</u>.
- d. OOCEACFX may at its option establish a minimum bid amount of not less than the appraised value of the property; however, the Right of Way Committee may determine, subsequent to a public sale where the minimum bid is not obtained, that a lower bid will be accepted.
- e. Upon OOCEACFX's notice of the successful bid, the successful bidder shall be required to place a deposit in the amount of ten percent (10%) of the purchase price (the "Deposit") in an escrow account designated by OOCEACFX within five (5) business days after such notice. The Deposit

shall be refundable pursuant to the terms of the OOCEACFX's standard written contract only in the event OOCEACFX does not proceed to execute and/or close on a contract for sale of the subject property or, if after executing the contract, the purchaser determines within the inspection period not to proceed with the purchase of the property. Full payment of the purchase price shall be made to OOCEACFX at closing in either a cashier's check, money order, or other non-cancelable instrument.

Proposal Procedure:

- f. The OOCEACFX may solicit proposals (Request for Proposals) for purchase of OOCEACFX property. OOCEACFX shall advertise the Request for Proposals, including at a minimum an advertisement in a newspaper of general circulation in the area where the property is located and shall post the advertisement on OOCEACFX's internet web site. The advertisement shall briefly describe the property and where to obtain additional information. The advertisement shall run in the newspaper at least one (1) day, which must occur at least fourteen (14) calendar days prior to the date the proposals are due. At the election of OOCEACFX, more notice may be afforded, but not less.
- g. The Request for Proposals shall constitute an invitation to submit offers to purchase and does not constitute an offer by OOCEACFX to sell any property. All sales are subject to execution and OOCEACFX Board approval of a written contract materially in OOCEACFX's standard form.

 OOCEACFX shall reserve the right to negotiate modifications to any offer that it deems acceptable, to reject any or all offers, to request and consider additional information from any submitter, and to waive minor irregularities and technical defects in any proposal. OOCEACFX shall reserve the right to seek new proposals or offers when it determines that it is in its best interest to do so. OOCEACFX also reserves the right not to pursue sales of any specific properties identified in the Request for Proposals.
- h. The proposals shall be opened on a date specified in the Request for Proposals at the OOCEACFX offices, or such other place designated by OOCEACFX, by a designated representative of OOCEACFX.
 OOCEACFX shall respond to all proposals by a date specified in the Request for Proposals. Upon OOCEACFX's notice of acceptance of an offer, the potential buyer shall be required to place a deposit in the amount of ten percent (10%) of the purchase price (the "Deposit") in an escrow account designated by OOCEACFX within five (5) business days after such notice. The Deposit shall be refundable pursuant to the terms of the OOCEACFX's standard written contract only in the event OOCEACFX does not proceed to execute and/or close on a contract for sale of the subject property or, if after executing the contract, the purchaser determines within the inspection period not to proceed with the purchase

of the property. Full payment of the purchase price shall be made to OOCEACFX at closing in either a cashier's check, money order, or other non-cancelable instrument.

- i. As a condition precedent to OOCEACFX's obligation to sell any property listed in a Request for Proposal, all proposals to purchase such property will be subject to an appraisal to confirm that the offer is a reasonable market offer. The appraisal shall be paid for by the buyer of the property.
- j. Any successful proposer shall enter into the OOCEACFX's standard written contract. Should a successful proposer fail to enter into the OOCEACFX's standard written contract within the time specified in the Request for Proposal, or the OOCEACFX's standard written contract, then the proposer shall be deemed to have abandoned the proposal and the Authority may, but shall not be obligated to, pursue a transaction with any other potential proposers.

All potential bidders and proposers are placed on notice that OOCEACFX is a public agency and is subject to Chapter 119, *Florida Statutes*, regarding the disclosure of public records. Pursuant to Section 119.071(1)(b), *Florida Statutes*, sealed bids or proposals received by OOCEACFX are exempt from public disclosure until such time as the OOCEACFX provides notice of an intended decision or until thirty (30) days after the bids or proposals are opened, whichever is earlier, at which time all bids or proposals received by OOCEACFX shall be made available to the public for inspection and copying in accordance with Chapter 119, *Florida Statutes*. Any language in a bid or proposal attempting to keep all or part of such bid or proposal confidential is of no force and effect and will be disregarded as contrary to Florida law.

5-6.07 Negotiated Sales.

A negotiated sale is a transaction between OOCEACFX and a prospective purchaser which occurs as a result of negotiations between OOCEACFX and the purchaser, and the sales price is decided through negotiation. In such circumstances, the parties will enter into ana OOCEACFX's standard written contract. Upon execution of OOCEACFX's standard written contract, a prospective purchaser shall provide a deposit equal to ten percent (10%) of the sales price. The deposit shall be paid in a cashier's check, money order, or other non-cancelable instrument.

5-6.08 Exchanges of Property.

OCEACFX may exchange Surplus Property for other real property. If a prospective purchaser of Surplus Property wishes to exchange a parcel of real property which has value to OCEACFX (the "Exchange Property"), OCEACFX may take title to the Exchange Property in exchange for the Surplus Property, provided the Board determines that acceptance of such Exchange Property is in the best interest of OCEACFX and the public. Factors considered in such determination may include, without limitation, whether the Exchange Property is: (i) located in Orange County, Florida; (ii) contiguous to a current Expressway Facility; (iii) contiguous to a planned Expressway Facility; or (iv) located in an area which would serve an

important function for OOCEACFX or OOCEACFX related project even if not contiguous to a current or planned Expressway Facility.

If the Board determines Surplus Property may be exchanged for Exchange Property, the exchange may be an equal exchange or, if the Exchange Property is worth less than the Surplus Property, the prospective purchaser shall pay the difference between the appraised value of the Exchange Property and the appraised value of the Surplus Property. However, if the Surplus Property is to be exchanged with a public entity or for a public purpose, the Board may agree to waive payment of the differential if deemed appropriate under all of the circumstances. In instances where the Exchange Property is appraised and/or is priced at a higher value than the Surplus Property, OOCEACFX shall follow its normal acquisition procedures to obtain such Exchange Property and the Surplus Property may be conveyed as partial consideration for the Exchange Property under such additional terms and conditions as deemed appropriate by OOCEACFX in light of all circumstances.

Notwithstanding anything contained herein, OOCEACFX may exchange property in connection with the settlement of eminent domain matters upon terms and conditions deemed acceptable to the Right of Way Committee and Board without complying with this exchange policy.

5-6.09 Closing.

Closing for the sale of all Surplus Property shall occur at either OOCEACFX offices, at the office of Right of Way Legal Counsel, or at such other agreed upon location. Closing shall occur as provided in OOCEACFX's standard written contract. All funds from the sale of Surplus Property shall be deposited into the System General Revenue Fund account.

Title to the Surplus Property shall be conveyed by a special warranty deed, "as-is" and "where-is", without abutters' right to the Expressway Facilities, subject to all matters of record and any matters set forth in the purchase and sale contract executed between OOCEACFX and the purchaser. OOCEACFX will execute an owner's affidavit for title insurance purposes if requested by the purchaser. If any structures are located on the Surplus Property, the purchaser shall receive a radon gas disclosure form which shall be executed by the purchaser.

If the purchaser fails to purchase the property as provided in the OOCEACFX's standard written contract, the purchaser shall forfeit the Deposit and OOCEACFX may proceed to sell the Surplus Property to other parties.

Unless otherwise specifically agreed by OOCEACFX, no deed conveying surplus property shall be deemed to waive or release any limited-access line and the deed shall expressly state that OOCEACFX it is not conveying or restoring any other abutter's rights including, without limitation, any claims for air, light and view between the Surplus Property conveyed, any abutting property and OOCEACFX's property.

5-6.10 Sale to Adjacent Owner where Sale is Inequitable.

If Surplus Property is sold to an adjacent owner to avoid the occurrence of an otherwise Inequitable Sale, the adjacent property owner must provide OOCEACFX evidence of title to the

adjacent property. Further, the adjacent property owner shall certify at closing that he holds title to the adjacent property.

5-6.11 Costs of Sale.

At the sale of any property hereunder, the purchaser shall pay all costs associated with the closing, including, but not limited to the following:

- a. Appraisal and review appraisal costs;
- b. Recording the deed and any closing documents;
- c. Title insurance (if provided under the OOCEACFX Sale Agreement);
- d. Prorated ad valorem taxes, if any;
- e. All survey and due diligence costs;
- f. Preparation of a legal description;
- g. Advertising for the public sale;
- h. All costs relating to buyers financing, if any;
- i. All costs of broker, attorneys or other consultants or contractors retained by the buyer; and,
- All other costs specified under the OOCEACFX's standard written contract.

OOCEACEX shall prepare and bear the cost for all closing documents.

Part 7: POLICY REGARDING THE RELEASE OF LIMITED-ACCESS LINES

5-7.01 Purpose and Authority.

The purpose of this policy is to establish a procedure for the release or partial release of limited-access line rights held by OOCEACFX upon request by the owners of lands affected by such limited-access lines or other third-party applicants, and the determination that such release shall not materially affect or interfere with the use, operation, maintenance or future expansion of the expressway system.

5-7.02 <u>Determination of Impact of Release</u>.

If an affected landowner or other third party desires the release or partial release of any limited-access line rights held by OOCEACFX, the requesting party shall submit such request in writing to the Executive Director or his designee. The requesting party shall also provide such surveys, plans, title reports or other information as may be reasonably requested by OOCEACFX to determine the nature and purpose of the proposed release. Upon receipt of any such request, OOCEACFX may review the request and the applicable limited-access line, or portion thereof, to determine whether the release would (i) materially affect or interfere with the present or future construction, use, operation, repair or maintenance of any portion of the expressway system, (ii) otherwise impair traffic operations or public safety, or (iii) be prohibited by or conflict with any other laws, regulations, requirements, covenants or agreements binding upon OOCEACFX. If it is determined that the release would not result in any of the foregoing negative effects, OOCEACFX may, in its discretion, release the limited- access line or portion thereof in accordance with the policies and procedures set forth below.

5-7.03 Valuation Process.

If OOCEACFX notifies an applicant of its willingness to release or partially release its rights in any limited-access line, except as otherwise provided herein, OOCEACFX shall obtain an appraisal report to determine the current fair market value of the release requested. If deemed appropriate by OOCEACFX in light of all the circumstances, the appraisal may be in the form of a summary or letter appraisal confirming that the release price is a reasonable market price. Where deemed appropriate by Right of Way Legal Counsel and the Right of Way Committee, OOCEACFX may accept an appraisal prepared for a landowner by an OOCEACFX-approved appraiser meeting the standards set forth in the Section 5-4.03 of this Manual. Appraisal costs shall be payable by the purchaser of any release of any portion of a limited-access line.

In determining the proper consideration to be paid for the release or partial release of any limited-access line, OCCEACFX may consider not only the appraisal but also the price paid, or obligations incurred, by OCCEACFX in originally obtaining the limited-access line rights as well as such other facts and circumstances as deemed relevant by OCCEACFX.

5-7.04 Negotiated Release.

OOCEACFX may negotiate with the applicant for release or partial release of the subject limited-access line. The mutually agreed terms and conditions, including the consideration, if any, to be paid to OOCEACFX for the release or partial release of the subject limited-access line, shall be embodied in a written agreement subject to approval by the OOCEACFX Board. Without limiting anything herein, OOCEACFX may release or partially release a limited-access line in exchange for other property, agreements or consideration by the applicant or other parties other than the payment of money. OOCEACFX may also release limited-access lines in connection with the settlement of litigation.

5-7.05 Release of Claims.

Any release or partial release of a limited-access line shall be made without warranty or representation by OOCEACFX and shall be accepted "as is" by the applicant. In further consideration of OOCEACFX's agreement to release or partially release any limited-access line,

the applicant and any other affected landowner shall agree in writing to release and discharge OOCEACFX from all past, present and future claims or actions arising out of, or in any way connected with, the location or relocation of the limited-access line, including any claim for loss of access to any party's remaining property, business damages, severance damages or any other damages. The release or partial release of any limited-access line shall expressly state that it is not conveying or restoring any other abutter's rights including, without limitation, any claims for air, light and view between any abutting property and OOCEACFX's property.

5-7.06 Closing and Recording of Release.

The closing of the release of limited-access line shall occur in accordance with the terms and conditions of the agreement between OOCEACEX and the applicant party. The applicant requesting such release shall pay all costs of the appraisal, title reports and surveys required, and all taxes, recording costs and fees of any nature relating to the release or the recording of the notice of release as provided herein. OOCEACEX shall prepare the notice of release to be recorded in the public records. Upon satisfaction of the terms and conditions of the agreement, including OOCEACEX's receipt of full payment of the release price and related costs, if any, by cashier's check or wire transfer of immediately available funds, OOCEACEX's Right of Way Legal Counsel shall arrange to record the notice of release in the public records evidencing the release or partial release of the limited-access line. The notice may contain such other terms and conditions of the agreement as OOCEACEX shall deem necessary or appropriate, including, without limitation, the release of claims and limitations of abutter's right as may be deemed necessary.