

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

***AMENDED Agenda**
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
RIGHT-OF-WAY COMMITTEE
February 24, 2016
2:00 p.m.

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** – January 27, 2016 **TAB A**
Requesting approval of the 01/27/16 minutes. **Action Item.**

4. **S.R. 429 (HOLDER) WEKIVA PARKWAY (PROJECT 429-204) PARCEL 275** **TAB B**
Trippe Cheek, Winderweedle, Haines, et. al.
Requesting the Committee's recommendation for Board approval of the proposed settlement. **Action Item.**

5. **S.R. 429 (HOWELL) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 279** - *Trippe Cheek, Winderweedle, Haines, et. al.* **TAB C**
Requesting the Committee's recommendation for Board approval of the proposed settlement. **Action Item.**

*6. **S.R. 417 AND S.R. 528 (MOCKINGBIRD ORLANDO, LLC) INTERCHANGE IMPROVEMENTS (PROJECT 599-126) PARCEL 100, PART A & B** **TAB D**
Linda Brehmer Lanosa, CFX
Requesting the Committee's recommendation for Board approved of the proposed Real Estate Purchase Agreement. **Action Item.**

*7. **S.R. 429 (PINEL & CARPENTER AND DONALD W. MCINTOSH ASSOCIATES, INC.) WEKIVA PARKWAY PROJECT (PROJECT 429-203 AND 204) PARCELS 197/897, 230, 257 AND 267** – *Joseph L. Passiatore, CFX* **TAB E**
Requesting the Committee's recommendation for Board approval for addendums to the Pinel & Carpenter, Inc. and Donald W. McIntosh Associates, Inc. agreements. **Action Item.**

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8. OTHER BUSINESS

9. ADJOURNMENT

This meeting is open to the public.

Section 286.0105, 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 or she will need a record of the proceedings, and that, for such purpose, he or she 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 407-690-5000.

Persons who require translation services, which are provided at no cost, should contact CFX at (407) 690-5000 x5317 or by email at Iranetta.dennis@CFXway.com at least three business days prior to the event.

Tab B

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
Right of Way Committee Meeting
January 27, 2016
Location: CFX Boardroom

Committee Members Present:

Sandy Minkoff, Lake County Representative, Chairman
Frank Raymond, Osceola County Representative
Ann Caswell, Orange County Representative
Laurie Botts, City of Orlando Representative
Brett Blackadar, Seminole County Representative

CFX Staff Present at Dais:

Laura Kelley, Executive Director
Joseph L. Passiatore, General Counsel
Linda Brehmer Lanosa, Deputy General Counsel
Mimi Lamaute, Paralegal/Recording Secretary

Item 1: CALL TO ORDER

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

Mr. Minkoff announced that an Amended Agenda adding Tab 19 was distributed. The three-day requirement was not met, but the matter was exempt from the requirement due to it being an emergency which required the Committee's action.

Item 2: PUBLIC COMMENT

There was no public comment.

The full agenda package is attached as Exhibit A, including items distributed at the meeting.

Item 3: APPROVAL OF MINUTES

Action: A motion was made by Ms. Botts and seconded by Ms. Caswell to approve the November 20, 2015 Right of Way Committee minutes as presented.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

Item 4: S.R. 429 (ELLEN S. HARDGROVE AICP PLANNING CONSULTANT, INC.) WEKIVA PARKWAY (PROJECT 429-202, 203, 204, 205 AND 206)

Mr. Shontz is requesting the Committee's recommendation for Board approval of a proposed Second Agreement for Land Planning Services by Ellen S. Hardgrove AICP Planning Consultant. The description of services with background is outlined in Mr. Shontz's memo to the Committee under Tab B, attached.

Mr. Shontz provided the Committee with additional details of the description of work being performed by Ellen S. Hardgrove.

The Committee asked what the new contract amount would be. Mr. Shontz replied, with the requested additional \$100,000, the total contract amount would now be \$200,000.

Action: A motion was made by Ms. Botts and seconded by Mr. Blackadar to recommend to the Board approval of the execution of the Second Agreement for Land Planning Expert Witness Consulting Services by Ellen S. Hardgrove AICP Planning Consultant with an upset amount of \$100,000.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

Item 5: S.R. 429 (DONALD W. MCINTOSH ASSOCIATES, INC.) WEKIVA PARKWAY PROJECT (PROJECT 429-202, 203, 204, 205 AND 206)

Mr. Shontz is requesting the Committee's recommendation for Board approval of a proposed Second Agreement for Engineering Expert Witness Consulting Services by Donald W. McIntosh Associates, Inc. to perform engineering consulting services and litigation support services for the Wekiva Parkway Project. The description of services with background is outlined in Mr. Shontz's memo to the Committee under Tab C, attached.

The Committee commented that this would increase the contract to \$600,000. Mr. Shontz stated that Mr. McIntosh is assigned 21 parcels.

Action: A motion was made by Ms. Botts and seconded by Mr. Blackadar to recommend to the Board approval of the proposed Second Agreement for Engineering Expert Witness Consulting Services by Donald W. McIntosh Associates, Inc. with an upset amount of \$150,000.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

Item 6: S.R. 429 (URBAN ECONOMICS, INCORPORATED) WEKIVA PARKWAY PROJECT (PROJECT 429-202, 203, 204, 205 AND 206)

Mr. Shontz is requesting the Committee's recommendation for Board approval of a proposed Addendum to the Agreement for Appraisal Services by Urban Economics Incorporated to perform appraisal services and litigation support services for the Wekiva Parkway Project. The description of services with background is outlined in Mr. Shontz's memo to the Committee under Tab D, attached.

Mr. Minkoff asked if the increase of \$150,000 was the cost of appraisals for two or more than two parcels. Mr. Shontz explained initially Urban Economics was hired to prepare the CSX appraisal report. They have now been assigned Parcels 219 and 228. The requested amount will allow the Appraiser to prepare appraisal reports for two trial parcels, as well as provide funding for rebuttal reports, deposition testimony, trial preparation and expert witness testimony at trial.

Action: A motion was made by Ms. Botts and seconded by Mr. Blackadar to recommend to the Board approval of the Addendum to Agreement for Appraisal Services by Urban Economics Incorporated with an upset amount of \$150,000.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

Item 7: S.R. 429 (HENDERSON) WEKIVA PARKWAY PROJECT (PROJECT 429-202) PARCELS 112/712

Mr. Cheek is requesting the Committee's recommendation for Board approval to serve an Offer of Judgment to the Hendersons, Owners, for Parcels 112 and 712. The description and background on the subject property is outline in Mr. Cheek's memo to the Committee under Tab E attached.

Mediation was conducted on January 6, 2016 without success.

CFX retained the services of Mr. David Hall. Mr. Hall concludes that the value of the taking, damages, cost to cure for Parcel 112 totaled \$395,200 and Parcel 712 totaled \$300, for a total compensation for Parcels 112 and 712 of \$395,500.

The Owners have retained the appraisal services of Richard Dreggors with Calhoun, Dreggors & Associates. Mr. Dreggors' valuation conclusions are summarized as follows:

Value of Part Taken	\$ 547,800
Damages, Incurable	\$ 452,500
Cost to Cure	\$ 1,000
Total Compensation for Parcel 112	\$ 989,000
Value for Parcel 712	\$ 500

Total Compensation for Parcels 112 and 712 \$1,001,800

Mr. Cheek explained the differences between Mr. Dreggors' appraisal and Mr. Hall's appraisal. He is suggesting an Offer of Judgment in the amount of \$650,000 and explained the strategy for this amount.

Discussion ensued as to access to the property, neighboring properties owned by CFX, the property in the after and the costs encompassing an Offer of Judgment. If a defendant rejects an Offer of Judgment and the judgment is less than the amount of that offer, the court shall not award any costs incurred by the defendant after the date the offer was rejected.

Action: A motion was made by Ms. Botts and seconded by Mr. Raymond to recommend to the Board approval to serve an Offer of Judgment in the amount of \$650,000 for Parcels 112 and 712.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

Item 8: S.R. 429 (HATCHER) WEKIVA PARKWAY PROJECT (PROJECT 429- 202) PARCELS 113/713

Mr. Cheek is requesting the Committee's recommendation for Board approval to serve an Offer of Judgment to Bruce Hatcher for Parcel 113 Part A & B.

CFX retained the services of Mr. David Hall, ASA, with Bullard, Hall & Adams, Inc., to appraise the property. Mr. Hall concluded the value of the taking, damages and cost to cure totaled \$81,200 for Parcel 113 A & B and totaled \$300 for Parcel 713, a total compensation for Parcels 113 and 713 of \$81,500.

The Owners have retained the appraisal services of Richard Dreggors with Calhoun, Dreggors & Associates, Inc. Mr. Dreggors concluded that the value of the taking, damages and cost to cure for Parcel 113 totaled \$782,600 and for Parcel 713 totaled \$500 for a total compensation for Parcels 113 and 713 of \$783,100.

Mediation was conducted on January 8, 2016 without a successful resolution. Mr. Cheek explained there is a fundamental difference in view between the appraisers in this case that is very difficult to resolve. This case is scheduled to go to trial during the April 25, 2016 trial docket.

Mr. Cheek is recommending an Offer of Judgment in the amount of \$200,000. He explained this number is consistent with the position taken by CFX at mediation.

The Committee asked several questions, which were answered by Mr. Cheek. Discussion ensued as to the recommendation of \$200,000 or a lower amount as an Offer of Judgment and the valuation by Mr. Dreggors for the part taken and the damages.

Action: A motion was made by Ms. Botts and seconded by Ms. Caswell to recommend to the Board approval to serve an Offer of Judgment in the amount of \$200,000 for Parcels 113 and 713.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

Item 9: S.R. 429 (AMCO PROPERTY GROUP II, LLC) WEKIVA PARKWAY PROJECT (PROJECT 429-202) PARCEL 126

Ms. O'Dowd of Windersweede, Haines, Ward & Woodman, P.A. is requesting the Committee's recommendation for Board approval of a proposed settlement with Amco Property Group, II, LLC for Parcel 126, Part A, B & C in the amount of \$1,123,762 which includes all fees and attorney's fees.

Ms. O'Dowd provided the Committee with the description of the property and background of the negotiations. Parcel 126 involves a partial taking of 9.586 acres from a 14 acre property, leaving a 4.8 acre remainder. She described the differences in the appraisal amounts received.

CFX's appraisal of the property was prepared by Walter Carpenter of Pinel & Carpenter. He concludes that the value of the taking and damages totaled \$696,175.

The relocation benefits have been settled and paid to the tenant on the leasehold interest.

Action: A motion was made by Mr. Blackadar and seconded by Ms. Botts to recommend to the Board approval of the proposed settlement in the amount of \$1,123,762 in full settlement of all compensation claims, attorney's fees, and expert fees for Parcel 126.

Mr. Minkoff expressed his concern regarding the differences in the appraisals.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

Item 10: S.R. 429 (MERCED) WEKIVA PARKWAY PROJECT (PROJECT 420-204) PARCEL 254

Mr. Cheek is requesting the Committee's recommendation for Board approval for the payment of \$73,000 for attorney's fees and \$8,500 for expert fees, for a total of \$81,500. No Committee approvals are necessary for the relocation aspects of this parcel.

Mr. Cheek explained the landowner is willing to accept CFX's appraised value in this case along with the Purchase Additive offer by CFX's acquisition agents.

The landowner retained the legal services of Kent Hipp and Nicholas Dancaescu, from Gray Robinson, P.A. The landowner's attorneys and expert fees are to be paid on an hourly basis. Mr. Cheek has reviewed the amounts sought by the owners' experts and attorneys. The landowner has incurred legal fees in

excess of \$85,000 in this case, but is willing to accept \$73,000. The landowners also retained the appraisal services of Richard Dreggors with Calhoun, Dreggors & Associates, Inc. An Invoice has been submitted for appraisal services in the amount of \$9,543. However, during settlement negotiations Mr. Dreggors agreed to accept \$8,500 for his firm's services related to this parcel.

The Committee asked several questions, which were answered by Mr. Cheek and Ms. O'Dowd.

Discussion ensued as to attorney's fees and paying attorneys' fees based on an hourly rate.

Action: A motion was made by Ms. Caswell and seconded by Ms. Botts to recommend to the Board approval of the proposed payment of \$73,000 for attorney's fees and \$8,500 for expert fees, for a total of \$81,500 to resolve all claims for compensation for the acquisition of Parcel 254.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

Mr. Minkoff opined it is an error to suggest that we are going to negotiate on attorney's fees outside of the statute with the attorneys and that only because of the betterment issue did he vote affirmatively.

Item 11: S.R. 429 (ACKLEY) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCELS 266/866

Mr. Cheek is requesting the Committee's recommendation for Board approval of attorney's fees for the representation of Ryan Ackley incurred in Parcels 266 and 866.

The Board approved a settlement in this case in the amount of \$725,770 on June 11, 2015. Included within that settlement was payment of attorneys' fees to Kurt Bauerle for the representation of Warren and Wendy Ackley, the owners. At the time of the approval of the settlement, Mr. Bauerle's attorney's fee information for the representation of Ryan Ackley, the tenant, had not been received.

Parcel 266 involved a partial taking of 4.707 acres of land from a 5.157 acre property, leaving a 0.450 acre remainder. Attorney's fees are being calculated on an hourly basis. The amount of \$9,750 has been negotiated with Mr. Bauerle for his representation of Ryan Ackley's tenancy interest and interest in the mobile home.

Discussion ensued regarding the settlement with the owners of the parcel, the permanent fixture on the property, and the mobile home value.

The Committee asked several questions, which were answered by Mr. Cheek.

Action: A motion was made by Mr. Raymond and seconded by Ms. Botts to table this item until next month's meeting. Ms. Lamaute will provide the Committee with the minutes and the agenda of the Right of Way Committee meeting when this matter was previously heard.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

**Item 12: S.R. 429 (HOLDER & STRITE) WEKIVA PARKWAY PROJECT (PROJECT 429-204)
PARCELS 275/279**

Ms. O'Dowd is requesting the Committee's recommendation for Board approval of a proposed settlement with Holder & Strite Corporation regarding the claimed business damages related to the taking of Parcels 275 and 279.

Ms. O'Dowd provided the Committee with a description and background on the taking. The case involves the taking of approximately 28 acres of property used in the hay farming and cattle raising business conducted by Holder & Strite. Holder & Strite is a tenant on both properties, and conducts its farming activities on both properties. The real estate value for both Parcels have been appraised by CFX's appraiser at \$1,508,100.

Thomas Durkee, CPA was retained to analyze its business damage claim. Holder & Strite asserted business damage claims in the amount of \$553,796 (apportioned as \$390,914 for Parcel 275 and \$162,881 for Parcel 279).

Ms. O'Dowd explained Mr. Durkee's valuation as to how the taking negatively impacted the business. Holder & Strite is not a profitable business and because of that, they have submitted an asset approach to value versus income approach to value.

CFX retained the services of Les Eiserman, CPA, from Clifton Larson Allen LLP, who estimated total business damages at \$78,805, which the Committee approved previously as a counteroffer.

Below is a summary of Settlement Proposal:

Holder & Strite	\$125,000
Maguire Lassman, P.A.	15,245
Averett, Warmus & Durkee	27,255
Cawthra Consulting & Appraisals	6,210
<u>Ed Williams</u>	<u>2,520</u>
Total	\$176,230

Discussion ensued as to the amount paid to CFX experts, the equipment on the property and the land appraiser involvement in the business damage claim.

Action: A motion was made by Mr. Blackadar and seconded by Ms. Caswell to recommend to the Board approval of the full settlement of the claimed business damages in the amount of \$176,230 with Holder & Strite Corporation on Parcels 275 and 279.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

Item 13: S.R. 429 (MCMAHAN) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 303

Ms. O'Dowd is requesting the Committee's recommendation for Board approval of a proposed settlement for all compensation claims, attorney's fees, and expert fees for Parcel 303, Part A, B & C.

Ms. O'Dowd provided the Committee with a description and background on the taking. Parcel 303 is a total taking of property that is approximately 44 acres. CFX's appraisal of the property was prepared by David Hall of Bullard, Hall & Adams, Inc. He concludes that the value of the taking and damages totaled \$745,700, based upon a land value of \$20,000 per acre.

The landowners have retained the appraisal services of Richard Dreggors, whose preliminary valuation was substantially higher than CFX's offer, based upon a land value of \$30,000 per acre.

Action: A motion was made by Ms. Caswell and seconded by Mr. Blackadar to recommend to the Board approval of the proposed settlement in the amount of \$1,187,700 in full settlement of all compensation claims, attorneys' fees, and expert fees for Parcel 303.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

Item 14: S.R. 429 (DIAZ-BORDON) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 185

Ms. Brehmer Lanosa explained Parcel 185 relates to a total take of 20.34 acres. She detailed the location of the Parcel and the improvements on the property. Chad Durrance, MAI appraised the property on behalf of CFX. Mr. Durrance estimated the total value of the property taken at \$750,000.

The owner's real estate appraiser, Richard Dreggors, GAA, estimated the total value of the property taken at \$1,750,000.

In addition to compensation for the land taken, the owners requested the following expert fees and costs:

Calhoun Dreggors and Associates	\$32,074
Other Experts	\$47,473
Costs and Other Charges	<u>\$ 6,051</u>

Total

\$85,598

Mr. Brehmer Lanosa explained that Sid Calloway with Shutts & Bowen was the attorney on this case. During the mediation, both parties compromised and tentatively reached an all-inclusive settlement agreement of \$1,395,000 for full compensation for the property taken, attorney's fees, expert fees, interest, and costs. Assuming \$1,195,000 for the property taken, statutory attorney's fees on the benefit of \$445,000 is \$131,250, leaving \$68,750 for expert fees and costs.

The Committee asked several questions, which were answered by Ms. Brehmer Lanosa.

Action: A motion was made by Ms. Botts and seconded by Mr. Blackadar to recommend to the Board approval of the proposed settlement in the amount of \$1,395,000 in full settlement of all claims of compensation from CFX including business damages, interest, attorney's fees, expert fees, costs, and any other claim for Parcel 185.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

Item 15: S.R. 429 (ORLANDO BELTWAY ASSOCIATES) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 235

Ms. Brehmer Lanosa explained that Orlando Beltway Associates (OBA) is a limited liability company consisting of over 40 difference owners. The attorney for OBA is Kurt Bauerle, who is in the audience. She described the location and the area taken. With respect to severance damages, the taking bisects the parent tract into two non-contiguous remainders. The eastern side of the property has access through Plymouth Sorrento Road. It is currently vacant. The western side of the property has access through Effie Drive. S.R. 429 is going to go through the middle of Parcel 235.

Walter N. Carpenter was retained by CFX to appraise the property. Mr. Carpenter estimated the market value of Parcel 235 at \$1,147,240.

Mr. Dreggors was retained by OBA to appraise the property. He estimated the value of Parcel 235 to be \$5,700,100.

Regarding the owner's expert fees, CFX has received the following invoices:

Calhoun Dreggors & Associates	\$31,906
Tipton Associates Inc.	\$ 5,404
VHB (Jim Hall)	<u>\$14,247</u>
Total	\$51,557

In contrast, Pinel & Carpenter billed approximately \$13,119 and the review appraiser billed approximately \$8,478.

At the mediation on December 11, 2015, the parties reached a tentative mediated settlement agreement. A settlement in the amount of \$2,765,000 roughly represents full compensation to the owner of \$2.4 million, plus statutory attorney's fees of \$321,000, plus expert fees in the amount of \$45,000.

Discussion ensued as to the two appraisers' analysis of the highest and best use of the parcels and the resulting valuation differentials. The Committee asked several questions, which were answered by Ms. Brehmer Lanosa.

Action: A motion was made by Mr. Blackadar and seconded by Mr. Raymond to recommend to the Board approval of the proposed settlement in the amount of \$2,765,000 including severance damages, business damages, tort damages, interest, attorney's fees, expert fees, costs, and any other claim, subject to apportionment, if any for Parcel 235.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

Item 16: S.R. 429 (HUANG) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 233

Ms. Brehmer Lanosa described the property and explained the appraisers' analysis regarding severance damages and business damages, as outlined in her memo to the Committee under Tab N attached.

CFX retained Walter Carpenter, to appraise the property. Mr. Carpenter estimated the value of the taking, improvements and cost to cure for Parcel 233 at \$22,940.

The owner's appraiser, Don K. Richardson estimated the value of Parcel 233 at \$102,000.

The owner reported expert fees and statutory attorney's fees as follows:

Dan K. Richardson, PhD, MAI	\$ 22,400
JMD Engineering, Inc.	\$ 4,245
Statutory Attorney's Fees	<u>\$ 26,090</u>
Total	\$ 52,735

The all-inclusive total for full compensation to the owner, expert fees and costs and attorney's fees and costs is \$154,735.

The largest difference in opinion between the appraisers involves the existence of severance damages.

Parcel 233 was mediated on January 7, 2016. At mediation, both parties compromised. Although the total proposed settlement is not broken down into components, the total could generally represent the sum of

the following: \$53,000 to the owners, \$22,000 for expert fees and costs, and \$10,000 for statutory attorney's fees.

Action: A motion was made by Ms. Botts and seconded by Mr. Raymond to recommend to the Board approval of the proposed settlement in the amount of \$85,000 for all compensation arising from the taking of Parcel 233, including severance damages, business damages, interest, attorney's fees, expert fees, costs, and any other claim.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

**Item 17: S.R. 429 (PROJECT ORLANDO) WEKIVA PARKWAY PROJECT (PROJECT 429-203)
PARCELS 197/897, 230, 257 AND 267**

Mr. Spoonhour provided the Committee with a Preliminary Comparison of Appraisal attached as Exhibit "B." He reported on the mediation for Parcels 197/897, 230, 257 and 267. Significant progress was made; however, ultimately the negotiations came to an impasse. Trial is scheduled for March 28, 2016. Discovery closes on February 15.

By consensus the Committee agreed they were comfortable with Mr. Spoonhour's strategy.

(This Item was presented for informational purposes. No action by the Committee was taken.)

Item 18: RIGHT OF WAY LEGAL COUNSEL – RENEWAL OF CONTRACTS

Mr. Passiatore explained that both the Winderweedle Haines Ward & Woodman (WHWW) and Shutts & Bowen (Shutts) contracts are expiring on February 27, 2016 with no additional funding.

CFX legal staff recommends a one-year extension until February 27, 2017 to each contract with additional funding of \$1,000,000 to the WHWW contract and \$4,000,000 to the Shutts contract.

Mr. Passiatore mentioned the Board discussions about hiring an in-house attorney to absorb some of this function. The Board will take this matter up as part of the annual budget discussion in a few months. The committee members asked questions, which were answered by Mr. Passiatore.

Action: A motion was made by Ms. Botts and seconded by Ms. Caswell to recommend to the Board approval of the proposed amendment to the Winderweedle, Haines, Ward & Woodman, P.A. Legal Contract No. 000427 for a one-year extension until February 27, 2017 with additional funding of One Million Dollars (\$1,000,000) and the proposed amendment to the Shutts & Bowen Contract No.

000930 for a one-year extension to February 27, 2017 with additional funding in the amount of Four Million Dollars (\$4,000,000).

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

Item 19: S.R. 429 (VIP PROPERTIES) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 170

Ms. Lanosa reported that we have received a notice of Reverse Offer of Judgment in the amount of \$62,000 for Parcel 170. We have 30 days from the date of service to decide whether to accept it. She requested the Committee's direction on this matter. Interrogatory responses to the owner's position were discussed and are attached as "Exhibit C."

Ms. Lanosa provided background information on this matter. Attorney Tom Callan represents VIP Properties, the owners. CFX's appraiser, Mr. Hall, provided an appraisal report which valued the property at \$15,600. CFX's Offer of Judgment was \$20,001. According to the Interrogatory Answers, VIP Properties is requesting \$139,000. They have hired Rick Dreggers, who has not done an appraisal report. VIP Properties has offered to settle the case at \$62,000.

Ms. Lanosa gave further information regarding the property owner's claim for severance damages and the taking. She explained that in order to evaluate this claim, CFX may have to retain a land planner and engineer, and have additional appraisal work done. She also explained the risks in trying a small case as opposed to accepting the Reverse Offer of Judgment. We would have to beat the \$62,000 at trial in order to avoid additional attorney's fees.

The committee members asked questions, which were answered by Ms. Brehmer Lanosa.

Action: A motion was made by Mr. Blackadar and seconded by Ms. Botts to recommend to the Board approval of the Reverse Offer of Judgment in the amount of \$62,000 for Parcel 170.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote.

Item 20: OTHER BUSINESS

Mr. Minkoff will not be able to attend the next meeting. Melanie Marsh, his alternate will attend in his place.

Mr. Blackadar commented that the exhibit prepared by Deborah Poindexter, depicting the location of the agenda items on a map, was very helpful and requested that it be included with the Committee's agenda packages.

Item 21: ADJOURNMENT

Chairman Minkoff adjourned the meeting at 4:10 p.m.

Minutes approved on _____, 2016.

Pursuant to the Florida Public Records Law and CFX 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

**WINDERWEEDLE, HAINES, WARD & WOODMAN, P.A.
329 Park Avenue North
Second Floor
Post Office Box 880
Winter Park, Florida 32790-0880
Telephone (407) 423-4246
Facsimile (407) 645-3728**

MEMORANDUM

TO: Central Florida Expressway Authority Right of Way Committee

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

DATE: February 9, 2016

RE: S.R. 429 Wekiva Parkway, Project 429-204: Parcel 275
Authorization for Settlement

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks the Right of Way Committee's recommendation for Board approval regarding the settlement of Parcel 275 on the Wekiva Parkway Project 429-204. A Petition in Eminent Domain was filed on October 14, 2014, and the Court entered an Order of Taking on January 13, 2015.

DESCRIPTION and BACKGROUND:

This case involves the taking of 17.888 acres through the middle of Parcel 275, which originally contained 52.737 acres, leaving a bisected northern remainder of 6.92 acres and southern remainder of 27.93 acres. This parcel is owned by Thomas J. Holder, Sr., as Trustee of the Sally R. Holder Credit Shelter Trust and the Thomas J. Holder, Sr. Family Trust.

The property has joint residential and business uses. Improvements within the area of taking include a 105 year old two-story single family residence, which contains 3,124 square feet of living area with five bedrooms and two baths. Thomas J. Holder, Sr., age 80, and his daughter, Beth Ann Arnold, reside in the dwelling. The remainder of the property is used primarily for farming operations, and contains numerous agricultural improvements.

CFX retained the services of Richard MacMillan, who estimated the value of the parent tract to be \$1,633,500.00, and the value of the taking to be \$1,163,600.00. Mr. MacMillan determined that the highest and best use of the property was for five residential homesites. After considering comparable sales that ranged from \$18,000 to \$28,000 per acre, Mr. MacMillan concluded that the property was worth **\$25,000 per acre**. In addition, he determined that the remainder would suffer severance damages of approximately **35%**, due in part to the bifurcated remainder and the effect the beltway may have on residential property values. In addition, Mr. Macmillan determined that the remainder required a \$76,000 cure, resulting in total severance damages of \$487,700.

This Committee has previously approved a "residential carve-out" agreement in which the

landowners agreed to accept CFX's appraised value of \$249,964 for the residential improvements and 2.88 acres of the property in order to facilitate the processing of the landowner's relocation claims under the Uniform Relocation Act. A copy of this memorandum is attached hereto. Subtracting the residential carve-out settlement results in a remaining compensation estimate of **\$913,636**. Mr. MacMillan's valuation conclusions are summarized as follows:

Land Taken (17.888 acres x \$25,000/ac)	\$ 447,200
Improvements Taken	\$ 228,700
Damages / Cost to Cure	\$ 487,700
CFX Compensation Estimate	\$1,163,600
<u>minus residential carve out</u>	<u>(249,964)</u>
Adjusted Compensation Estimate	\$ 913,636

The landowner retained the appraisal services of Gary Pendergast, who appraised the property subject to the residential carve-out agreement (and therefore no adjustments are required). Mr. Pendergast determined that the highest and best use of the property was for a residential subdivision. He considered 6 comparable sales and concluded on **\$73,900 per acre**, which equates to \$3,684,700 for the parent tract, and \$1,109,200 for the land taken. One of the biggest issues in this case is the location of the comparables used by both appraisers. CFX's appraiser located sales close to the subject property, which the landowner claims are subject to "condemnation blight." The landowner's sales are located quite far from the subject, in superior locations and with superior zoning designations and approvals in place. The landowners claim that the comparable sales locations and development entitlements are similar to what the subject neighborhood and property would have enjoyed in the absence of the Beltway.

After the taking, Mr. Pendergast opined that the property's highest and best use was now for rural residential homesites with a per acre value of \$25,000. This resulted in a severance damage claim of \$1,704,200. Mr. Pendergast's valuation conclusions are summarized as follows:

Land Taken (15.008 acres x \$73,900/ac)	\$1,109,200
<u>Severance Damages</u>	<u>\$1,704,200</u>
Holder Compensation Estimate	\$2,813,400

PROPOSAL FOR SETTLEMENT:

Negotiations with landowners' counsel have resulted in a settlement proposal in the amount of **\$1,410,000**. The undersigned counsel believes that this settlement proposal is in the best interest of CFX in that it limits the potential risk of a jury award almost two million dollars above appraised value. From a negotiation perspective, 150% of Mr. MacMillan's update appraisal amount would be \$1,745,400. After deducting for the \$249,964 carve-out, the balance of Mr. MaMillan's appraised amount would be \$1,495,436. The negotiated settlement amount of \$1,410,000 offers a reduction below the remaining balance. In addition, as part of the negotiated settlement, the landowner agreed to accept a reduction of 15% of their expert fees. The number of experts retained in this complex case are numerous, and their fees are summarized as follows:

EXPERT	INVOICE AMOUNT
Morris –MEI (engineer)	\$25,394.25
Pendergast (appraiser)	\$24,120.00
Williams (land planner)	\$32,300.00
Hall (land planner)	\$12,626.65
Ovation Construction (cost to cure analysis)	\$3,631.25
Cawthra (improvement value analysis)	\$6,900.00
Buchheit (survey)	\$29,855.00
TOTAL	\$134,827.15

The undersigned counsel has reviewed the invoices submitted by the above experts and believes that a 15% reduction, or **\$114,603.00**, is an appropriate resolution of these fees. CFX's fees are \$63,022 (including appraisal, improvement cost estimate, and engineering). However, these fees do not include initial survey and engineer work that was performed by CFX in conjunction with other parcels on this project. Considering the amount at issue in the instant litigation (\$2,813,400 *plus* the residential carve-out resolution, which expert fees are included above), the undersigned counsel believes that the fee resolution is reasonable.

The landowners retained the services of Raymer Maguire from Maguire and Lassman, P.A. Mr. Maguire has agreed to accept statutory betterment fees in the amount of \$153,591 (based on a betterment of \$534,364).

The total settlement proposal, inclusive of fees and costs, is summarized as follows:

Compensation to the Owner	\$1,410,000
Expert Fees and Costs	\$ 114,603
Attorneys fees (based on betterment)	\$ 153,591
Total	\$1,678,194

RECOMMENDATION:

We respectfully request that the Right of Way Committee recommend CFX Board approval of the proposed settlement in the amount of \$1,678,194, to resolve the remaining compensation claims on Parcel 275, as well as the landowner's expert and attorney fees.

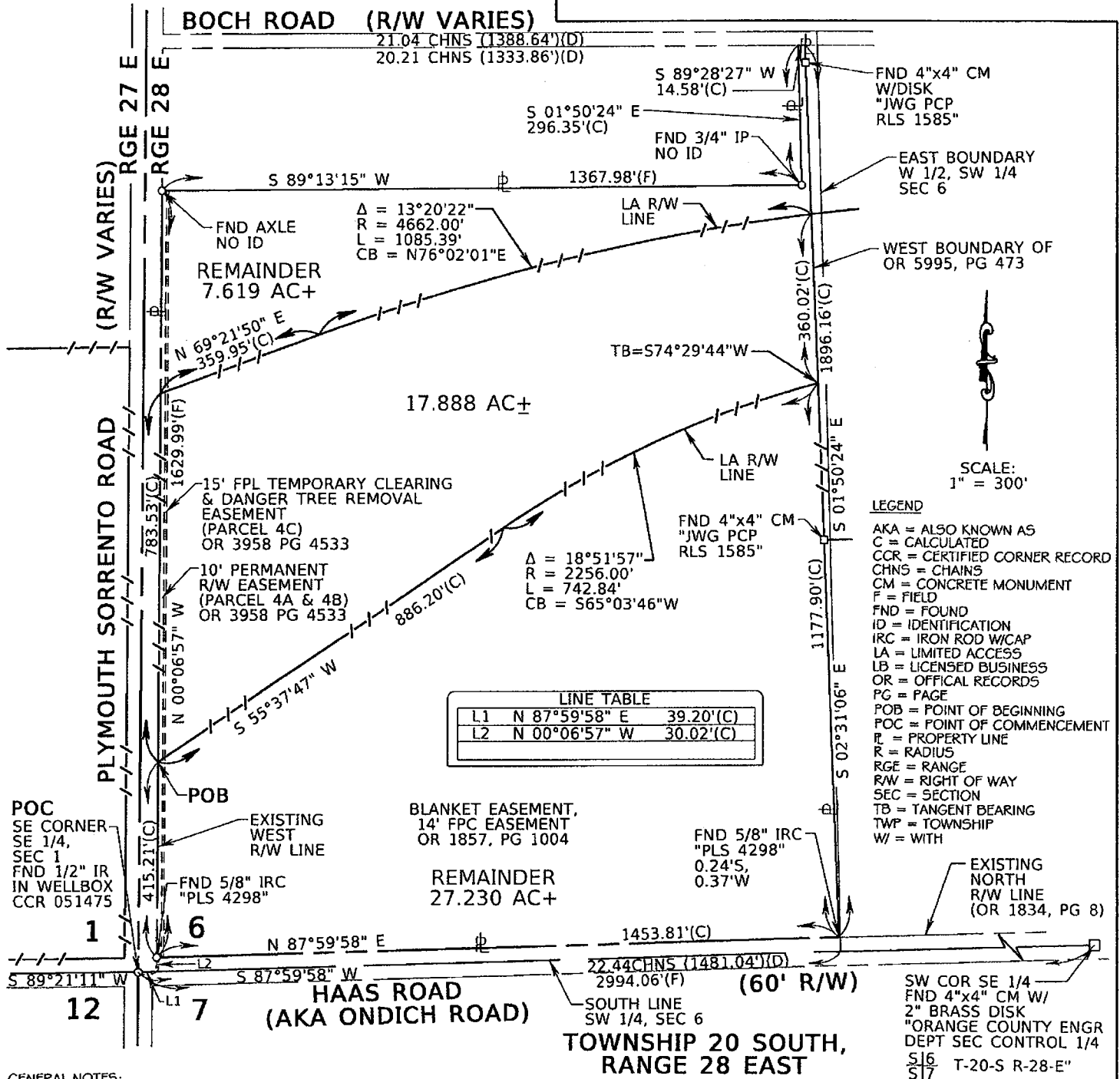
ATTACHMENT:
Parcel Sketch

SKETCH OF DESCRIPTION

PARCEL: 275

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE



GENERAL NOTES:

1. THE BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, 1983 NORTH AMERICAN DATUM, 2007 ADJUSTMENT, WITH THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, HAVING A BEARING OF SOUTH 89°21'11" WEST.
2. THERE MAY BE OTHER RECORDED DOCUMENTS FOUND IN ORANGE COUNTY RECORDS AFFECTING THIS PROPERTY THAT ARE NOT SHOWN ON THIS SKETCH OF DESCRIPTION.
3. ATTENTION IS DIRECTED TO THE FACT THESE MAPS MAY HAVE BEEN ALTERED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALE DATA.
4. A CERTIFICATE OF TITLE INFORMATION PREPARED BY "FIRST AMERICAN TITLE INSURANCE COMPANY" DATED NOVEMBER 29, 2012, FILE NO. 2037-2864232 WAS REVIEWED BY THE SURVEYOR AND EXCEPTIONS (IF ANY) NOTED ON SAID CERTIFICATE ARE SHOWN HEREON.

FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY

STATE ROAD 429

DESIGNED BY: RJM

DATE: 3/18/14

DRAWN BY: DJK

JOB NO:

APPROVED BY: RJM

OOCEA PROJECT NO: 429-204

URS

URS CORPORATION
315 E. ROBINSON STREET
SUITE 245
ORLANDO, FL 32801-1949
PH (407) 422-0353
LICENSED BUSINESS NO. 6839

REVISIONS:

SHEET: 2 OF 2



CENTRAL FLORIDA EXPRESSWAY AUTHORITY

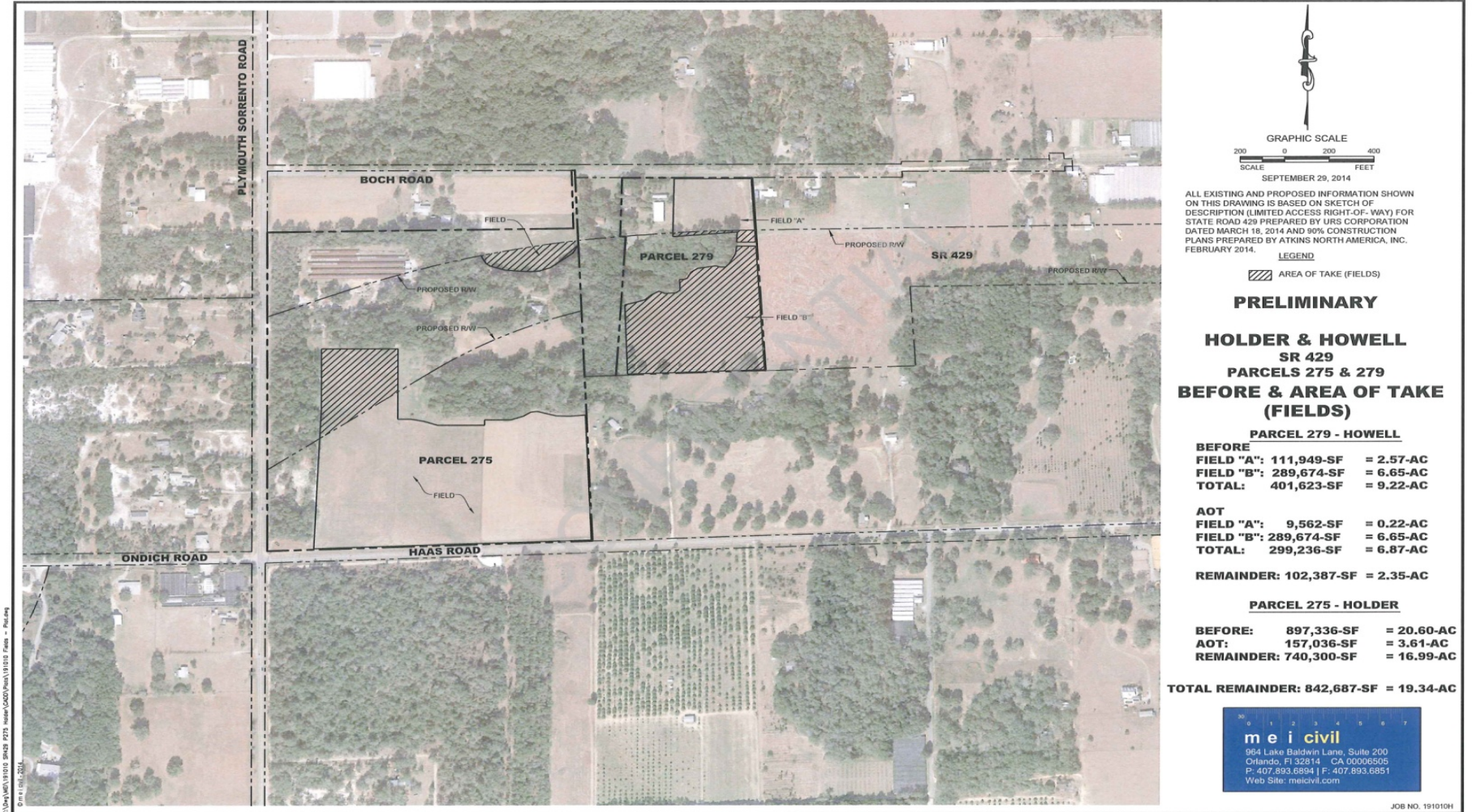
Right of Way Committee Meeting February 24, 2016
Recommendation for Approval of Settlement
S.R. 429 Wekiva Parkway
Project 429-204
Parcel 275
Offer

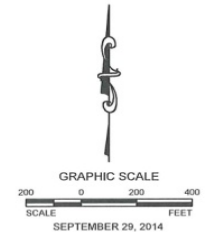
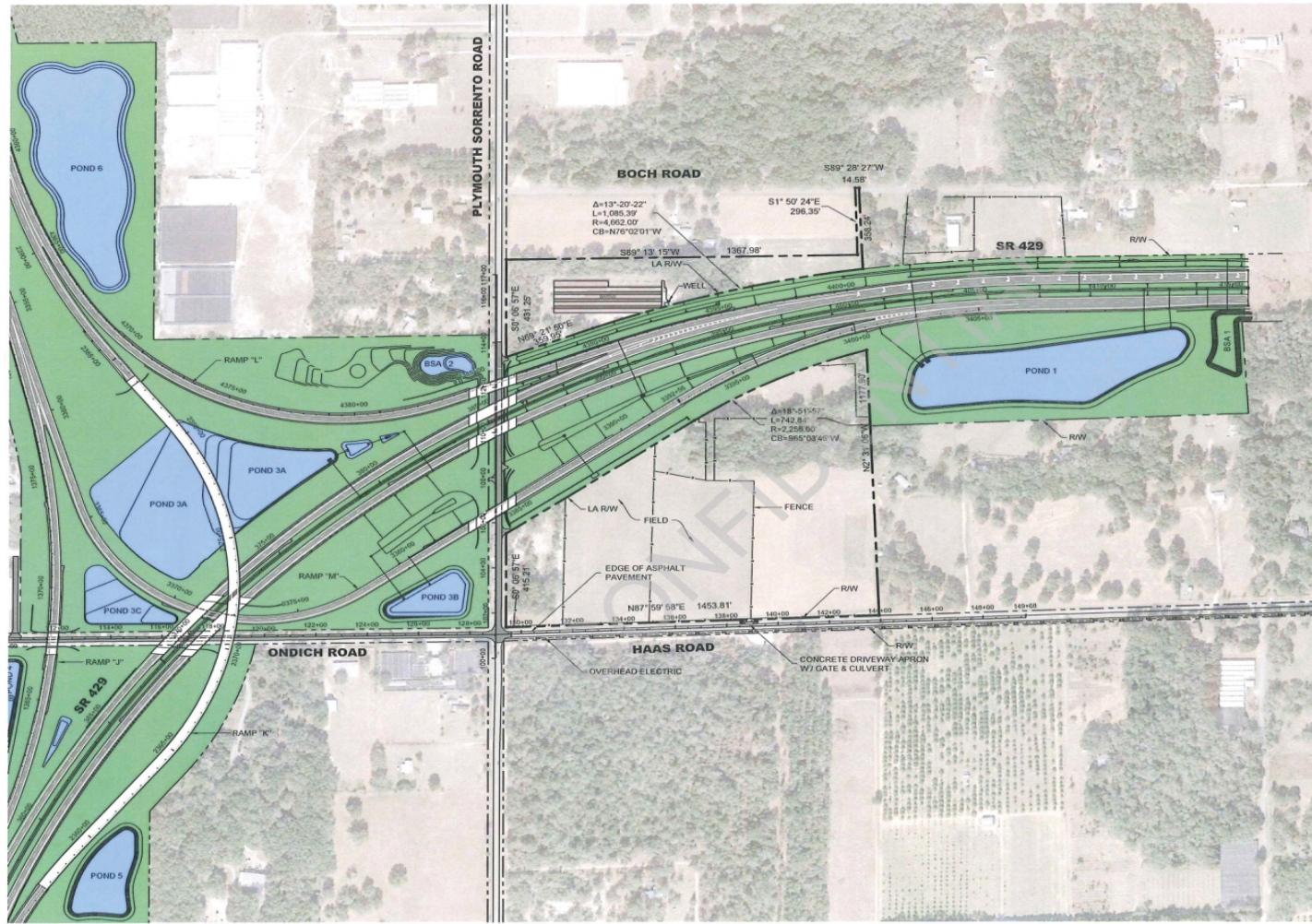


Central Florida Expressway Authority
Right of Way Committee
February 24, 2016

**Recommendation for
Approval of Settlement**

**S.R. 429 Wekiva Parkway
Project 429-204
Parcel 275**





SEPTEMBER 29, 2014
ALL EXISTING AND PROPOSED INFORMATION SHOWN ON THIS DRAWING IS BASED ON SKETCH OF DESCRIPTION (LIMITED ACCESS RIGHT-OF-WAY) FOR STATE ROAD 429 PREPARED BY URS CORPORATION DATED MARCH 18, 2014 AND 90% CONSTRUCTION PLANS PREPARED BY ATKINS NORTH AMERICA, INC. FEBRUARY 2014.

- LEGEND**
- ASPHALT
 - CONCRETE
 - GRASS
 - STORMWATER MANAGEMENT

PRELIMINARY
THOMAS J. HOLDER
SR 429
PARCEL 275

OVERALL UNCURED REMAINDER
NORTH: 331,884-SF = 7.619-AC
SOUTH: 1,186,138-SF = 27.230-AC

m e i civil
964 Lake Baldwin Lane, Suite 200
Orlando, FL 32814 CA 0006505
P: 407.893.6894 | F: 407.893.6851
Web Site: meicivil.com

JOB NO. 191010H

25-Aug-16/191010 36429 275 meic Civil/191010 - Uncured Remainder - Prelim
© me i civil 2014



Appraisal Comparison

PARCEL 275	CFX	HOLDER
Value of Parent Tract (52.737 acres)	\$1,633,500	\$3,684,700
Part Taken (17.888 acres)	\$675,900	\$1,109,200
Price per acre – before	\$25,000.00	\$73,900
Price per acre – after	\$16,250/ac	\$25,000/ac
Sev Damages %	35%	About 65%
Severance Damages/ Cost to Cure	\$487,700	\$1,704,200
Total Compensation	\$1,163,600	\$2,813,400
	-	
	<u>(\$249,964)</u> \$913,636	



RECOMMENDATION

We respectfully request that the Right of Way Committee recommend CFX Board approval of settlement in the amount of \$1,678,194.00.

Tab C

WINDERWEEDLE, HAINES, WARD & WOODMAN, P.A.
329 Park Avenue North
Second Floor
Post Office Box 880
Winter Park, Florida 32790-0880
Telephone (407) 423-4246
Facsimile (407) 645-3728

MEMORANDUM

TO: Central Florida Expressway Authority Right of Way Committee

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

DATE: February 9, 2016

RE: S.R. 429 Wekiva Parkway, Project 429-204: Parcel 279
Authorization for Settlement

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks the Right of Way Committee's recommendation for Board approval regarding the settlement of Parcel 279 on the Wekiva Parkway Project 429-204. A Petition in Eminent Domain was filed on October 14, 2014, and the Court entered an Order of Taking on January 13, 2015.

DESCRIPTION and BACKGROUND:

This case involves the partial taking of property owned by Adelpha Howell, which is located on the south side of Boch Road, approximately 1,550 feet east of Plymouth-Sorrento Road in unincorporated Orange County. CFX is acquiring 10.311 acres from a 14.14 acre parent tract, leaving a 3.829 acre remainder with frontage along Boch Road. The property is improved with two single-family residences and other minor residential and agricultural improvements. The residential improvements will not be directly affected by the taking, but will be located in close proximity to the Beltway. The land is zoned Farmland Rural District (A-2) by Orange County, with a future land use of rural/agricultural, which allows a maximum density of one dwelling unit per 10 acres.

CFX retained the services of appraiser Walter Carpenter, who estimated the value of the parent tract to be \$542,900 and the value of the taking to be **\$382,000**. Mr. Carpenter determined that the highest and best use of the property in the "before" condition was for rural residential use, with up to two units per acre. After considering comparable sales that ranged from \$23,000 to \$45,000 per acre, Mr. Carpenter concluded that the property was worth **\$30,000 per acre** before the taking.

CFX is acquiring about 10 acres, or approximately 73% of the land area, leaving a remainder that is just less than four acres. The expressway height ranges from about 28 feet above grade on the west, gradually decreasing to about 5.5 feet towards the east of the remainder property. Mr. Carpenter considered an Impact Adjacency Study of large low density residential

sites located adjacent to limited access highways to assist in determining severance damages to the remainder. This study indicated that proximity to limited access highways can have an impact on value ranging from 0% to -43%. Considering the elevation of the expressway along the subject property, Mr. Carpenter concludes that the remainder improvements and land will be damaged by **25%** (and will be worth **\$22,500 per acre**), resulting damages of **\$54,300**. Mr. Carpenter also considered a \$2,100 cost to cure. His valuation estimates are summarized as follows:

Value of the Part Taken (10.311 acres x \$30,000/ac)	\$325,600
Severance damages (25%)	54,300
Cost to Cure	2,100
CFX's Total Compensation Estimate	\$382,000

The landowner retained the appraisal services of Gary Pendergast, who determined that the highest and best use of the property was for a residential subdivision. The landowners' position is that, absent the Wekiva Parkway influence, the same densities and intensities proposed in the Wekiva Parkway Interchange Vision Plan would have been developed surrounding the Plymouth-Sorrento Road / Kelly Park Road intersection. Therefore, they claim it is highly likely that the subject would be annexed into the City of Apopka and obtain a Neighborhood District future land use and the necessary zoning change and approvals to be developed with low density residential uses at a density between 1-5 units per acre. The landowner's appraiser concludes that a density near three units per acre is most likely, in the absence of project influence.

Mr. Pendergast considered 6 comparable sales that ranged in value from \$76,000-\$149,000 per acre. All but one sale already had approval for low density residential subdivisions between 2.2-3.2 units per acre. All of the comparables had sewer and water service available. Mr. Pendergast concludes that if the subject had the necessary zoning, land use, and utilities in place, it would have a value of \$80,000 per acre before the taking. MEI determined that extraordinary development costs would be \$55,400 (\$3,900) per acre. Mr. Pendergast deducts another 10% to account for time, risk and effort to obtain necessary approvals and utilities (another \$8,000 per acre) to conclude on a value of **\$68,100 per acre**, which equates to \$962,900 for the parent tract, and **\$702,200** for the land taken.

One of the biggest issues in this case is the location of the comparables used by both appraisers. CFX's appraiser located sales close to the subject property, which the landowner claims are subject to "condemnation blight." The landowner's sales are located quite far from the subject, in superior locations and with superior zoning designations and approvals in place. The landowners claim that the comparable sales locations and development entitlements are similar to what the subject neighborhood and property would have enjoyed in the absence of the Beltway.

After the taking, Mr. Pendergast contends that the expressway will negatively impact the development potential of the property, which will now be limited to the County's Rural/Agricultural standard of one unit per 10 acres. Thus, the remainder's highest and best use is for development of a rural residential homesite. After considering 4 comparable sales located adjacent to elevated limited access roadways, Mr. Pendergast concludes that the remainder property would be worth **\$25,000 per acre** (about the same after-value conclusion as Mr. Carpenter). This amounts to severance damages of **\$165,000**, or approximately **65%**. Mr. Pendergast's valuation

conclusions are summarized as follows:

Land Taken (10.311 acres x \$68,100/ac)	\$702,200
<u>Severance Damages (65%)</u>	<u>\$165,000</u>
Landowner's Compensation Estimate	\$867,200

PROPOSAL FOR SETTLEMENT:

At a Mediation Conference held on January 26, 2016, the parties reached a settlement in the amount of **\$570,000**, plus attorneys fees and costs, subject to CFX Right of Way and Board approval. The undersigned counsel believes that \$570,000 represents a reasonable resolution of this case, limits CFX's exposure at trial, reduces expert and attorney fees and costs, and is below the midpoint of \$624,600. The landowner submitted expert fee invoices in the amount of \$59,196.00. As part of the mediated settlement agreement, the landowner agreed to accept a reduction of approximately 15% of their expert fees. The number of experts retained in this case are numerous, and their fees are summarized as follows:

EXPERT	INVOICE AMOUNT
Morris –MEI (engineer)	\$23,247.00
Pendergast (appraiser)	\$15,714.00
Williams (land planner)	\$8,050.00
Hall (land planner)	\$3,442.20
Buchheit (survey)	\$9,685.00
TOTAL	\$60,138.20

The undersigned counsel has reviewed the invoices submitted by the above experts and believes that a 15% reduction, or **\$50,320.00** is an appropriate resolution of these fees. CFX's fees are \$58,498 (including appraisals, improvement cost estimates, and engineering). However, these fees do not include initial survey and engineer work that was performed by CFX in conjunction with other parcels on this project. Considering the amount at issue in the instant litigation (\$867,200), and the similarity in fees between the landowner and CFX, the undersigned counsel believes that the fee resolution is reasonable.

The landowners retained the services of Raymer Maguire from Maguire and Lassman, P.A. Mr. Maguire has agreed to accept statutory betterment fees in the amount of \$76,560 (based on a betterment of \$232,000).

The total settlement proposal, inclusive of fees and costs, is summarized as follows:

Compensation to the Owner	\$570,000
Expert Fees and Costs	\$ 50,320
<u>Attorneys fees (based on betterment)</u>	<u>\$ 76,560</u>
Total	\$696,880

RECOMMENDATION:

We respectfully request that the Right of Way Committee recommend CFX Board approval of the proposed settlement in the amount of **\$696,880** to resolve Adelpha Howell's compensation claims and expert and attorneys fees on Parcel 279.

ATTACHMENT:

Parcel Sketch

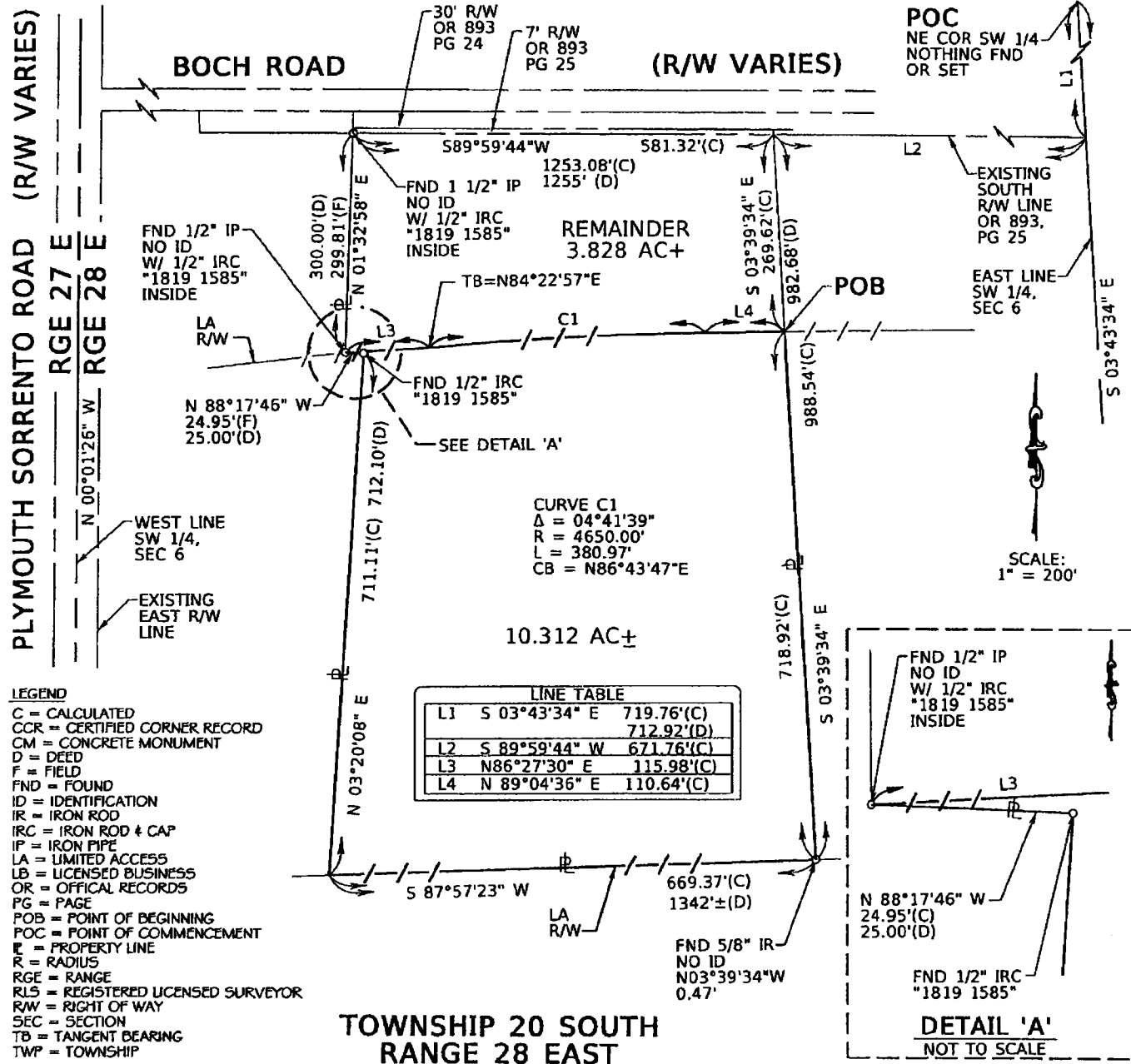
Mediated Settlement Agreement

SKETCH OF DESCRIPTION

PARCEL 279

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE



GENERAL NOTES:

- THE BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, 1983 NORTH AMERICAN DATUM, 2007 ADJUSTMENT, WITH THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, HAVING A BEARING OF NORTH 00°01'26" WEST.
- THERE MAY BE OTHER RECORDED DOCUMENTS FOUND IN ORANGE COUNTY RECORDS AFFECTING THIS PROPERTY THAT ARE NOT SHOWN ON THIS SKETCH OF DESCRIPTION.
- ATTENTION IS DIRECTED TO THE FACT THESE MAPS MAY HAVE BEEN ALTERED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALE DATA.
- A CERTIFICATE OF TITLE INFORMATION PREPARED BY "FIRST AMERICAN TITLE INSURANCE COMPANY" DATED OCTOBER 18, 2012, FILE NO. 2037-2840301 WAS REVIEWED BY THE SURVEYOR AND EXCEPTIONS (IF ANY) NOTED ON SAID CERTIFICATE ARE SHOWN HEREON.

FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY

STATE ROAD 429

DESIGNED BY: RJM

DATE: 3/18/14

DRAWN BY: DJK

JOB NO:

APPROVED BY: RJM

OOCEA PROJECT NO: 429-204

URS

URS CORPORATION
315 E. ROBINSON STREET
SUITE 245
ORLANDO, FL 32801-1949
PH (407) 422-0353
LICENSED BUSINESS NO. 6839

REVISIONS:

SHEET: 2 OF 2

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

CENTRAL FLORIDA EXPRESSWAY AUTHORITY,
a body politic and corporate, and an agency of
the state under the laws of the State of Florida

10718
CASE NO: 2014-CA-~~003636~~-O

Subdivision 39

Petitioner,

Parcel 279

vs.

THOMAS J. HOLDER, SR., individually and as Trustee
of the Sally R. Holder Credit Shelter Trust created
under agreement dated November 11, 2004;
THOMAS J. HOLDER, SR., as Trustee of the Thomas
J. Holder, Sr., Family Trust dated November 11, 2004;
BETH ANN HOLDER; ADELPHA HOWELL;
HOLDER & STRITE CORPORATION;
FLORIDA POWER CORPORATION n/k/a DUKE ENERGY
FLORIDA, INC.; ORANGE COUNTY, FLORIDA, and
SCOTT RANDOLPH, Orange County Tax Collector,

Respondents.

MEDIATED SETTLEMENT AGREEMENT

At the Mediation Conference held on January 26, 2016, the parties reached the following Settlement Agreement:

1. Petitioner will pay to Respondent, **ADELPHA HOWELL** ("Respondent") the sum of **Five Hundred Seventy Thousand Dollars (\$570,000)**, in full settlement of all claims for compensation from Petitioner resulting from the taking of Parcel 279, including severance damages, business damages, tort damages, interest, and any other claim, subject to apportionment, if any, but excluding attorney's fees, expert fees, and costs,

2. Petitioner is entitled to a credit in the amount of **Three Hundred Thirty-Eight Thousand Dollars (\$338,000)**, which sum was previously deposited in the Registry of the Court in this case by Petitioner.

3. Petitioner will pay Respondent the balance due of **Two Hundred Thirty-Two Thousand Dollars (\$232,000)**, within twenty (20) days of the actual date of receipt by Petitioner's counsel of a conformed copy of the ~~afforeaid~~ Stipulated Final Judgment from the Court.

4. In addition to the settlement amount referenced in Paragraph 1 of this Settlement

Agreement, Petitioner will pay to the trust account of Respondents' attorney the sum of **Seventy-Six Thousand Five Hundred Sixty Dollars (\$76,560)** in full settlement and satisfaction of all attorney's fees, including all fees related to monetary benefits, non-monetary benefits, and all law firm litigation costs in this case, but excluding supplemental proceedings related to apportionment, if any.

5. In addition to the above-referenced settlement sum and the above-referenced attorney's fees and law firm litigation costs, Petitioner will pay to the trust account of Respondent's attorney not more than 85% of the verified and confirmed invoiced amount, but no more than the sum of **Fifty Thousand Three Hundred Twenty Dollars (\$50,320)**, in full settlement and satisfaction of all expert witness fees and expert witness costs incurred by Respondent in this case, subject to review and confirmation that each invoice submitted by Respondent's experts was necessary and reasonable. Counsel for Respondent shall provide the experts' invoices and any additional backup within five (5) days.

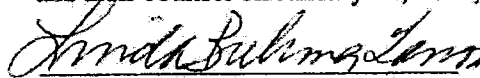
6. This Agreement is contingent upon the approval of the Central Florida Expressway Authority ("CFX") Right of Way ("ROW") Committee and the CFX Board of Directors.


7. The parties agree to continue the trial of this matter pending review by the CFX ROW Committee and CFX Board.

8. Counsel for Petitioner and Respondent will jointly submit to the Court for signature a mutually approved Stipulated Final Judgment in this matter as soon as practice able after the approval of this mediated settlement agreement by the CFX Board. The Stipulated Final Judgment will include a sentence that states that the portion of the Wekiva Parkway as to Parcel 279 will be built in substantial conformance with the construction plans filed in this case. Respondent will have the same rights set forth in the *Wye River* case

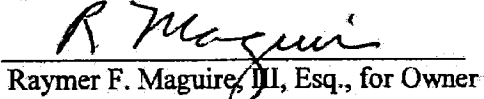
9. This Agreement resolves all claims whatsoever, including claims of compensation arising from the taking of Parcel 279, such as severance damages, business damages, tort damages, interest, attorney's fees, expert fees, costs, and any other claim.

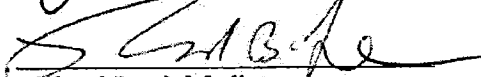
10. The parties agree to waive any confidentiality provisions set forth in Chapter 44 of Florida Statutes, the Florida Rules of Civil Procedure, and the Florida Rules of Evidence, if applicable, for the limited purpose of consideration of this proposed Settlement Agreement by the ROW Committee and the CFX Board. This Settlement Agreement, executed by the parties and their counsel on January 26, 2016, contains all of the agreements of the parties.


Linda Brehmer Lanosa, Esq.
Central Florida Expressway Authority


Thomas J. Holder, Jr., Power of Attorney,
for Owner


James Edward Cheek, III, Esq. for CFX


Raymer F. Maguire, III, Esq., for Owner


Richard Lord, Mediator



CENTRAL FLORIDA EXPRESSWAY AUTHORITY

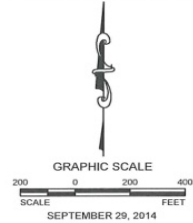
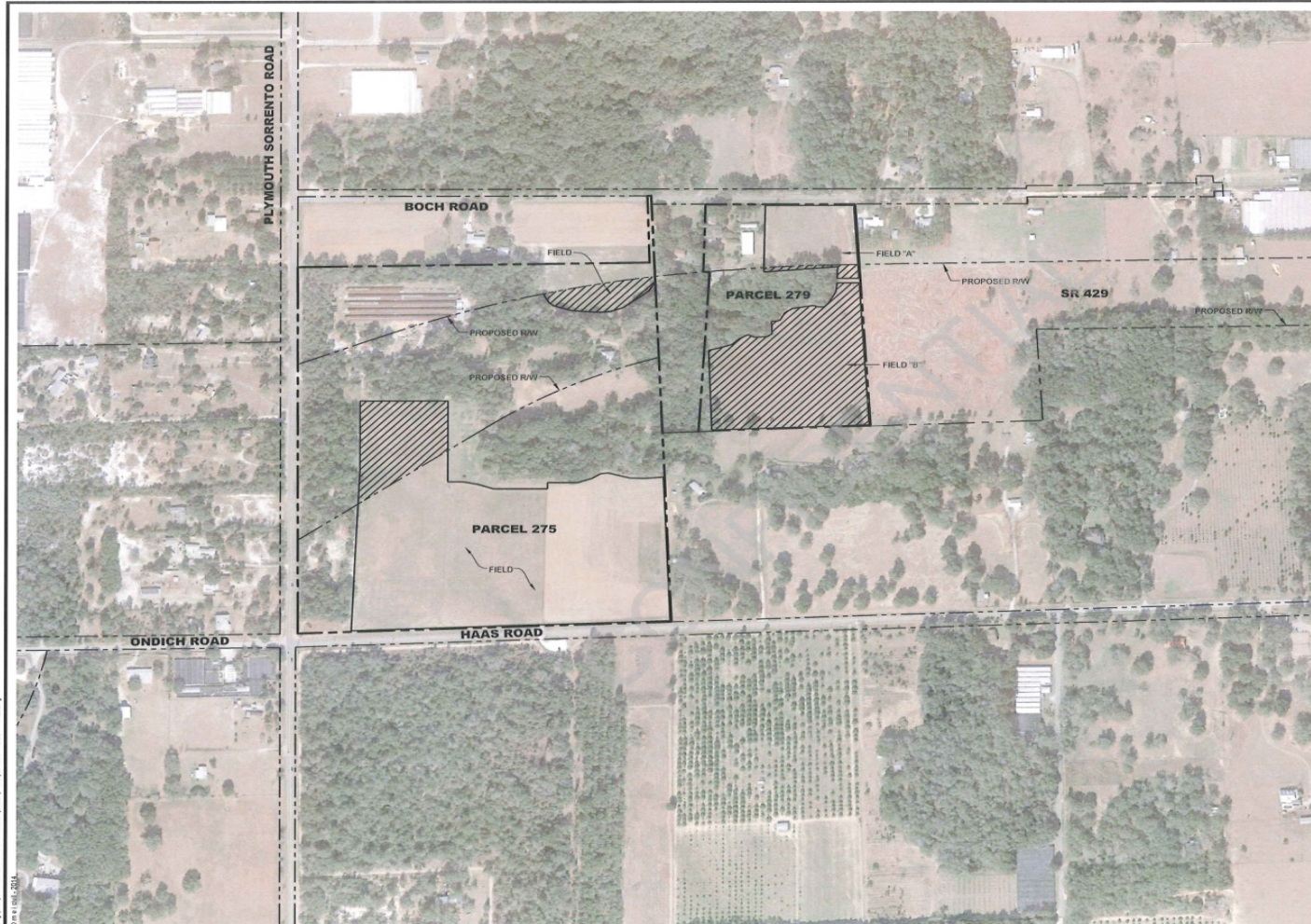
Right of Way Committee Meeting February 24, 2016
Recommendation for Approval of Settlement
S.R. 429 Wekiva Parkway
Project 429-204
Parcel 279
Offer



Central Florida Expressway Authority
Right of Way Committee
February 24, 2016

**Recommendation for
Approval of Settlement**

**S.R. 429 Wekiva Parkway
Project 429-204
Parcel 279**



ALL EXISTING AND PROPOSED INFORMATION SHOWN ON THIS DRAWING IS BASED ON SKETCH OF DESCRIPTION (LIMITED ACCESS RIGHT-OF-WAY) FOR STATE ROAD 429 PREPARED BY URS CORPORATION DATED MARCH 18, 2014 AND 90% CONSTRUCTION PLANS PREPARED BY ATKINS NORTH AMERICA, INC. FEBRUARY 2014.

LEGEND

AREA OF TAKE (FIELDS)

PRELIMINARY

**HOLDER & HOWELL
SR 429
PARCELS 275 & 279
BEFORE & AREA OF TAKE
(FIELDS)**

PARCEL 279 - HOWELL

BEFORE

FIELD "A": 111,949-SF = 2.57-AC
FIELD "B": 289,674-SF = 6.65-AC
TOTAL: 401,623-SF = 9.22-AC

AOT

FIELD "A": 9,562-SF = 0.22-AC
FIELD "B": 289,674-SF = 6.65-AC
TOTAL: 299,236-SF = 6.87-AC

REMAINDER: 102,387-SF = 2.35-AC

PARCEL 275 - HOLDER

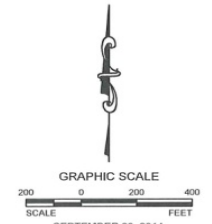
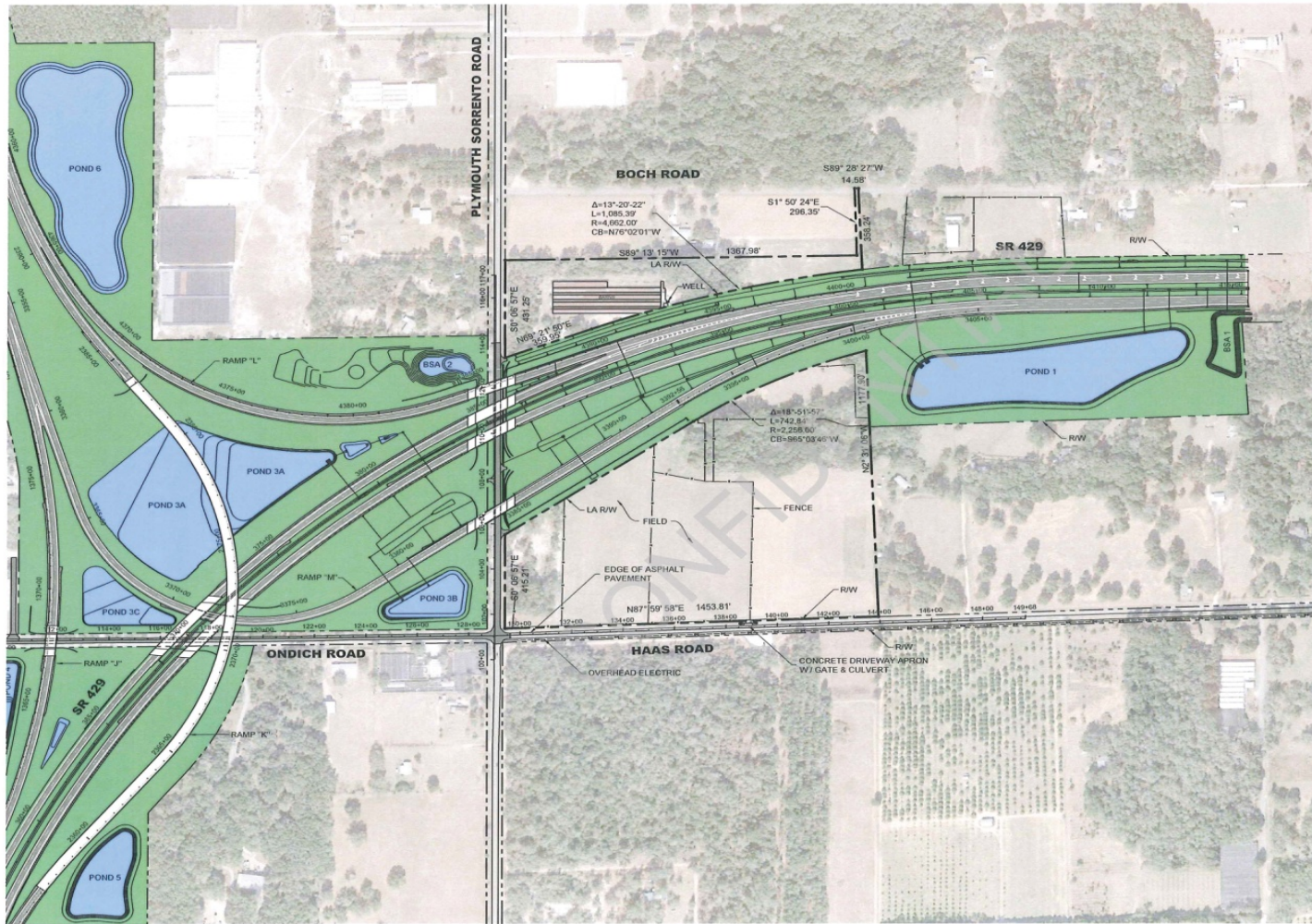
BEFORE: 897,336-SF = 20.60-AC
AOT: 157,036-SF = 3.61-AC
REMAINDER: 740,300-SF = 16.99-AC

TOTAL REMAINDER: 842,687-SF = 19.34-AC

m e i civil

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Orlando, FL 32814 CA 0006505
P: 407.893.6894 | F: 407.893.6851
Web Site: meicivil.com

JOB NO. 191010H



SEPTEMBER 29, 2014
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LEGEND

- ASPHALT
- CONCRETE
- GRASS
- STORMWATER MANAGEMENT

PRELIMINARY

THOMAS J. HOLDER
SR 429
PARCEL 275

**OVERALL UNCURED
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SOUTH: 1,186,138-SF = 27.230-AC

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Web Site: meicivil.com

JOB NO. 191010H



Appraisal Comparison

PARCEL 279	CFX	HOWELL
Value of Parent Tract (14.14 acres)	\$542,900	\$962,900
Part Taken (10.311 acres)	\$325,600	\$702,200
Price per acre – before	\$30,000/ac	\$68,100/ac
Price per acre – after	\$22,500/ac	\$25,000/ac
Severance Damages %	25%	~65%
Severance Damages/ Cost to Cure	\$56,400	\$165,000
Total Compensation	\$382,000	\$867,200



RECOMMENDATION

We respectfully request that the Right of Way Committee recommend CFX Board approval of settlement in the amount of \$696,880.00.

Tab D

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: Right of Way Committee Members

FROM: Linda S. Brehmer Lanosa, Deputy General Counsel



DATE: February 18, 2016

RE: *Central Florida Expressway Authority v. Mockingbird Orlando, LLC*
Project 599-1260, Parcel 100, Part A and Parcel 100, Part B for
Improvements at the Interchange of State Roads 417 and 528
Parent Tract Location: Northwest Corner of S.R. 417 and S.R. 528
Parcel 100 Part A: 4.278+/- acres along S.R. 528 for retention
Parcel 100 Part B: 2.048+/- acres at the northwest corner for the ramp

INTRODUCTION

Last year, the Central Florida Expressway Authority ("CFX") Board adopted a resolution approving the acquisition of Project 599-1260, Parcel 100, part A and Parcel 100, part B for improvements at the interchange of State Roads 417 and 528 and along S.R. 528 in the general area depicted on **Composite Exhibit 1**. The improvements are for two reasons. First, the improvements will allow for the reconstruction of the southbound S.R. 417 (Greeneway) ramp connecting to the westbound S.R. 528 (Beachline) to accommodate an increased design speed from 40 m.p.h. to 60 m.p.h. Second, the auxiliary lane on S.R. 528 will be extended from the S.R. 417 ramp to the S.R. 15 exit. Currently this section of S.R. 528 has 3-lanes from the S.R. 417 ramp, reducing to 2-lanes on the S.R. 528 mainline, before again reopening to three-lanes through S.R. 15 (Narcoossee Road). The proposed 3-lane configuration will improve the westbound traffic flow. Additional property is needed for stormwater treatment purposes.

APPRAISED VALUE OF PARCEL 100, PART A AND B

CFX retained Paul M. Roper, MAI, SRA, to appraise the subject property. As stated in his appraisal report, the property was formally used as the Pine Castle Jeep Bombing Range. The property is considered to be contaminated with leftover buried munitions, explosives and bombs that were used in the 1940s at the time the property was leased by the military. Prior to commencing any development, the property will need to be remediated.

Mr. Roper appraised the property as if clean at \$55,400 per gross acre for a total of \$351,000 for the 6.326 acres of property needed. Mockingbird Orlando, LLC, has agreed to accept CFX's appraised value and agreed to remediate CFX's portion of the subject property as a priority. In return, the property owner would like to obtain a right of entry along the northern boundary of S.R. 528 for access purposes for a period of twenty-four (24) months.

Attached is a proposed Real Estate Purchase Agreement setting forth the anticipated completion dates of May 2016 to complete the requirements of the Integrated Corrective Action Plan and June 2016 as an anticipated deadline to receive a no further action notice from the Florida Department of Environmental Protection. A closing would take place thereafter.

REQUESTED ACTION

We respectfully request the Committee's recommendation for Board approval of the attached Real Estate Purchase Agreement setting a purchase price based upon the appraised value of the property, requiring Mockingbird Orlando to prioritize the cleanup of the property needed by CFX, and setting a closing date.

ATTACHMENTS

1. Aerial Maps
2. Easement or License from Adjacent Parcel
3. Purchase Agreement

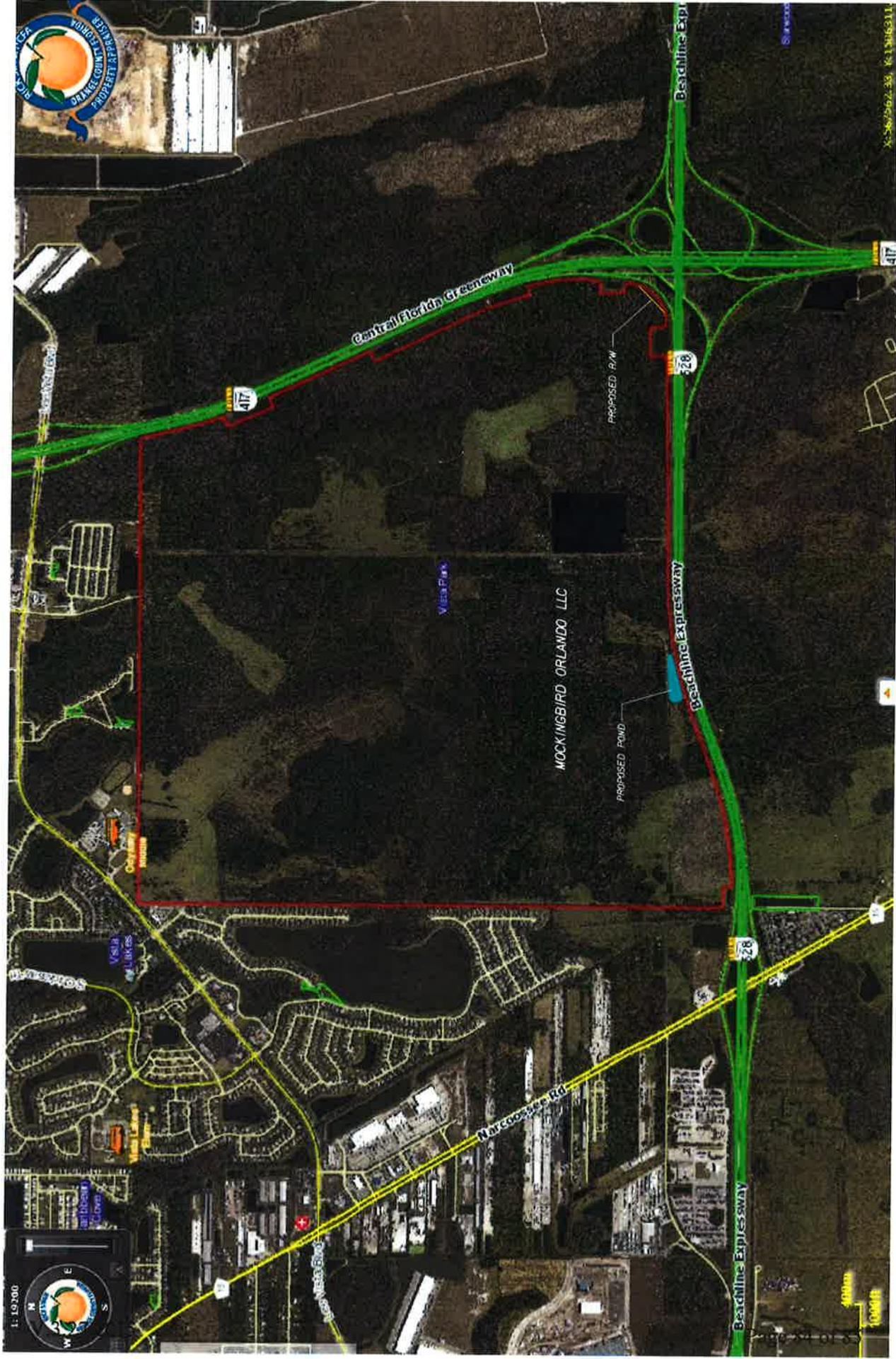
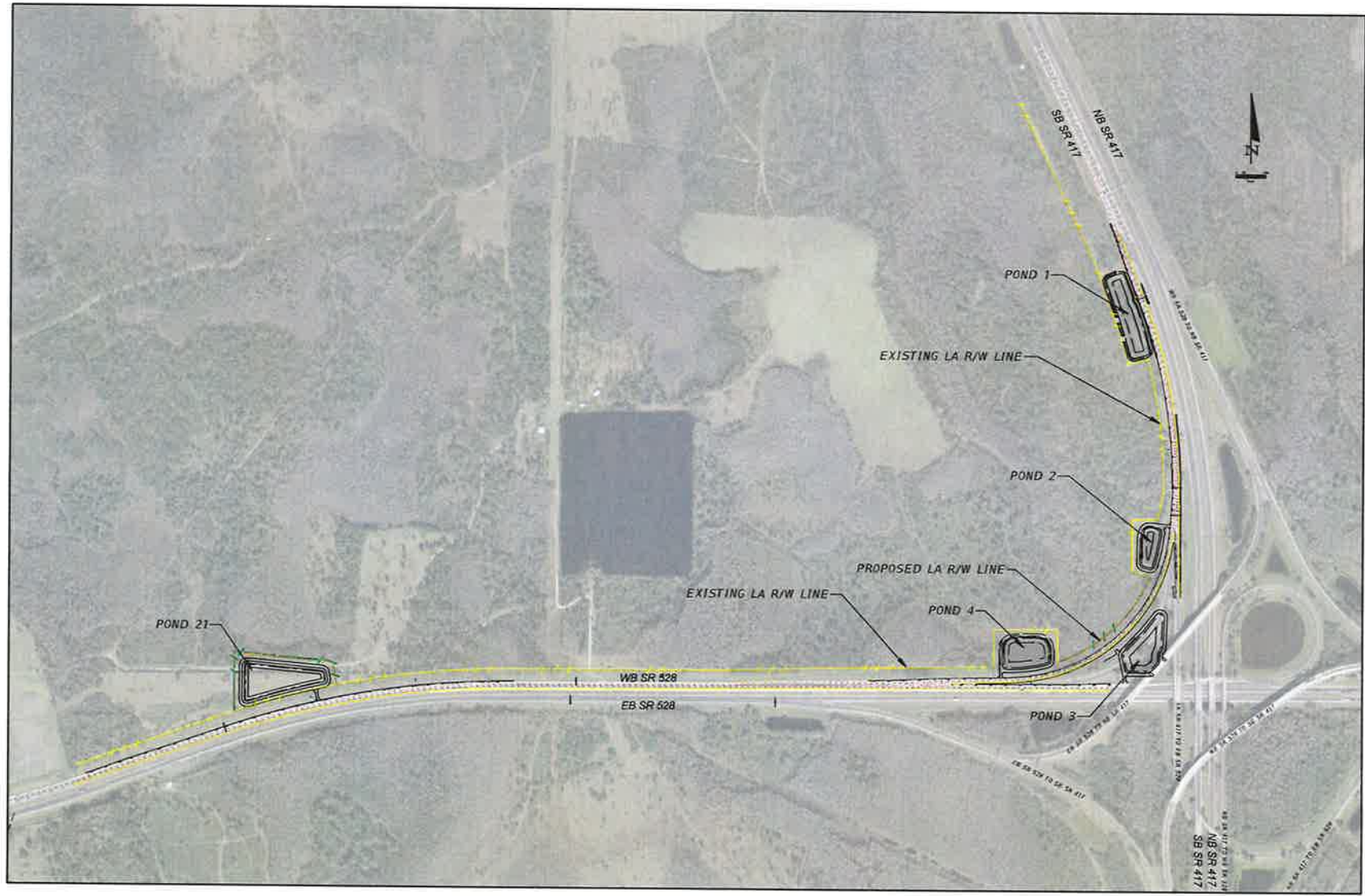


EXHIBIT 1

SB SR 417 TO WB SR 528 RAMP REALIGNMENT PROPOSED CONDITION



MOCKINGBIRD ORLANDO, LLC

**2200 E. 4th Avenue
Hialeah, Florida 33013
Business: (305)-885-8000
Facsimile: (305) 887-8006**

January 12, 2016

Mr. Navid Tahir
Afridi Investments L.P.
1898 S. Clyde Morris Blvd.
Daytona Beach, FL 32119

Re: Orange County, Florida Property Tax Parcel No. 36-23-30-0000-00-013 (Convenience Store @ Intersection of Narcoossee Road & SE 528 (Beechline Expressway)) (the Property")

Dear Mr. Tahir:

When this letter has been counter-signed by all of us it will constitute a memorandum of understanding of a proposal from Mockingbird Orlando, LLC ("Mockingbird") to Afridi Investments L.P. ("Afridi") to obtain a temporary easement (36 months in term) to procure access to and from a portion of the Property identified above to provide access between Narcoossee Road and an existing haul road located within the right-of-way of the Beachline Expressway along the southerly boundary of property owned by Mockingbird, which is contiguous to the easterly boundary of the Afridi Property. As you know, Mockingbird is in the process of initiating remediation of the entire parcel adjacent to your Property with respect to long-existing contamination from munitions debris which was left on the property at the conclusion of World War II, when all of the property (including your property) were leased to the Department of Defense and operated as the "Pine Castle Jeep Range". This remediation of the munitions contamination on the property will allow planned development of all of the Mockingbird property into a large residential project, and the extension of the Econohatchee Trail roadway through the Mockingbird Property and across the Beachline, continuing to Dowden Road. All of these efforts by Mockingbird will result in a substantial increase in potential customers for your Property.

We are requesting:

- a. An easement or license from you, for the term of 36 months (the term will terminate upon completion of our remediation and cessation of their remediation work, which should occur well before the 36 month time period) for vehicular access across that portion of your property shown on the sketch attached to this letter and marked as Exhibit "A", to provide a staging location and access across your property to an existing haul road that runs along the southerly boundary of the Mockingbird Property within the boundaries of the right-of-way of the Beachline Expressway. This will provide vehicular access for our remediation contractors to go from Narcoossee Road across the corner of the Afridi Property to the existing haul road located within the Beachline Expressway right-of-way.

EXHIBIT 2

To: Mr. Tahir
Re: Orange County, Florida Property Tax Parcel No. 36-23-30-0000-00-013
Date: 12-21-2015

Page 2

The general terms of this arrangement that we have agreed upon include:

1. As noted previously, an easement or license providing access over that part of the Property shown on the marked Property sketch attached.
2. Access for 36 months, terminating upon completion of the remediation work (which has a tentative schedule of 24 months).
3. We will commit to our remediation contractor per having all vehicles being used by the remediation contractor to purchase their fuel at your station during the entire remediation process, subject to the requirement that you will sell that fuel to the remediation contractor at the market price you are charging all of your general population customers.
4. Those additional terms which have been added to the attached page labeled "Additional Terms" and initialed by both of us. (See attached Exhibit "B")
5. We will be responsible for all costs of providing security for our operations.
6. Upon our termination of use we will return your property to its prior condition.

As soon as this Memorandum as been fully signed we will undertake to finalize with you a written agreement which will include these agreed terms of our arrangement.

Thank you for your consideration of this proposal.

Sincerely,

**MOCKINGBIRD ORLANDO, LLC, a
Florida limited liability company**

By: 
RICHARD BROCK
Authorized Agent

CONFIRMED AND AGREED:

**AFRIDI INVESTMENTS L.P., a Limited
Partnership**

By: 

Print Name: NAV A I D T A H I R

Title: Partner

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PARCEL NO. _____
PROJECT _____

REAL ESTATE PURCHASE AGREEMENT

This **REAL ESTATE PURCHASE AGREEMENT** ("Agreement") is made and entered into this ____ day of _____, 2015, (the "Acceptance Date") by and between **MOCKINGBIRD ORLANDO, LLC**, a Florida limited liability company, ("Owner"), whose address is 2200 East 4th Avenue, Hialeah, Florida 33013 and whose U.S. Taxpayer Identification Number is _____ and the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body politic and corporate, and an agency of the state, under the laws of the State of Florida, ("CFX"), whose address is 4974 ORL Tower Road, Orlando, FL 32807.

WITNESSETH:

WHEREAS, Owner is the fee simple owner of a certain parcel of real property located in Orange County, Florida (the "Property"), being more particularly described in **Composite Exhibit "A"** attached hereto and incorporated herein by this reference; and

WHEREAS, CFX desires the Property as right of way for future construction and maintenance of an authorized roadway and/or related facilities or for other appropriate and legally authorized uses, and CFX is required by law to furnish same for such purpose; and

WHEREAS, Owner, under threat of condemnation, desires to sell to CFX and CFX desires to purchase from Owner the Property upon the terms and conditions herein below set forth.

WHEREAS, pursuant to Section 334.27, Florida Statutes, CFX is a governmental transportation entity and CFX is not subject to any liability imposed by Chapters 476 or 403, F.S., for preexisting soil or ground water contamination due solely to its ownership.

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

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

2. **Agreement to Buy and Sell.** Owner, under threat of condemnation, agrees to sell to CFX and CFX agrees to purchase from Owner the Property in the manner and upon the terms and conditions herein below set forth in this Agreement.

EXHIBIT 3

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3. **Purchase Price.** The total Property to be purchased from Owner is the sum of 4.278 acres plus 2.048 acres, more or less, for Parcel 100, Part A, and Parcel 100, Part B, as more particularly described in the legal descriptions and sketches attached hereto as Composite Exhibit "A". and includes any and all site improvements (the "Property"). The total purchase price (the "Purchase Price") to be paid by CFX to Owner for the Property shall be Three Hundred and Fifty One Thousand Dollars (**\$351,000.00**) which Purchase Price shall be paid by CFX to Owner at Closing. The Purchase Price shall be paid by a check from CFX or by wire transfer of funds, subject to appropriate credits, adjustments and prorations as herein below provided, and represents the full compensation to Owner for the Property and for any damages suffered by Owner and any adjoining property owned by Owner in connection with the transaction contemplated under this Agreement.

4. **CFX's Right of Inspection.**

(a) **Right of Inspection.** CFX shall at all times before Closing have the privilege of going upon the Property with its agents and engineers as needed to inspect, examine, survey and otherwise undertake those actions which CFX, in its discretion, deems necessary or desirable to determine the suitability of the Property for its intended uses thereof. Said privilege shall include, without limitation, the right to make surveys, soils tests, borings, percolation tests, compaction tests, environmental tests and tests to obtain any other information relating to the surface, subsurface and topographic conditions of the Property. CFX may, in its sole discretion and at its sole cost and expense, have the Property tested, surveyed and inspected to determine if the Property contains any hazardous or toxic substances, wastes, materials, pollutants or contaminants. As used herein, "Hazardous Substances" shall mean and include all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous components), or other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up, including, without limitation, "CERCLA", "RCRA", or state superlien or environmental clean-up statutes (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). CFX may obtain a hazardous waste report prepared by a registered engineer, which report, if obtained, shall be satisfactory to CFX in its sole discretion. In the event CFX determines that said report is not satisfactory, CFX may terminate this Agreement, both parties thereby being relieved of all further obligations hereunder.

(b) **Termination.** In the event Authority elects to exercise its right to terminate this Agreement pursuant to the provisions of Section 4(a) hereof, such election must be exercised by providing written notice of the election to Owner (the "Termination Notice"), which Termination Notice must be timely provided (pursuant to the Notices provisions in Section 11 hereof) prior to the then-scheduled date of Closing.

(c) **Indemnification.** Subject to limitations provided in Statute 768.28, Florida Statutes, Authority hereby agrees to indemnify and hold harmless Owner against all claims, demands, and liabilities, including but not limited to attorneys' fees, or non-payment of services rendered to or for Authority, or damages or injuries to persons or property, or the property, arising out of Authority's inspection of the Property, and not resulting from the wrongful acts or omissions of Owner or Owner's agents. Notwithstanding anything to the contrary set forth in this

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Agreement, the agreement to indemnify and hold Owner harmless in this Section 4(c) shall survive the Closing or any earlier termination of this Agreement as provided herein. The grant of indemnity in this Section shall include all actions undertaken by Authority or Authority's employees, agents, or consultants. In the event Authority terminates this Agreement during the inspection period Authority shall repair any damage to the Property resulting from Purchaser's inspection activities. In the event this Agreement is not terminated pursuant to the preceding provisions of this Section 4, as to all Authority's access to and inspections of the Property occurring subsequent to the expiration of the time period for inspection and prior to the Closing the preceding provisions of this Section 4, including the indemnification provisions, shall remain in full force and effect, and shall survive the termination of this Agreement. CFX is an agency of the State of Florida whose limits of liability are set forth in Section 768.28, Florida Statutes, and nothing herein shall be construed to extend the limits of liability of CFX beyond that provided in Section 768.28, Florida Statutes. Nothing herein is intended as a waiver of CFX's sovereign immunity under Section 768.28, Florida Statutes. Nothing hereby shall inure to the benefit of any third party for any purpose, which might allow claims otherwise barred by sovereign immunity or operation of law. Furthermore, all of CFX's obligations under this Agreement are limited to the payment of no more than the amount limitation per person and in the aggregate contained in Section 768.28, Florida Statutes, even if the sovereign immunity limitations of that statute are not otherwise applicable to the matters as set forth herein.

5. **Evidence of Title.** At any time within sixty (60) days of the Acceptance Date, CFX may, at CFX's sole cost and expense, order a commitment from an agent of CFX's selection, for a policy of Owner's Title Insurance (the "Commitment") which shall be written on a title insurance company reasonably satisfactory and acceptable to CFX. Copies of all documents constituting the exceptions referred to in the Commitment shall be attached thereto. A complete copy of the Commitment and all title exception documents shall be provided to Owner by CFX within ten (10) days of CFX's receipt of the Commitment and title exception documents. The Commitment shall bind the title company to deliver to CFX a policy of Owner's Title Insurance which shall insure CFX's title to the Property in an amount equal to the Purchase Price. CFX shall have thirty (30) days from the date of receipt of the latter of the Commitment or the Survey (as defined below) to examine same and notify Owner, in writing and in accordance with the Notices procedures specified in Section 11 hereof, of any defects, a defect being a matter which would render title unmarketable or is otherwise unacceptable to CFX. Owner shall have thirty (30) days from receipt of notice within which to remove such defect(s), and if Owner is unsuccessful in removing same within said time period, CFX shall have the option of: (i) accepting title as it then is; or (ii) terminating this Agreement, whereupon each party shall then be released of all further obligations hereunder. Owner agrees that it will, if title is found to be unmarketable or otherwise unacceptable to CFX, remove or correct the defect(s) in title within the time period provided therefor. In the event any of the foregoing time periods extend beyond the Closing Date, the Closing Date shall extend accordingly at CFX's option. Those matters set forth on **Exhibit "B"** attached hereto and incorporated herein by reference, together with those title exceptions listed in the Commitment and accepted by CFX, shall be deemed and collectively referred to herein as the "Permitted Exceptions". CFX shall take title to the Property subject to the Permitted Exceptions. At Closing, CFX shall pay the premium for the Owner's Title Insurance Policy to be issued.

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6. **Survey.** CFX shall have the right, at any time before Closing, to have the Property surveyed at its sole cost and expense (the "Survey"). Any Survey shall be performed and certified to CFX, Owner, and the title company issuing the Commitment in accordance with applicable law, statutes and regulations and shall have located thereon all matters listed in the Commitment which are capable of being shown on a survey. Any survey exceptions or matters not reasonably acceptable to CFX shall be treated as title exceptions. The surveyor shall provide to CFX and Owner certified legal descriptions and sketches of said descriptions delineating the Property into various portions of right of way and the legal descriptions will be included in the deed as an additional description of the Property conveyed by Owner.

7. **Closing Date and Closing Procedures and Requirements.**

(a) **Closing Date.** The closing of the purchase and sale contemplated under this Agreement (the "Closing") shall be held on a date not greater than thirty (30) days following the completion of the environmental remediation of the Property in compliance with the terms of the Voluntary Clean-up Order (VCO) which has been issued by the Florida Department of Environmental Protection ("FDEP") and is more particularly described in Section 18 below, the issuance by FDEP of a no further action determination with respect to the Property regarding the environmental remediation, and the expiration of any appeal period with respect to the FDEP no further action determination. As specified in Section 18 below, Owner shall provide to CFX copies of correspondence, reports, other status updates, and other documentation generated or received as part of or in conjunction with the VCO, including specifically copies of the no further action determination by FDEP (which will be provided by Owner to CFX immediately upon receipt by Owner). Upon issuance of the FDEP no further action determination and expiration of any appeal period with respect thereto the Parties shall agree on a mutually acceptable closing date (unless an alternate closing date is determined by CFX under the provisions of sub-Section 7(b) immediately below), which closing date shall occur within thirty (30) days of satisfaction of the above listed contingencies regarding the FDEP no further action determination.

(b) **Alternate Closing Date.** Notwithstanding any other provisions of this Agreement to the contrary, including the provisions of sub-Section 7(a) immediately above, CFX shall retain the right, at its election, to schedule a Closing date and close on the purchase of the Property prior to the completion of the environmental remediation of the Property (and contiguous real property also owned by Owner) by Owner. In the event CFX elects to set an alternate closing date under the provisions of this Sub-Section the following provisions shall apply:

(i) CFX election of an alternate closing date prior to completion of the environmental remediation of the Property shall not terminate or alter Owner's obligation under this Agreement to complete the environmental remediation of the Property required under the VCO described in Section 18 herein. Owner shall continue to pursue completion of the environmental remediation of the Property with due diligence, and thereafter obtain a no further action determination regarding the property by FDEP (the FDEP no further action determination may be included in a no further action determination that includes the Property other contiguous real property owned by Owner).

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(ii) In the event CFX elects to close on the purchase of the Property prior to the completion of the environmental remediation of the Property the Owner, Owner's environmental remediation contractor, and their respective agents, employees and sub-contractors shall be provided a contractual rights of entry for the Property to allow completion of the environmental remediation of the Property by Owner and Owner's contractors. The contractual right of entry to the Property shall occur in accordance with the same procedure and requirements for the contractual right of entry CFX will provide to Owner and Owner's contractors and consultants with respect to the access parcel which is described in Section 19 below, including the terms of the contractual right of access described in Section 19, for not more than twenty-four (24) months.

(iii) In the event CFX exercises its right to complete the Closing of the purchase of the Property prior to completion of the environmental remediation, CFX shall not be responsible for any additional cost incurred by Owner for completion of the environmental remediation of the Property as a result of Owner's environmental remediation contractor incurring additional expenses as a result of CFX's ownership of the Property during the remediation process.

(c) Conveyance of Title. At the Closing, Owner shall execute and deliver to CFX a Special Warranty Deed, in the form and content attached hereto as **Exhibit "C"** and incorporated herein by reference, conveying fee simple marketable record title to the Property to CFX, free and clear of all liens, general and special assessments, easements, reservations, restrictions and encumbrances whatsoever, except for Permitted Exceptions and other title exceptions to which CFX has not objected or which CFX has agreed to accept pursuant to any other provisions of this Agreement. In the event any mortgage, lien or other encumbrance encumbers the Property at Closing and is not paid and satisfied by Owner, such mortgage, lien or encumbrance shall, at CFX's election, be satisfied and paid with the proceeds of the Purchase Price.

(d) Conveyance of Possession. Title shall transfer as of the Closing Date and, Owner shall abandon and vacate the Property and shall remove all personal property not included in this transaction that Owner intends to remove from the Property and for which CFX has not paid Owner as part of the Closing. Owner shall surrender possession of the Property to CFX at the Closing free of any tenancies, sub-tenancies or encumbrances, except those listed on the Permitted Exceptions attached as **Exhibit "B"**. Any personal property or fixtures left by Owner upon the Property after the Closing Date shall be presumed to be abandoned, and CFX will have the right to remove and destroy such property or fixtures without any responsibility or liability to Owner for any damages or claims whatsoever.

(e) Prorating of Taxes and Assessments. Owner shall pay all taxes, assessments and charges applicable to the Property for the period of time prior to the Closing Date. At Closing, Owner will pay to CFX or the closing agent, by credit to the Purchase Price or otherwise, Owner's pro rata share of all taxes, assessments and charges as determined by the Orange County Property Appraiser, the Orange County Tax Collector and/or other applicable governmental authority.

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(f) Closing Costs. CFX shall, at Closing, pay: (i) all real property transfer and transaction taxes and levies, including documentary stamps on the Statutory Warranty Deed delivered to CFX hereunder, if any, relating to the purchase and sale of the Property; (ii) the cost of recording the Statutory Warranty Deed delivered hereunder; (iii) all costs pertaining to the title commitment, including, but not limited to, title insurance premiums, title search fees, and the premiums for any endorsements requested by CFX, and all costs related to the issuance of the Commitment and a title insurance policy insuring title to the Property, should CFX desire to obtain a title insurance policy on the Property; (iv) all of the costs and expenses associated with the Survey, should CFX desire to obtain a Survey. All other costs incurred at Closing shall be borne by the parties in accordance with the custom and usage in Orange County, Florida.

(g) General Closing Documents. At Closing, the Owner shall sign a closing statement, an owner's affidavit including matters referenced in Section 627.7842(b) and (c), Florida Statutes, and an affidavit that Owner is not a foreign person for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), as revised by the Deficit Reduction Act of 1984 and as same may be amended from time to time (which certificates shall include Owner's taxpayer identification numbers and address or a withholding certificate from the Internal Revenue Service stating that Owner is exempt from withholding tax on the Purchase Price under FIRPTA) and such other documents as are necessary to complete the transaction. If the Owner holds title to the Property in the form of a partnership, limited partnership, corporation, trust or any form of representative capacity whatsoever, then no later than fourteen (14) days before this Agreement is considered by the CFX Board, the Owner shall sign a beneficial interest affidavit described in Section 286.23, Florida Statutes, as applicable (a copy of which is attached hereto as Exhibit "D").

8. Maintenance of Property. From and after the date hereof and until physical possession of the Property has been delivered to CFX, Owner will keep and maintain all of the Property in good order and condition and will comply with and abide by all laws, ordinances, regulations and restrictions affecting the Property or its use, and Owner will pay all taxes and assessments relative to the Property prior to the due date thereof. From and after the date hereof, Owner shall not offer to sell the Property to any other person or entity or enter into any verbal or written agreement, understanding, or contract relating to the sale or conveyance of the Property or any interest therein.

9. Warranties and Representations of Owner. To induce the Authority to enter into this Agreement and to purchase the Property, Owner, in addition to the other representations and warranties specifically set forth herein, represents and warrants to Authority that, as of the date hereof, and as of the Closing Date, the following representations and warranties are (or if applicable will be as of the Closing) true and correct, and shall survive the Closing as to all claims asserted by notice given to the representing party given within one (1) year after the Closing:

(a) That Owner owns fee simple marketable record title to the Property, free and clear of all liens, special assessments, easements, reservations, restrictions and encumbrances and there are no tenancy, rental or other occupancy agreements affecting the Property.

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(b) That there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, affecting the Property or any portion thereof or relating to or arising out of the ownership of the Property, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality, other than the VCO issued by the Florida Department of Environmental Protection, described in Section 18 below.

(c) Owner has the full right, power and authority to enter into and deliver this Agreement and to consummate the purchase and sale of the Property in accordance herewith and to perform all covenants and agreements of Owner hereunder.

(d) Owner has no knowledge or notice that any present default or breach exists under any mortgage or other encumbrance encumbering the Property or any covenants, conditions, restrictions, rights-of-way or easements which may affect the Property or any portion or portions thereof, and that no condition or circumstance exists which, with the passage of time and/or the giving of notice, or otherwise, would constitute or result in a default or breach under any such covenants, conditions, restrictions, rights-of-way or easements.

(e) Other than those matters contained in the VCO described in Section 18 below Owner has no knowledge that the Property has ever been used by previous owners and/or operators to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substances. Owner has no knowledge of the Property having ever contained nor does it now contain either asbestos, PCB or other toxic materials, whether used in construction or stored on the Property, and Owner has not received a summons, citation, directive, letter or other communication, written or oral, from any agency or Department of the State of Florida or the U. S. Government concerning any intentional or unintentional action or omission on Owner's part which had resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances. Owner has no knowledge of any release of Hazardous Substances or notice of violation of any environmental law related to such operation.

(f) Other than those matters contained in the VCO described in Section 18 below Owner has no knowledge of any anti-pollution, Environmental Laws, rules, regulations, ordinances, orders or directives which would hinder, prevent or substantially obstruct CFX's use of the Property.

(g) Other than those matters contained in the VCO described in Section 18 below There are no Hazardous Substances, pollutants, contaminants, petroleum products or by-products, asbestos or other substances, whether hazardous or not, on or beneath the surface of the Property, which Owner or any other person or entity has placed or caused or allowed to be placed upon the Property, and which have caused or which may cause any investigation by any agency or instrumentality of government, which are or may be on the Property in violation of any law or regulation of any local, state or federal government or which are or may be a nuisance or health threat to occupants of the Property or other residents of the area.

(h) No person, firm or other legal entity other than CFX has any right or option whatsoever to acquire the Property or any portion thereof or any interest therein, other than as is specified herein. Notwithstanding any other provisions of this Agreement to the

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contrary, the Property is a portion of a larger parcel of property which is the subject of an Amended and Restated Real Estate Purchase Agreement between Owner and Beachline North Residential, LLC having a current Effective Date of April 28, 2015 ("Beachline Purchase Agreement"). CFX acknowledges that Owner has previously disclosed to CFX that the Property is included in Property covered by the terms of the Beachline Purchase Agreement. The Buyer under the Beachline Purchase Agreement (Beachline North Residential, LLC) has agreed to release from the terms of that Purchase Agreement its right to purchase the Property which is the subject of this Agreement, concurrent with the sale of the Property to CFX (which release will include a release of any right to the sales proceeds to Owner arising out of this Agreement). At Closing Owner will provide to CFX, in form and content reasonably satisfactory to CFX, a Release of Interest executed by Beachline North Residential, LLC, releasing its right to purchase the Property or receive any sales proceeds therefrom.

(i) That the execution and delivery of this Agreement and the consummation of the transaction contemplated herein shall not and do not constitute a violation or breach by Owner of any provision of any agreement or other instrument to which Owner is a party or to which Owner may be subject although not a party, nor result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued against Owner.

(j) That each and every one of the foregoing representations and warranties is true and correct as of the date hereof, will remain true and correct throughout the term of this Agreement, and will be true and correct as of the Closing Date.

(k) In the event that changes occur as to any information, documents or exhibits referred to in the subparagraphs of this section, or in any other part of this Agreement, of which Owner has knowledge, Owner will immediately disclose same to CFX when such knowledge is first available to Owner; and in the event of any change which may be deemed by CFX to be materially adverse, CFX may, at its election, terminate this Agreement.

10. **Defaults.** In the event either party breaches any warranty or representation contained in this Agreement or fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed by such party under the terms and provisions of this Agreement, and the failure of the defaulting party to cure the default within thirty (30) days of the effective date of a written Notice of Default from the non-defaulting party to the defaulting party, the non-defaulting party, in its sole discretion, shall be entitled to: (i) terminate this Agreement, in which event this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect (other than obligations which, by the terms of this Agreement, expressly survive the termination of the Agreement); or (ii) pursue an action for specific performance of this Agreement against Owner (CFX acknowledges that it has waived any right to pursue an action for damages against Owner, in the event of a default by Owner); provided, however, that nothing contained in this subsection shall limit or prevent CFX from exercising its power of eminent domain to acquire, by condemnation, title to the Property.

11. **Notices.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically (i.e., by telecopier device) or within three (3)

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days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

CFX: CENTRAL FLORIDA
EXPRESSWAY AUTHORITY
4974 ORL Tower Road
Orlando, Florida 32807
Attn: Executive Director
Telephone: (407) 690-5000
Facsimile: (407) 690-5011

With a copy to: CENTRAL FLORIDA
EXPRESSWAY AUTHORITY
4974 ORL Tower Road
Orlando, Florida 32807
Attn: General Counsel
Telephone: (407) 690-5000

Owner: **MOCKINGBIRD ORLANDO, LLC**
Attn: John J. Brunetti, Jr.
2200 East 4th Avenue
Hialeah, Florida 33010
Telephone: (305) 885-8000

With a copy to: Steven H. Gray, Esq.
Gray, Ackerman & Haines, P.A.
125 NE First Avenue, Suite 1
Ocala, Florida 34470-6675
Phone: (352) 732-8121
Fax: (352) 368-2183

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

12. **Conditional Acceptance.** Owner hereby acknowledges and agrees that CFX's execution hereof and acceptance of the terms and provisions hereof constitute a conditional acceptance and agreement. Notwithstanding anything to the contrary contained herein, it is expressly acknowledged and agreed that, pursuant to Section 286.011(1), Florida Statutes, as amended from time to time, this Agreement shall be subject to the final approval and acceptance by CFX's Board, in its sole discretion, and shall be accepted or rejected by said Board on or before ninety-five (95) days after the Effective Date of this Agreement (the "Acceptance Date"). In the event of Acceptance, CFX shall notify Owner in writing within fifteen (15) days after the Board meeting at which the Agreement was accepted by executing and delivering the Notice of Approval and Acceptance in the form attached hereto as **Exhibit "E"**. Provided this Agreement is timely accepted by CFX, this Agreement shall continue in full force and effect, subject to the

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terms and provisions hereof. In the event CFX shall fail to accept this Agreement on or before the Acceptance Date, this Agreement shall be deemed rejected. If this Agreement is rejected or deemed rejected by CFX, this Agreement shall automatically be null and void and of no further force or effect and the parties shall be released from all further obligations and liabilities hereunder. Owner hereby expressly acknowledges and agrees that Owner has made and entered into this Agreement in consideration of CFX's covenant to conditionally accept this Agreement subject to final acceptance by CFX, in its sole discretion, in accordance with the terms and conditions herein set forth.

13. **Design, Location and Funding Disclosure.** In accordance with Section 5-5.025 of the Central Florida Expressway Authority Property Acquisition & Disposition Procedures Manual, Owner acknowledges that: (i) the design and location of any contemplated or proposed roadway systems or access scenarios are not guaranteed unless otherwise specified therein; (ii) funding has not been completed for the subject project; and (iii) this Agreement may be subject to funding by a CFX bond issue or other applicable sources. Nothing included in this Section, including the acknowledgement that funding may be by a bond issue or other sources, shall operate to extend the scheduled date of Closing, or any other timeline dates in this Agreement.

14. **Acceptance Date.** When used herein, the term "Acceptance Date" or the phrase "the date hereof" or "the date of this Agreement" shall mean the last date that either CFX or Owner executes this Agreement.

15. **Release of CFX.** By execution of this Agreement and pursuant to Section 5-5.025 of the Central Florida Expressway Authority Property Acquisition & Disposition Procedures Manual, Owner acknowledges and agrees that as of the date of Owner's execution and delivery of the deed, Owner shall thereby remise, release, acquit, satisfy, and forever discharge CFX, of and from all, and all manner of action and actions, cause and causes of action, suits, sums of money, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, claims and demands whatsoever, in law or in equity, which Owner ever had, then have, or which any personal representative, successor, heir or assign of Owner, thereafter can, shall or may have, against CFX, for, upon or by reason of any matter, cause or thing whatsoever, arising out of or in any way connected with Owner's conveyance of the Property to CFX or the applicable project, including, without limitation, any claim for loss of access, air, light or view to Owner's remaining property, or other severance damages to Owner's remaining property, business damages, consequential damages, or any other damages, all from the beginning of the world to the day thereof. A covenant shall be contained in the deed acknowledging Owner's agreement to the foregoing.

16. **Not an Offer.** Notwithstanding anything to the contrary in this Agreement, in the event that the transaction under this Agreement does not close, this Agreement shall not be deemed an offer nor admissible in any subsequent eminent domain proceeding with respect to the Property.

17. **Owner's Development Efforts.** The Authority agrees not to directly or indirectly oppose, challenge, or otherwise obstruct or impede the efforts of Owner or Owner's successors in title or assigns to obtain governmental approvals and develop its adjacent property; provided, however, that Owner acknowledges that it may need to obtain land development approvals and

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permits before the City Council of the City of Orlando, Orange County Commission, other governmental entities, or departments thereof, and a vote of approval by any member of the CFX Board for this Purchase Agreement shall not impede the exercise of discretion by any member of the CFX Board in their role as a member of the City Council of the City of Orlando (or the mayor of the City), Orange County Commission, or as member of a board or commission or council of another governmental entity. As used herein, any references to Seller's adjacent property or similar phrase means all of the approximately 1,500 acre tract known as the Vista Lakes parcel.

18. **Voluntary Clean-up Order (VCO)**. The parties acknowledge that the Property is subject to the provisions of a Voluntary Cleanup Order ("VCO") approved by FDEP, dated June 26, 2015, and all attachments to the VCO (including the Integrated Corrective Action Plan ("ICAP")) contained therein. As stated in the VCO, FDEP determined that significant quantities of munitions and explosives of concern ("MEC"), including unexploded ordnance, discarded military munitions, and munitions constituents may remain at the Property as a result of the historic operations and activities at the Property. As stated in the VCO and as confirmed by Owner, Owner has commenced completion of the FDEP approved ICAP, which plan requires field investigation, rehabilitation, and site restoration. Upon successful completion, the FDEP will issue a final determination that no further corrective measures or actions are required. The Owner agrees to prioritize the investigation, rehabilitation, and restoration the Property to be acquired by CFX in advance of other portions of the Owner's property. Owner will use its best efforts to complete the requirements in the ICAP on the Property by _____ May 2016, with an anticipated no further action notice from FDEP as to the Property by _____ June 2016. CFX has the right to monitor Owner's progress and proceedings with the FDEP and Owner or its consultants will provide CFX with copies of correspondence, reports, data, test results, permits, status updates, and other documentation generated or received as part of or in conjunction with the VCO or ICAP, upon the specific written request of CFX.

(ba) Owner will pursue completion of the requirements of the VCO, as to the Property which is the subject of this Agreement, as a portion of the first remediation zone to be environmentally remediated under the terms of the VCO. Owner will use its best efforts to obtain a no further action determination from FDEP as to the first remediation zone for which remediation is completed under the VCO, as soon as reasonably possible, but Owner cannot guarantee to CFX that FDEP will issue a no further action determination for the Property prior to the completion of the environmental remediation of all of the real property which is the subject of the VCO.

19. **Contractual Right of Entry ("CROE")**. In partial consideration for Owner's acceptance of CFX's appraised value of the Property as the agreed Purchase Price, and to facilitate acceleration of the completion of the environmental remediation of the Property under the terms of the VCO described in the preceding Section by rescheduling the environmental remediation of the Property under the terms of the VCO, CFX agrees that it will provide to Owner, for the benefit and use of Owner and Owner's contractors, consultants, employees, and agents, strictly for the facilitation of the environmental remediation for both the Property which is the subject of this Agreement and the remaining real property which is the subject of the VCO described in Section 18 above, a limited, non-exclusive, Contractual Right Of Entry (the

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"CROE") for ingress or egress, over and across an existing unimproved haul road located within the boundaries of the right-of-way of SR 528 (the "Beachline Expressway"), a road facility owned and operated by CFX. The boundaries of the property for which the CROE will be provided, provision of the CROE, and additional terms with respect to the grant and usage of the CROE, shall be as follows:

(a) **Access Area.** The "Access Area" shall, generally, consist of the northerly ~~_____~~ twelve (12) feet of that segment of the right-of-way of the Beachline Expressway which is contiguous to the southerly boundary of the real property which is the subject of the VCO, and adjoining third-party properties to the east, the location of the Access Area being identified on the aerial overlay shown on attached Exhibit "F". Owner will provide, subject to CFX's reasonable review and approval, a legal description and sketch of the Access Area within twenty (20) days of the Acceptance Date. The westerly end of the Access Area will not connect to the right-of-way of Narcoossee Road, access from the Access Area directly to Narcoossee Road will not be permitted. Owner has provided to CFX documentation that Owner has obtained a non-exclusive ~~easement~~ right-of-entry from the owner of the gasoline station/convenience store located at the NE corner of the intersection of the Beachline Expressway and Narcoossee Road, access from the ~~Easement~~ Access Area to Narcoossee Road will be provided by traversing said third-party parcel of property and accessing Narcoossee Road from the existing access driveways connecting the third-party parcel to Narcoossee Road.

(b) **Grant of CROE.** Owner has submitted to CFX an Application for the CROE described in this Section, a copy of which is shown on attached Exhibit "~~—G~~", (the "Application") which when executed by both Owner and CFX will constitute the CROE Agreement between Owner and CFX. Owner shall comply with all standard requirements of CFX for issuance and use of CROE over CFX-owned property, and in addition shall comply with the following additional terms regarding the CROE. Prior to initiation of use of the ~~easement~~, Owner and CFX will enter into ~~an Easement Agreement~~ the CROE, in form and content which is reasonably acceptable to both Parties, which ~~Easement Agreement~~ CROE shall contain, in addition to the grant of the ~~access easement~~ CROE described herein, additional terms as follows:

Access
Area

(i) **Application Compliance.** Owner shall comply with all of the requirements of the Application, including but not limited to all requirements to provide CFX the specified insurance coverage specified in the Application.

(ii) **Limited Uses.** The CROE shall not be used for the delivery of heavy equipment or materials (such as, but not limited to, fill, lime rock, asphalt, poles, or other similar construction materials). The CROE shall be used solely for general vehicular traffic transporting the contractor and contractor's employees or agents to the site.

(iii) **Barricades, Etc.** Owner shall at Owner's sole cost, if required by CFX, install barriers of size and design (reasonably satisfactory to CFX) to prevent vehicles making use of the CROE from traversing onto the remainder of the right-of-way of SR 528.

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(iv) **Term.** The term of the CROE shall extend until the first of the following dates to occur: (i) finalization of the environmental remediation of the adjoining property owned by Owner subject to the terms of the VCO, which will occur upon the issuance of a no further action determination under the VCO by the Florida Department of Environmental Protection, and the expiration of all appeal periods with respect to the no further action determination; or (ii) the date ~~forty-two (42)~~twenty-four (24) months following the date of the ~~Easement Agreement; CROE.~~

~~(iv)(v)~~ Upon the expiration of the CROE, any and all rights or interests Owner or its successors or assigns may have in, over, and under the Access Area or any other portion of CFX's property shall terminate immediately.

20. **Delays.** In the event that FDEP does not issue a no further action notice by the date specified in Section 19 above, CFX has the option, but not the obligation, to purchase the Property "as is" and take over the corrective action with a price reduction to offset by the cost paid by CFX obtain a no further action letter from FDEP. Alternatively, CFX has the right to terminate this Agreement at its discretion.

21. **Warranties Regarding Brokers, Finders, Etc.** Owner represents and warrants to CFX, and CFX likewise represents and warrants to Owner, that they have neither dealt with, nor negotiated with, any broker, sales person or finder in connection with the sale of the Property to CFX, these representations and warranties of Owner and CFX shall survive the termination of this Agreement.

22. **Waiver/Time.** The waiver of any breach of any provision hereunder by CFX or Owner shall not be deemed to be a waiver of any proceeding or subsequent breach hereunder. No failure or delay of any part in the exercise of any right given hereunder shall constitute a waiver thereof nor shall any partial exercise of any right preclude further exercise thereof. Time is of the essence in this Agreement as to all dates and time periods set forth herein. To the extent that the last day of any time period stipulated in this Agreement falls on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next day which is neither a Saturday, Sunday or federal holiday. Any time period of five (5) days or less specified herein shall not include Saturdays, Sundays or federal holidays. Where used herein, the term "business day" shall be those days other than Saturdays, Sundays or federal holidays.

23. **Representation by Counsel.** CFX and Seller are both represented in this transaction by their selected counsel. This Agreement shall not be construed more or less favorably against either party, regardless of which party may be deemed the drafter hereof.

24. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which constitute one and the same Agreement.

25. **General Provisions.** No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or

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otherwise, between the parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon any of the parties hereto unless such amendment is in writing and executed by Owner and CFX. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns. Time is of the essence of this Agreement. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or Legal Holiday, such time for performance shall be extended to the next business day. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. The headings inserted at the beginning of each paragraph of this Agreement are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph. Owner and CFX do hereby covenant and agree that such documents as may be legally necessary or otherwise appropriate to carry out the terms of this Agreement shall be executed and delivered by each party at Closing. This Agreement shall be interpreted under the laws of the State of Florida. The parties hereto agree that the exclusive venue for any legal action authorized hereunder shall be in the courts of Orange County, Florida. TIME IS OF THE ESSENCE OF THIS AGREEMENT AND EACH AND EVERY PROVISION HEREOF.

26. **Survival of Provisions.** Unless otherwise specifically limited by contrary provisions in this Agreement, all covenants, representations and warranties set forth in this Agreement shall survive the Closing and shall survive the execution or delivery of any and all deeds and other documents at any time executed or delivered under, pursuant to or by reason of this Agreement, and shall survive the payment of all monies made under, pursuant to or by reason of this Agreement.

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

28. **Waiver of Jury Trial.** OWNER AND CFX VOLUNTARILY WAIVE A TRIAL BY JURY IN ANY LITIGATION OR ACTION ARISING FROM THIS AGREEMENT.

Radon Gas. Radon is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

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

WITNESSES:

Print Name: _____

Print Name: _____

WITNESSES:

corporate,
Print Name: _____

“OWNER”

MOCKINGBIRD ORLANDO, LLC,
a Florida limited liability company

By: _____
Printed Name: _____
Title: _____
Date: _____

“CFX”

**CENTRAL FLORIDA EXPRESSWAY
AUTHORITY,** a body politic and

and an agency of the state, under the laws of
the State of Florida

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Print Name _____

By: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____

CFX General Counsel

Date: _____

SCHEDULE OF EXHIBITS

EXHIBIT	REFERENCE	DESCRIPTION
A	Recital No. 1	Legal Description – The Property
B	§7(c)	Schedule – Permitted Exceptions
C	§7(b)	Form – Special Warranty Deed
D	§7(f)	Disclosure of Interest in Real Property
E	§17	Notice of Approval and Acceptance
F	§19(a)	Easement Area – Aerial Overlay
		<i>Access</i>
<u>G</u>	<u>§19(b)</u>	<u>CROE Application</u>

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EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Parcel ID No.: _____

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
S.R. 417 AT S.R. 528 - PROJECT NO. 599-1260
LIMITED ACCESS RIGHT OF WAY
ESTATE: FEE SIMPLE

LEGAL DESCRIPTION:

PART A

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 23 SOUTH, RANGE 31 EAST, AND THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 23 SOUTH, RANGE 31 EAST, ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A FOUND 4" X 4" CONCRETE MONUMENT WITH NO IDENTIFICATION MARKING THE SOUTHEAST CORNER OF SECTION 30, TOWNSHIP 23 SOUTH, RANGE 31 EAST, ORANGE COUNTY, FLORIDA; THENCE RUN NORTH 89°57'28" WEST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 30, A DISTANCE OF 993.45 FEET TO ITS INTERSECTION WITH THE EXISTING NORTHERLY LIMITED ACCESS RIGHT OF WAY LINE OF STATE ROAD 528 AS SHOWN ON THE ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY (OOCEA) RIGHT OF WAY MAP OF ROAD NO. 528, SECTION 1.1-1.5; SAID POINT BEING ON A CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 5879.58 FEET, A CHORD DISTANCE OF 521.34 FEET AND A CHORD BEARING OF SOUTH 81°11'35" WEST; THENCE DEPARTING SAID SOUTH LINE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID EXISTING NORTHERLY LIMITED ACCESS RIGHT OF WAY LINE THROUGH A CENTRAL ANGLE OF 05°04'55", A DISTANCE OF 521.51 FEET FOR THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID CURVE HAVING A CHORD DISTANCE OF 721.95 FEET AND A CHORD BEARING OF SOUTH 75°07'56" WEST; THENCE RUN SOUTHWESTERLY ALONG SAID CURVE AND ALONG SAID EXISTING NORTHERLY LIMITED ACCESS RIGHT OF WAY LINE THROUGH A CENTRAL ANGLE OF 07°02'23", A DISTANCE OF 722.40 FEET; THENCE DEPARTING SAID CURVE AND SAID EXISTING NORTHERLY LIMITED ACCESS RIGHT OF WAY LINE, RUN NORTH 00°00'00" EAST, A DISTANCE OF 402.05 FEET; THENCE SOUTH 84°52'51" EAST, A DISTANCE OF 668.91 FEET; THENCE SOUTH 11°20'53" EAST, A DISTANCE OF 160.25 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH ALL RIGHTS OF INGRESS, EGRESS, LIGHT, AIR AND VIEW TO, FROM OR ACROSS ANY STATE ROAD 528 RIGHT OF WAY PROPERTY WHICH MAY OTHERWISE ACCRUE TO ANY PROPERTY ADJOINING SAID RIGHT OF WAY.

CONTAINING 4.278 ACRES, MORE OR LESS

NOTE:

THIS SKETCH OF DESCRIPTION WAS PREPARED WITH THE BENEFIT OF CERTIFICATE OF TITLE INFORMATION PREPARED BY FIRST AMERICAN TITLE INSURANCE COMPANY AS TO FILE NO. 2037-3374531 DATED 06/11/2015.

LEGEND & ABBREVIATIONS

CB = CHORD BEARING
C.C.R. = CERTIFIED CORNER RECORD
CH = CHORD LENGTH
COR. = CORNER
(C) = CALCULATED DISTANCE
D.B. = DEED BOOK
ESMT = EASEMENT
EXIST = EXISTING
FND = FOUND
(F) = FIELD DISTANCE
ID = IDENTIFICATION

L. = ARC LENGTH
L.A. = LIMITED ACCESS
LS = LICENSED SURVEY BUSINESS
LT = LEFT
NO. = NUMBER
OOCEA = ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY
O.R.B. = OFFICIAL RECORDS BOOK
P.C. = POINT OF CURVATURE
PG./PGS. = PAGE / PAGES

P.I. = POINT OF INTERSECTION
P.O.B. = POINT OF BEGINNING
P.O.C. = POINT OF COMMENCEMENT
P.O.T. = POINT ON TANGENT
PROJ = PROJECT
P.T. = POINT OF TANGENCY
(P) = PLAT
R = RADIUS
RT = RIGHT
R/W = RIGHT OF WAY

SEC = SECTION
S.R. = STATE ROAD
STA. = STATION
W/ = WITH
CL = CENTERLINE
Δ = DELTA (CENTRAL ANGLE)
◊ = CHANGE IN DIRECTION
--- = LIMITED ACCESS R/W LINE
--- = R/W LINE

PROJECT NO. 599-1260

DATE JULY 06, 2013		CERTIFICATION OF AUTHORIZATION No. LB 8011		SKETCH OF DESCRIPTION (THIS IS NOT A BOUNDARY SURVEY)	PARCEL 100
DRAWN BY M.ROLLINS		Dewberry			
CHECKED BY S.WARE		520 SOUTH MAGNOLIA AVENUE ORLANDO, FLORIDA 32801 (407) 643-5120 FAX 407-649-8664		S.R. 417 AT S.R. 528 CENTRAL FLORIDA EXPRESSWAY AUTHORITY ORANGE COUNTY, FLORIDA	SCALE: N/A
DBS PROJECT NO. 50068541					
ADD SW COR. SE 1/4, SEC. 30		M.ROLLINS 07/31/2013		SHEET 1 OF 5	
REVISION		BY DATE			

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
S.R. 417 AT S.R. 528 - PROJECT NO. 599-1260
LIMITED ACCESS RIGHT OF WAY
ESTATE: FEE SIMPLE

LEGAL DESCRIPTION:

PART B


A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 23 SOUTH, RANGE 31 EAST, ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A FOUND 4" X 4" CONCRETE MONUMENT WITH NO IDENTIFICATION MARKING THE SOUTHWEST CORNER OF SECTION 29, TOWNSHIP 23 SOUTH, RANGE 31 EAST, ORANGE COUNTY, FLORIDA; THENCE RUN NORTH 89°30'44" EAST ALONG THE SOUTH LINE OF SAID SECTION 29, A DISTANCE OF 3390.50 FEET TO ITS INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE EXISTING NORTHERLY LIMITED ACCESS RIGHT OF WAY LINE OF STATE ROAD 528 AS SHOWN ON THE ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY (OOCEA) RIGHT OF WAY MAP PROJECT NUMBER 6440-401/402; THENCE DEPARTING SAID SOUTH LINE RUN NORTH 00°14'55" WEST ALONG SAID SOUTHERLY EXTENSION, A DISTANCE OF 73.29 FEET TO SAID EXISTING NORTHERLY LIMITED ACCESS RIGHT OF WAY LINE FOR THE POINT OF BEGINNING; THENCE CONTINUE NORTH 00°14'55" WEST, A DISTANCE OF 9.01 FEET TO A POINT ON A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 1031.35 FEET, A CHORD DISTANCE OF 856.61 FEET AND A CHORD BEARING OF NORTH 46°47'27" EAST; THENCE DEPARTING SAID EXISTING NORTHERLY LINE, RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 49°04'28", A DISTANCE OF 883.36 FEET TO ITS INTERSECTION WITH THE EXISTING WESTERLY LIMITED ACCESS RIGHT OF WAY LINE OF STATE ROAD 417 AS SHOWN ON SAID OOCEA RIGHT OF WAY MAP; THENCE DEPARTING SAID CURVE RUN SOUTH 74°27'48" EAST ALONG SAID EXISTING WESTERLY LINE, A DISTANCE OF 36.97 FEET TO A POINT ON A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 636.20 FEET, A CHORD DISTANCE OF 813.77 FEET AND A CHORD BEARING OF SOUTH 41°17'21" WEST; THENCE RUN SOUTHERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID EXISTING WESTERLY LIMITED ACCESS RIGHT OF WAY LINE OF STATE ROAD 417 THROUGH A CENTRAL ANGLE OF 79°31'04", A DISTANCE OF 882.95 FEET TO ITS INTERSECTION WITH AFORESAID EXISTING NORTHERLY LIMITED ACCESS RIGHT OF WAY LINE OF STATE ROAD 528; THENCE DEPARTING SAID CURVE RUN NORTH 78°07'07" WEST ALONG SAID NORTHERLY LINE, A DISTANCE OF 125.64 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH ALL RIGHTS OF INGRESS, EGRESS, LIGHT, AIR AND VIEW TO, FROM OR ACROSS ANY STATE ROAD 417 AND STATE ROAD 528 RIGHT OF WAY PROPERTY WHICH MAY OTHERWISE ACCRUE TO ANY PROPERTY ADJOINING SAID RIGHT OF WAY.

CONTAINING 2.048 ACRES, MORE OR LESS

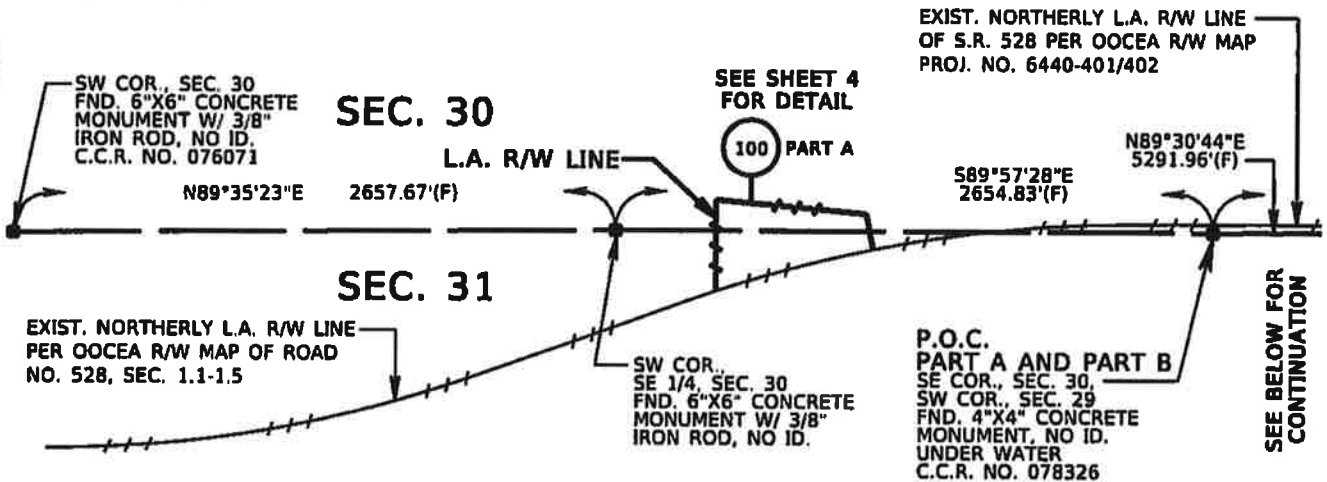
PROJECT NO. 599-1260

DATE	JULY 06, 2015	 Dewberry 520 SOUTH MAGNOLIA AVENUE ORLANDO, FLORIDA 32803 (407) 843-5120 FAX 407-649-8664	SKETCH OF DESCRIPTION (THIS IS NOT A BOUNDARY SURVEY)	PARCEL 100
DRAWN BY	M. ROLLINS			SCALE: N/A
CHECKED BY	S. WARE		S.R. 417 AT S.R. 528 CENTRAL FLORIDA EXPRESSWAY AUTHORITY ORANGE COUNTY, FLORIDA	SHEET 2 OF 5
DBS PROJECT NO.	50068541			
ADD SW COR., SE 1/4, SEC 30	M. ROLLINS	07/31/2015		
REVISION	BY	DATE		

BEARING STRUCTURE BASED ON THE SOUTH LINE OF THE S/W 1/4 OF SEC. 30-23-31, BEING N89°35'23"E, FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NAD 1983/2011 ADJUSTMENT.

SCALE: 1" = 800'

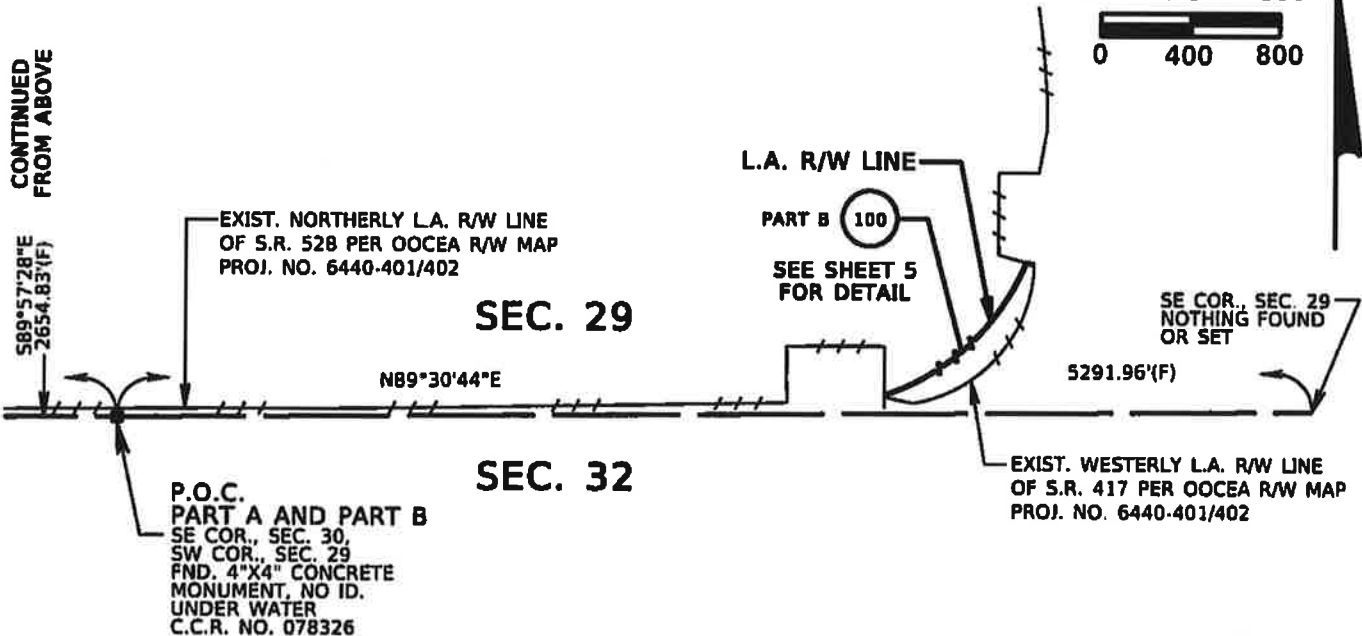
0 400 800



CONTINUED FROM ABOVE

SCALE: 1" = 800'

0 400 800



KEY MAP

PROJECT NO. 599-1260

DATE	JULY 06, 2015
DRAWN BY	M.ROLLINS
CHECKED BY	S.WARE
DBS PROJECT NO.	50068341
ADD SW COR. SE 1/4, SEC. 30	M.ROLLINS 07/31/2015
REVISION	BY DATE

CERTIFICATION OF AUTHORIZATION No. LB 8011
Dewberry
520 SOUTH MAGNOLIA AVENUE ORLANDO, FLORIDA 32801 (407) 843-5120 FAX 407-648-8664

SKETCH OF DESCRIPTION
(THIS IS NOT A BOUNDARY SURVEY)

S.R. 417 AT S.R. 528
CENTRAL FLORIDA
EXPRESSWAY AUTHORITY
ORANGE COUNTY, FLORIDA

PARCEL
100

SCALE: 1"=800'

SHEET 3 OF 5

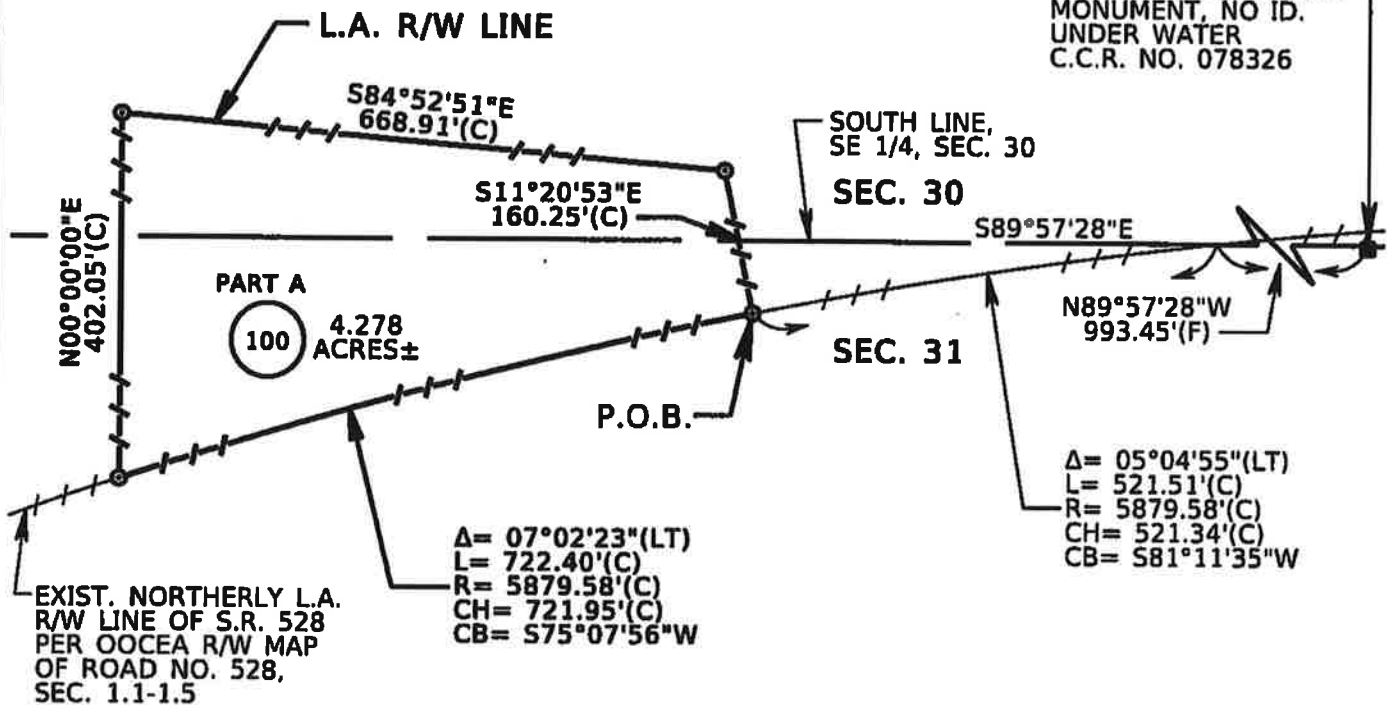
BEARING STRUCTURE BASED ON THE SOUTH LINE
OF THE S/W 1/4 OF SEC. 30-23-31, BEING
N89°35'23"E, FLORIDA STATE PLANE COORDINATE
SYSTEM, EAST ZONE, NAD 1983/2011 ADJUSTMENT.

SCALE: 1" = 200'

0 100 200



P.O.C.
SE COR., SEC. 30
FND. 4"X4" CONCRETE
MONUMENT, NO ID.
UNDER WATER
C.C.R. NO. 078326



TOWNSHIP 23 SOUTH, RANGE 31 EAST

PROJECT NO. 599-1260

DATE JULY 06, 2015	CERTIFICATION OF AUTHORIZATION NO. LB 8011	SKETCH OF DESCRIPTION (THIS IS NOT A BOUNDARY SURVEY)	PARCEL 100
DRAWN BY M.ROLLINS	Dewberry	S.R. 417 AT S.R. 528 CENTRAL FLORIDA EXPRESSWAY AUTHORITY ORANGE COUNTY, FLORIDA	SCALE: 1"=200'
CHECKED BY S.WARE	520 SOUTH MAGNOLIA AVENUE ORLANDO, FLORIDA 32801 (407) 843-5120 FAX 407-649-8664		SHEET 4 OF 5
DBS PROJECT NO. 50068541			
ADD SW COR. SE 1/4, SEC 30	M.ROLLINS		
REVISION	BY	DATE	
		07/31/2015	

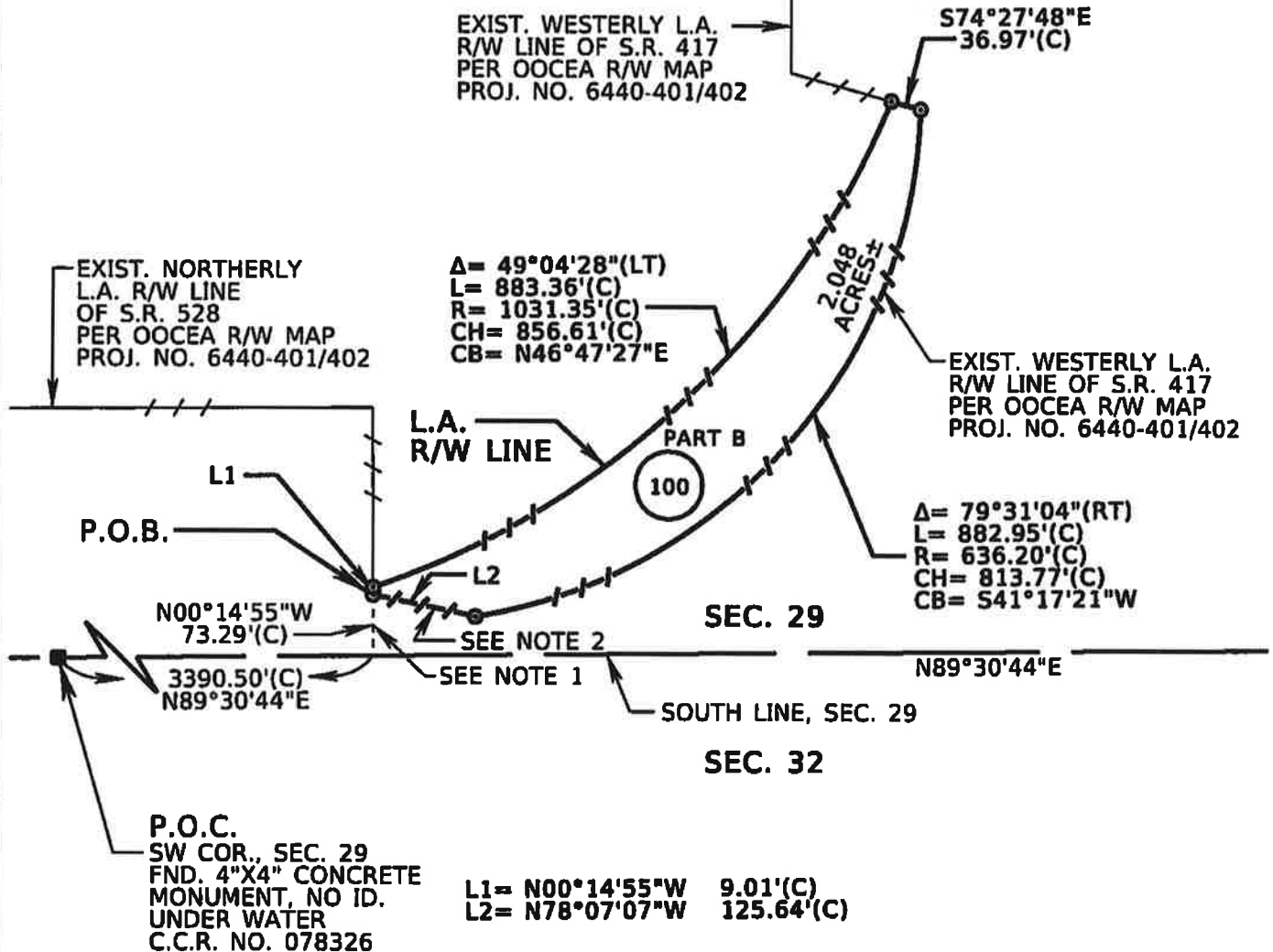
BEARING STRUCTURE BASED ON THE SOUTH LINE
OF THE S/W 1/4 OF SEC. 30-23-31, BEING
N89°35'23"E, FLORIDA STATE PLANE COORDINATE
SYSTEM, EAST ZONE, NAD 1983/2011 ADJUSTMENT.

SCALE: 1" = 200'



NOTES:

1. SOUTHERLY EXTENSION OF EXIST.
NORTHERLY L.A. R/W LINE OF S.R. 528 PER
OOCEA R/W MAP PROJ. NO. 6440-401/402
2. EXIST. NORTHERLY L.A. R/W LINE OF S.R. 528
PER OOCEA R/W MAP PROJ. NO. 6440-401/402



TOWNSHIP 23 SOUTH, RANGE 31 EAST

PROJECT NO. 599-1260

I HEREBY CERTIFY THAT THIS SKETCH OF DESCRIPTION
IS IN ACCORDANCE WITH THE STANDARDS OF
PRACTICE AS REQUIRED BY CHAPTER 31-17, FLORIDA
ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027,
FLORIDA STATUTES.

William E. Byrd 8/03/2015
WILLIAM E. BYRD, P.S.M.
LICENSE NUMBER 5442 DATE

NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER

CERTIFICATION OF
AUTHORIZATION No. LB 8011

Dewberry

520 SOUTH MAGNOLIA AVENUE
ORLANDO, FLORIDA 32803
(407) 843-5120
FAX 407-649-8664

**SKETCH OF DESCRIPTION
(THIS IS NOT A BOUNDARY SURVEY)**

S.R. 417 AT S.R. 528
CENTRAL FLORIDA
EXPRESSWAY AUTHORITY
ORANGE COUNTY, FLORIDA

**PARCEL
100**

SCALE: 1"=200'

SHEET 5 OF 5

DRAFT

EXHIBIT "B"

PERMITTED EXCEPTIONS

1. Real Property Taxes for the year 2015.
2. _____
3. _____

DRAFT

EXHIBIT "C"

FORM OF DEED

This deed has been executed and delivered under threat of condemnation and/or in settlement of condemnation proceedings affecting the property described herein and is not subject to documentary stamp tax. See, Department of Revenue Rules 12B-4.013(4) and 12B-4.014(14), F.A.C; and see, *Florida Department of Revenue v. Orange County*, 620 So.2d 991 (Fla. 1993)

WARRANTY DEED

THIS INDENTURE, made and executed the _____ day of _____, 201__ by **MOCKINGBIRD ORLANDO, LLC**, a Florida limited liability company, whose address is 2200 East 4th Avenue, Hialeah, FL 33010 hereinafter referred to as "Grantor," to **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body politic and corporate, and an agency of the state, under the laws of the State of Florida, whose tax identification number is 59-1021557, and whose mailing address is 4974 ORL Tower Road, Orlando, FL 32807, hereinafter referred to as "Grantee".

WITNESSETH:

THAT Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto Grantee all that certain land situate in Orange County, Florida, to-wit:

Parcel Identification No.: _____

Legal Description: _____

Subject to those exceptions listed on **Exhibit "A"** attached hereto and incorporated herein by this reference, as well as the ad valorem real estate taxes for the year 2015 and all subsequent years thereafter.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TOGETHER with all rights of ingress, egress, light, air an view between the Grantor's remaining property and any facility constructed on the above-described property.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND Grantor hereby covenants with Grantee that Grantor is lawfully seized of said land in fee simple; that Grantor has good right and lawful authority to sell and convey said land; that Grantor hereby fully warrant the title to said land and will defend the same against the lawful

DRAFT

claims of all persons whatsoever; and that said land is free of all encumbrances except those matters set forth on **Exhibit "A"**.

AND by execution and delivery of this deed, Grantor hereby remises, releases, acquits, satisfies, and forever discharges Grantee, of and from all, and all manner of action and actions, cause and causes of action, suits, sums of money, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, claims and demands whatsoever, in law or in equity, which Grantor ever had, now have, or which any personal representative, successor, heir or assign of Grantor, hereafter can, shall or may have, against Grantee, for, upon or by reason of any matter, cause or thing whatsoever, arising out of Grantor's conveyance of the subject property to Grantee or the applicable project, including, without limitation, any claim for loss of access, air, light or view to Owner's remaining property, or other severance damages to Owner's remaining property, business damages, consequential damages, or any other damages, both before and after the date of this instrument.

IN WITNESS WHEREOF, Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered
in the presence of:

MOCKINGBIRD ORLANDO, LLC,
a Florida limited liability company,

WITNESSES:

Print Name: _____

Printed Name: _____

Title: _____

Date: _____

Print Name: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____ as _____ of _____, a _____, on behalf of the _____. He / She is personally known to me or has produced _____ as identification and who did/did not take an oath.

(Signature of Notary Public)

(Typed name of Notary Public)
Notary Public, State of Florida

DRAFT

Commission No.: _____
My commission expires: _____

EXHIBIT "D"

FLORIDA STATUTES, § 286.23 DISCLOSURE OF INTERESTS IN REAL PROPERTY

TO: CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and corporate and an agency of the state, under the laws of the State of Florida

FROM: **MOCKINGBIRD ORLANDO, LLC**, a Florida limited liability company

RE: Project _____, Parcel(s) _____
as more particularly described on Exhibit "A" attached hereto (the "Property")

Please be advised that the undersigned, after diligent search and inquiry, hereby states under oath, and subject to the penalties for perjury, that the name and address of each person having a legal or beneficial interest in the Property as of _____, 2015 is as follows:

Name	Address	Percentage of Ownership
_____	_____ _____	
_____	_____ _____	

I swear and affirm that the information furnished herein is accurate as of the date hereof, and I agree to promptly disclose any changes in the information contained herein, or any errors in such information.

This disclosure is made under oath and I understand I am subject to penalties for perjury for any false information contained herein.

This disclosure is made pursuant to Section 286.23, Florida Statutes, in connection with a conveyance of the Property to the Central Florida Expressway Authority and is required to be completed at least ten (10) days before closing. It is recommended that this disclosure be completed at least fourteen (14) days before consideration by the CFX Right of Way Committee and the CFX Board.

DRAFT

[SIGNATURE AND NOTARY ON NEXT PAGE]

DRAFT

SELLER

MOCKINGBIRD ORLANDO, LLC, a
Florida limited liability company

By: _____
Printed Name: _____
Title: _____
Date: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____ as _____ of _____, a _____. He / She is personally known to me or has produced _____ as identification and who did/did not take an oath.

(Signature of Notary Public)

(Typed name of Notary Public)
Notary Public, State of Florida
Commission No.: _____
My commission expires: _____

DRAFT

EXHIBIT "E"

NOTICE OF APPROVAL AND ACCEPTANCE

Pursuant to the terms and conditions of Section 286.011(1), Florida Statutes, the Central Florida Expressway Authority, a body politic and corporate and an agency of the state, under the laws of the State of Florida ("CFX"), on the day and date set forth herein below has duly approved and accepted that certain Real Estate Purchase Agreement dated _____, 2015, by and between **MOCKINGBIRD ORLANDO, LLC**, a Florida limited liability company, and CFX.

"CFX"

CENTRAL FLORIDA EXPRESSWAY
AUTHORITY, a body politic and corporate,
and an agency of the state, under the laws of
the State of Florida

By: _____
Printed Name: _____
Title: _____
Date: _____

STATE OF FLORIDA)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this _____ day of _____
2016, by _____ as _____ of Central Florida Expressway
Authority, a body politic and corporate, and an agency of the state, under the laws of the State of
Florida, on behalf of the corporation. He / She is personally known to me or has produced
_____ as identification and who did/did not take an oath.

(Signature of Notary Public)

(Typed name of Notary Public)

Notary Public, State of Florida

Commission No. _____

My commission expires: _____



UXO Staging Area

Mockin

9

Toll Road / SR. 528

BP Gas Station

Concrete Barriers blocking access to access road

Maroonberry Rd Exit Ramp

EXHIBIT F

**APPLICATION FOR
RIGHT OF ENTRY UPON
CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX") PROPERTY**

Applicant: _____
Address: _____
Telephone Number(s): _____
Email Address(es): _____

Contact Person: _____
Telephone Numbers(s): _____ Email: _____

Required Attachments:

- ☐ A. Project Plan
- ☐ B. Description of Location
- ☐ C. Certificate of Insurance

DESCRIPTION OF PROJECT AND LOCATION

A. Description of Project. Applicant intends to perform the work described in the plans attached hereto as **Attachment A**, referred to as "Project," generally described as follows:

B. Location. In order to construct the Project, Applicant desires to enter upon the real property more particularly described in **Attachment B**, referred to as "CFX Property," which Applicant represents is owned by CFX, in the following area:

TERMS AND CONDITIONS

Based upon the above, Applicant hereby requests a temporary non-exclusive right of entry to enter upon CFX Property to commence the Project and agrees to the terms and conditions set forth herein.

1. The description of the Project and location are true, correct, and complete.

EXHIBIT G

2. Term. This Right of Entry is terminable at will by the CFX. Unless terminated sooner, this Right of Entry will expire upon the earlier of: (a) completion of the Project; (b) the expiration of the required insurance; or (c) _____ (____) days from the date of execution.

3. Right of Entry. CFX hereby authorizes Applicant, its employees, contractors, and agents to enter upon CFX Property for the sole and limited purpose of:

It is expressly stipulated that this Right of Entry is a license for permissive use only and that the placing of utilities upon public property pursuant to this Right of Entry shall not operate to create or vest any property right in said holder. In the case of non-compliance with CFX's requirements or any other applicable requirements, this Right of Entry is void and any alterations to CFX Property will have to be brought into compliance or removed from CFX Property at no cost to CFX. It is understood and agreed that the rights and privileges herein set out are granted only to the extent of CFX's title and interest in the land to be entered upon and used by the Applicant, and the Applicant will, at all times, and to the extent permitted by law, assume all risk of and indemnify, defend, and save harmless CFX and its officers, employees, and agents from and against any and all loss, damage, cost or expense arising in any manner on account of the exercise or attempted exercises by said Applicant of the aforesaid rights and privileges.

4. Conditions. Applicant further agrees to the following conditions:

- a. Applicant shall apply for and obtain all necessary permits, including permits issued by or through the Florida Department of Transportation, and comply with all applicable laws, rules, ordinances, and regulations.
- b. Under no circumstances may Applicant block any CFX roadway or operation or impede CFX in its normal functions without the prior written consent and approval from the CFX.
- c. No pullboxes or other surface structures shall be permanently placed within CFX right-of-way.
- d. All work, materials, and equipment shall be subject to inspection and approval by CFX at any time.
- e. The Project shall not interfere with the property and rights of a prior Applicant or an existing structure, facility, utility, or use.
- f. In the event contaminated soil is encountered by the Applicant, its employees, contractors, or agents, within CFX Property, the Applicant shall immediately cease work on the Project and notify CFX. CFX shall notify the Applicant of any suspension or revocation of the Right of Entry to allow for contamination

assessment and remediation. Said suspension or revocation shall remain in effect until otherwise notified by CFX.

- g. _____

- h. _____

- i. _____

5. Coordination. Activities to be performed in connection with the Project shall be coordinated with CFX prior to the initiation of the activity. Coordination with CFX shall be accomplished through contact and cooperation with both Pat Collins at 407-690-5056 and Steve Geiss at 407-690-5335, at least 72 hours in advance to assist in locating the existing CFX roadway lighting lines, fiber optic network lines, and any other underground improvements and to confirm no on-going maintenance in the area.

6. Restoration of Site. Applicant shall be responsible for any and all costs related to the Project, including, but not limited to, installation, operation and removal and restoration of equipment on and around CFX Property. At Applicant's sole cost and expense, Applicant shall remove from CFX Property all materials generated during its activities within CFX Property and Applicant shall be fully responsible for the proper disposal of such materials in accordance with applicable laws, rules, ordinances and regulations. Additionally, Applicant agrees to promptly repair any and all damage to CFX Property caused by the Project with specific attention to surface sod, concrete, and asphalt. Restoration of CFX Property shall be equal or superior to its present condition as nearly as may reasonably be possible. Upon completion of restoration, Applicant shall contact Pat Collins at 407-690-5056 and Steve Geiss at 407-630-5335, who shall inspect the CFX Property and, if satisfied, issue a notice of satisfaction, which notice may be transmitted by electronic mail. Failure to obtain said notice of satisfaction may result in pursuit by CFX against Applicant, its contractors or agents for damages and costs associated with proper restoration of CFX Property.

7. Indemnification. Applicant shall indemnify, defend and hold CFX harmless and shall cause Applicant's contractors and agents to indemnify, defend and hold CFX harmless from and against any and all costs, expenses, fines, fees, penalties, claims, suits or proceedings (including attorneys' fees at the trial or appellate level), demands, liabilities, damages, injuries (including death) arising from their respective use or work performed on or about CFX Property or in connection with the Project, excepting only those claims arising from the sole negligence of CFX, its officials, or employees.

8. Sovereign Immunity. Nothing contained in this Right of Entry shall be construed as a waiver or attempt at a waiver by CFX of its sovereign immunity under the Constitution, the Florida Statutes, and laws of the State of Florida.

9. **Insurance Requirements.** The Applicant shall provide, pay for and maintain in full force and effect insurance outlined below for coverage at not less than the prescribed minimum limits of liability, covering the Applicant's activities and those of any and all subcontractors (including officers, employees or agents of each and their successors). All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable by the CFX. Compliance with the insurance requirements below shall not relieve or limit the Applicant's liabilities and obligations under this Right of Entry. Failure of CFX to demand such certificate or evidence of full compliance with these insurance requirements or failure of CFX to identify a deficiency from evidence provided will not be construed as a waiver of the Applicant's obligation to maintain such insurance. The acceptance of delivery by CFX of any certificate of insurance evidencing the required coverage and limits does not constitute approval or agreement by CFX that the insurance requirements have been met or the insurance policies shown in the certificates of insurance are in compliance with the requirements.

- a. The Applicant shall require all insurance policies in any way related to the work to include clauses stating each underwriter shall waive all rights of recovery, under subrogation or otherwise, against CFX. The Applicant shall require of sub-contractors, by appropriate written Agreements, similar waivers each in favor of all parties enumerated in this section. When required by the insurer, or should a policy condition not permit an endorsement, the Applicant agrees to notify the insurer and request that the policy(ies) be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. At the Applicant's expense, all limits must be maintained. All insurance coverage required of the Applicant shall be primary over any insurance or self-insurance program carried by CFX.
- b. **Commercial General Liability:** Shall be on an occurrence form policy for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than One Million Dollars (\$1,000,000) per occurrence, Combined Single Limits (CSL) or its equivalent. CFX shall be listed as an additional insured utilizing an endorsement Form.
- c. **Business Automobile Liability:** Shall be on an occurrence form policy for all owned, non-owned and hired vehicles issued on ISO form CA 00 01 or its equivalent. The limits shall be not less than One Million Dollars (\$1,000,000) per occurrence, Combined Single Limits (CSL) or its equivalent. In the event the Applicant does not own automobiles, the Applicant shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
- d. **Workers' Compensation Coverage:** Workers' Compensation and Employer's Liability Insurance shall be provided as required by law or regulation (statutory requirements). Employer's Liability insurance shall be provided in amounts not less than \$100,000 per accident for bodily injury by accident, \$100,000 per employee for bodily injury by disease, and \$500,000 policy limit by disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of CFX for all work performed by the Applicant, its employees, contractors, agents and sub-contractors.

- e. Prior to the expiration of the Certificate of Insurance, the Applicant shall provide CFX with a renewed Certificate of Insurance.

10. Assumption of Risk; Release. Applicant, on behalf of its employees, contractors, and agents, assumes the risk associated with any activities arising out of this Right of Entry or on or around CFX Property. Applicant, on behalf of itself, its employees, contractors, and agents, hereby releases CFX, its officials, officers, employees, contractors and agents from any and all liability, loss, claims, damages, costs and expenses of any nature in connection with any injury or damage to any person or any real or personal property which Applicant and its employees, contractors, or agents may suffer or incur in connection with this Right of Entry.

11. Reservation of Rights. CFX expressly reserves all rights to pursue any claims it may have against the Applicant, its employees, contractors or agents for damages, violations, contributions and indemnity, or for any other losses which may have been caused by the Applicant, its employees, contractors, or agents within CFX Property. In the event that the Applicant fails to comply with the terms of this Right of Entry, CFX has the right to immediately termination upon notice.

12. Governing Law. All parties agree that this Right of Entry and the contents thereof are to be interpreted and enforced pursuant to the laws of the State of Florida. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Right of Entry or any provision hereof shall be instituted and maintained only in the courts of the State of Florida.

13. Notice. Except as otherwise provided in the paragraphs with the headings of Coordination and Restoration of Site, all notices required to be delivered to Applicant or CFX shall be delivered via certified mail return receipt requested to the respective parties at the addresses provided below:

With respect to Applicant: To the address provided on page 1.

With respect to CFX:

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
4974 ORL Tower Road
Orlando, FL 32807-1684
Telephone: (407) 690-5000
Facsimile: (407) 690-5011
Attention: Chief of Infrastructure

and

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
4974 ORL Tower Road
Orlando, FL 32807-1684
Telephone: (407) 690-5000
Facsimile: (407) 690-5011
Attention: General Counsel

14. Authorized Signatories. Applicant represents and warrants that the person signing below is duly authorized to sign this Right of Entry to which the Applicant and its employees, contractors, and agents will be duly bound.

15. The Parties agree that neither this Right of Entry nor any memorandum or notice of the same shall be recorded in the Official Records of Orange County, Florida or any other County in the State of Florida.

16. Applicant understands and agrees that this Right of Entry does not take effect until it is fully executed by CFX in writing and that Applicant cannot rely upon the representations of staff.

IN WITNESS WHEREOF, the Applicant executes this Application for Right of Entry for a temporary non-exclusive right of entry to enter upon CFX Property to commence the Project at the location described herein, subject to the terms and conditions above.

Witnesses:

First Witness

By: _____

Print Name: _____

Second Witness

By: _____

Print Name: _____

APPLICANT:

Name: _____

By: _____

Print Name: _____

Title: _____

Date: _____

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

In reliance upon the Applicant's representations and commitments, CFX approves the Application and grants a temporary non-exclusive right of entry to enter upon CFX Property to commence the Project subject to the terms and conditions above, effective on the last date of execution below.

By: _____ Date: _____

Joseph A. Berenis, P.E., Chief of Infrastructure

APPROVED AS TO FORM: _____ Date: _____

General Counsel /Deputy General Counsel



CENTRAL FLORIDA EXPRESSWAY AUTHORITY

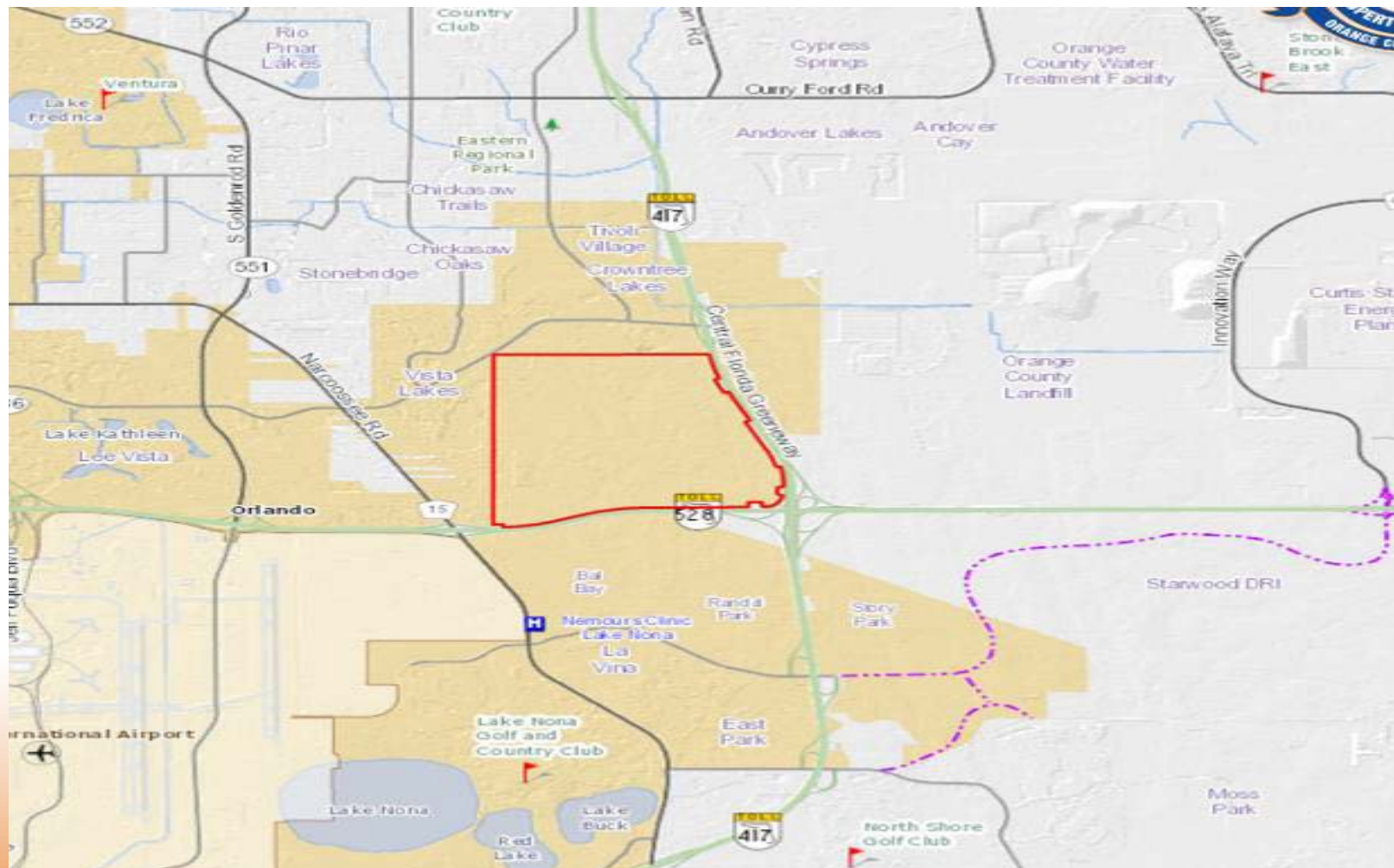
RIGHT OF WAY COMMITTEE MEETING
February 24, 2016

Parcel 100, Part A & B
Proposed Settlement

➤➤➤ Aerial View of Parent Tract



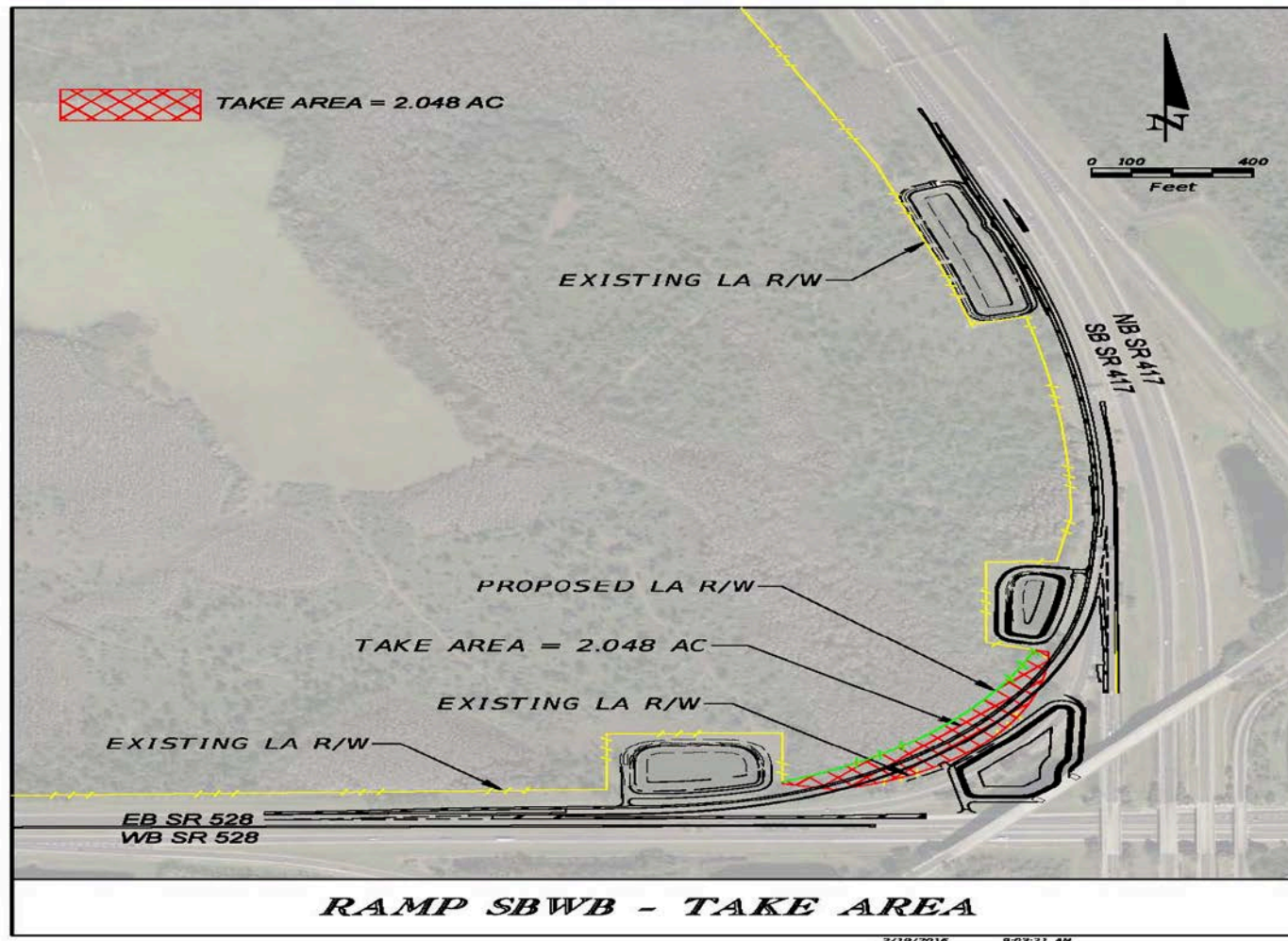
Neighborhood Map



CENTRAL FLORIDA EXPRESSWAY AUTHORITY

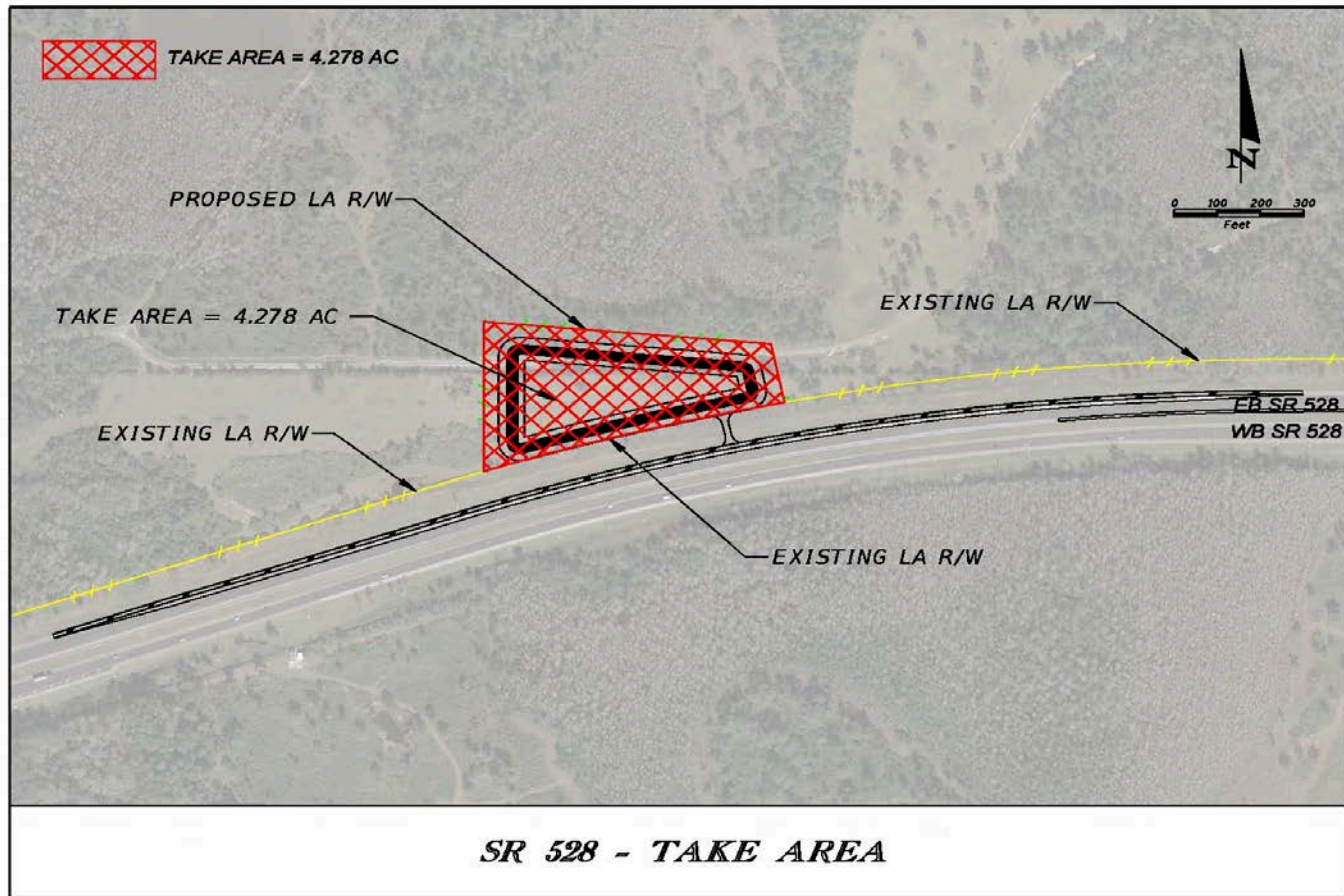


Construction Plans





Construction Plans



»» Subject Photos



GATED ENTRY / NW CORNER OF
PARENT TRACT



ABBREVIATED PARENT TRACT FROM
STATE ROAD 528



Subject Photos



VIEW OF ABBREVIATED PARENT
TRACT FROM STATE ROAD 417



ABBREVIATED PARENT TRACT FROM STATE
ROAD 417


Request

Recommend approval of a settlement in the amount of \$351,000 for 6.325 acres, requiring Mockingbird Orlando to prioritize the cleanup of the property needed by CFX, approving temporary Right of Entry and setting a closing date

Tab E

MEMORANDUM

TO: Central Florida Expressway Authority Right of Way Committee

FROM:  Joseph L. Passiatore, General Counsel

DATE: February 18, 2016

SUBJECT: Donald W. McIntosh Associates, Inc. - Contract No. 000916
Addendum No. 4

Recommendation for approval is sought from the Central Florida Expressway Authority Right of Way Committee for the attached Engineering Expert Witness Consulting Services by Donald W. McIntosh Associates, Inc., ("Engineering Expert Witness Consultant") to perform engineering consulting services and litigation support services for the Wekiva Parkway Project Parcels 197, 897, 230, 257 and 267.

BACKGROUND/DESCRIPTION

The Authority is currently engaged in pre-trial discovery with Project Orlando concerning the above referenced parcels. Based upon special counsel's review, a trial budget of \$100,000 is requested for engineering and expert witness services on behalf of the Central Florida Expressway Authority.

REQUESTED ACTION

It is respectfully requested that the Right of Way Committee recommend to the CFX Board approval of the terms of the Addendum No. 4 for Engineering Expert Witness Consulting Services in the amount of \$100,000 to allow continuation of services by McIntosh Associates related to anticipated litigation costs for the Wekiva Parkway Project.

ATTACHMENT

Addendum No. 4 for Engineering Expert Witness Consulting Services for Wekiva Parkway Parcels 198, 897, 230, 257 and 267.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
ADDENDUM NO. 4

Contract Name: Expert Witness Services

Contract No: 000916 Project No.: 429-203

This Addendum No. 4 entered into this ____ day of _____, 2016, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and DONALD W. McINTOSH ASSOCIATES, INC., (the "Engineer"), the same being an addendum to the Agreement between the aforesaid, dated October 16, 2012, for expert witness services pertaining to Wekiva Parkway Project No. 429-203, (the Contract").

1. CFX wishes to increase the Contract amount by \$100,000.00 and extend the Contract term to April 14, 2017, to complete the required services.
2. The Engineer hereby agrees to the increase in the Contract amount and the extension of the Contract term.
3. CFX and Engineer agree that this Addendum No. 4 shall not alter or change in any manner the force and effect of the Contract including any previous addenda thereto, except insofar as the same is altered and amended by this Addendum No. 4; that acceptance of this Addendum No. 4 signifies the Engineer's complete and total claim for the terms and conditions of the same and that the Engineer waives all future right for additional compensation which is not already defined herein.
4. This Addendum No. 4 is necessary to increase the compensation to the Engineer and extend the Contract term to complete the required services.

ADDENDUM NO. 4

Contract Name: Expert Witness Services

Contract No.: 000916 Project No.: 429-203

Amount of Changes to this document: \$100,000.00

This Addendum No. 4 entered into as of the day and year first written above.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: _____
Director of Procurement

DONALD W. McINTOSH ASSOCIATES, INC.

By: _____

Print Name: _____

Title: _____

Attest: _____ (Seal)
(Secretary or Notary)

Approved as to form and execution, only.


General Counsel for CFX

**Pinel & Carpenter,
Inc.**

Contract No. 000986

MEMORANDUM

TO: Central Florida Expressway Authority Right of Way Committee

FROM:  Joseph L. Passiatore, General Counsel

DATE: February 18, 2016

SUBJECT: Pinel & Carpenter, Inc. - Contract No. 000986
Addendum No. 4

Recommendation for approval is sought for the Central Florida Expressway Authority Right of Way Committee for the attached Addendum to the Agreement for Appraisal Services by Pinel & Carpenter, Inc. ("Appraiser") to perform appraisal services and litigation support services for the Wekiva Parkway Project Parcels 197, 897, 230, 257 and 267.

BACKGROUND/DESCRIPTION

The Authority is currently engaged in pre-trial discovery with Project Orlando concerning the above referenced parcels. Based upon special counsel's review, a trial budget of \$80,000 to allow Appraiser to prepare appraisal reports for immediate use at trial, as well as provide litigation support services including testimony under oath as an expert witness on behalf of the CFX.

REQUESTED ACTION

It is respectfully requested that the Right of Way Committee recommend to the CFX Board approval of the terms of the Addendum No. 4 for Appraisal Services in the amount of \$80,000 to allow continuation of services by Pinel & Carpenter, Inc. related to anticipated litigation costs for the Wekiva Parkway Project.

ATTACHMENT

Addendum No. 4 for Appraisal Services for Wekiva Parkway Parcels 198, 897, 230, 257 and 267.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
ADDENDUM NO. 4

Contract Name: Appraisal Services

Contract No: 000986 Project No.: 429-203

This Addendum No. 4 entered into this ___ day of _____, 2016, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY (the "Authority"), and PINEL & CARPENTER, INC., (the "Appraiser"), the same being an addendum to the Agreement between the aforesaid, dated February 25, 2013, for appraisal services pertaining to Wekiva Parkway Project No. 429-203, (the Contract").

1. The Authority wishes to increase the compensation to the Appraiser in the not-to-exceed amount of \$80,000.00 to complete the required services for Parcel Nos. 197, 230, 257 and 267 as detailed in the scope of services.
2. The Authority wishes to delete the language in Article 3.6, Total Payments Not to Exceed, of the Agreement in its entirety and insert the following new language in its place:

"All payments made pursuant to this Agreement shall not exceed a total of Two Hundred Seventy-Five Thousand Dollars (\$275,000.00), without an Addendum to this Agreement that shall be approved by the Client. It shall be the responsibility of the Appraiser to monitor the total of all payments made pursuant to this Agreement and notify the Client prior to reaching the Two Hundred Seventy-Five Thousand Dollars (\$275,000.00) upset limit."

3. The Appraiser hereby agrees to the additional compensation and the new language in Article 3.6.
4. The Authority and Appraiser agree that this Addendum No. 4 shall not alter or change in any manner the force and effect of the Agreement including any previous addenda thereto, except insofar as the same is altered and amended by this Addendum No. 4; that acceptance of this Addendum No. 4 signifies the Appraiser's complete and total claim for the terms and conditions of the same and that the Appraiser waives all future right for additional compensation which is not already defined herein.
5. This Addendum No. 4 is necessary to increase the compensation to the Appraiser to complete the services for Parcel Nos. 197, 230, 257 and 267.

ADDENDUM NO. 4

Contract Name: Appraiser Services

Contract No.: 000986 Project No.: 429-203

Amount of Changes to this document: \$80,000.00

This Addendum No. 4 entered into as of the day and year first written above.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: _____
Director of Procurement

PINEL & CARPENTER, INC.

By: _____

Print Name: _____

Title: _____

Attest: _____ (Seal)
(Secretary or Notary)

Approved as to form and execution, only.

General Counsel for the Authority

Agenda Items

Map of Parcels

USER: schn2087
11:07:39 AM
1/25/2016
T:\PROJECTS\CFX\RW Exhibits\Wekiva\exhibit01-b.dgn

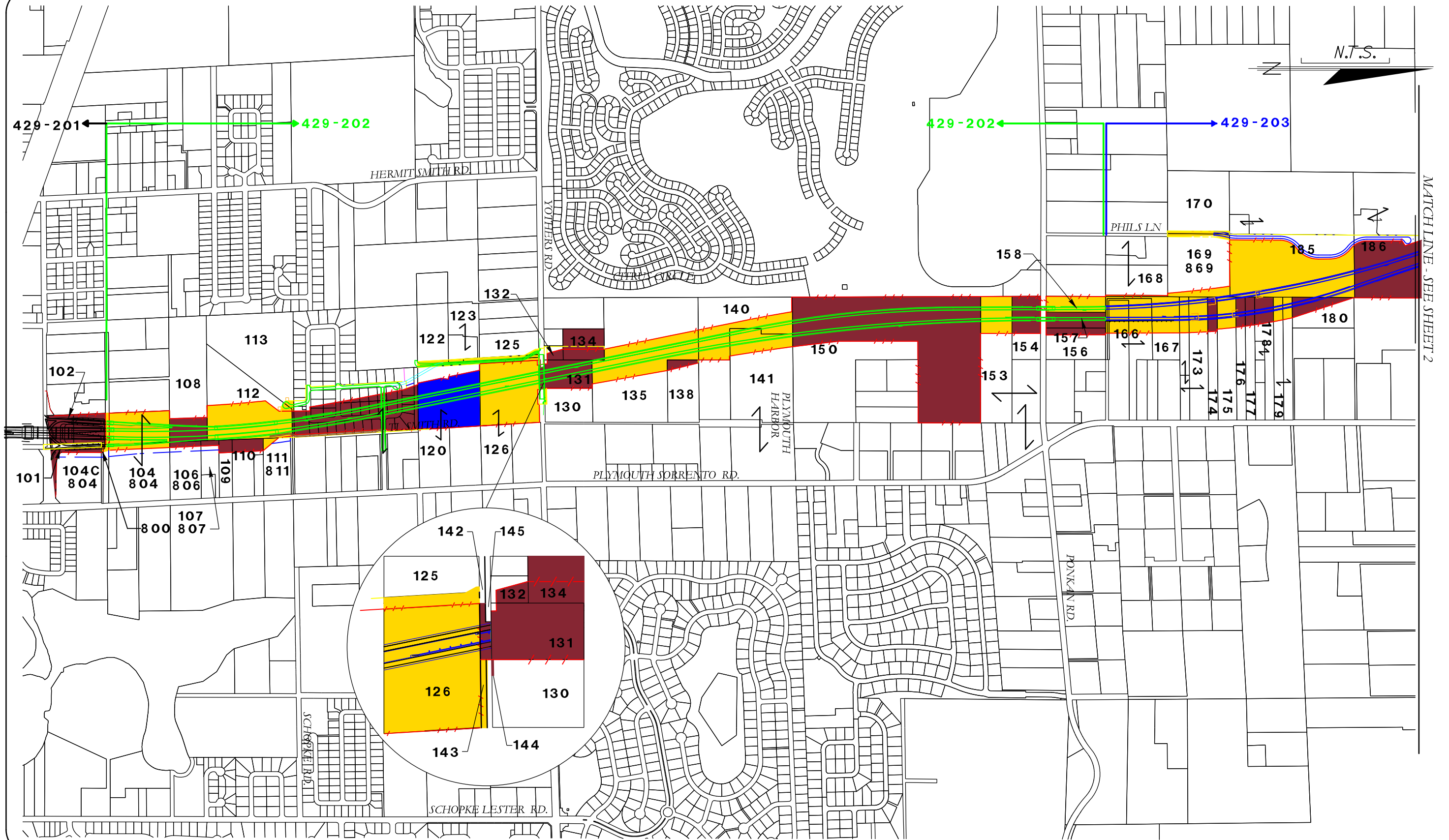
CENTRAL
FLORIDA
EXPRESSWAY
AUTHORITY

WEKIVA PARKWAY

Legend	
	ACQUIRED/COMPLETE
	ACQUIRED/PENDING LITIGATION
	ACQUIRED/PENDING FEES & COSTS

RIGHT-OF-WAY EXHIBIT
January 26, 2016
SUBJECT TO CHANGE

1
OF
5



USER: schn2087
11:34:58 AM
1/25/2016
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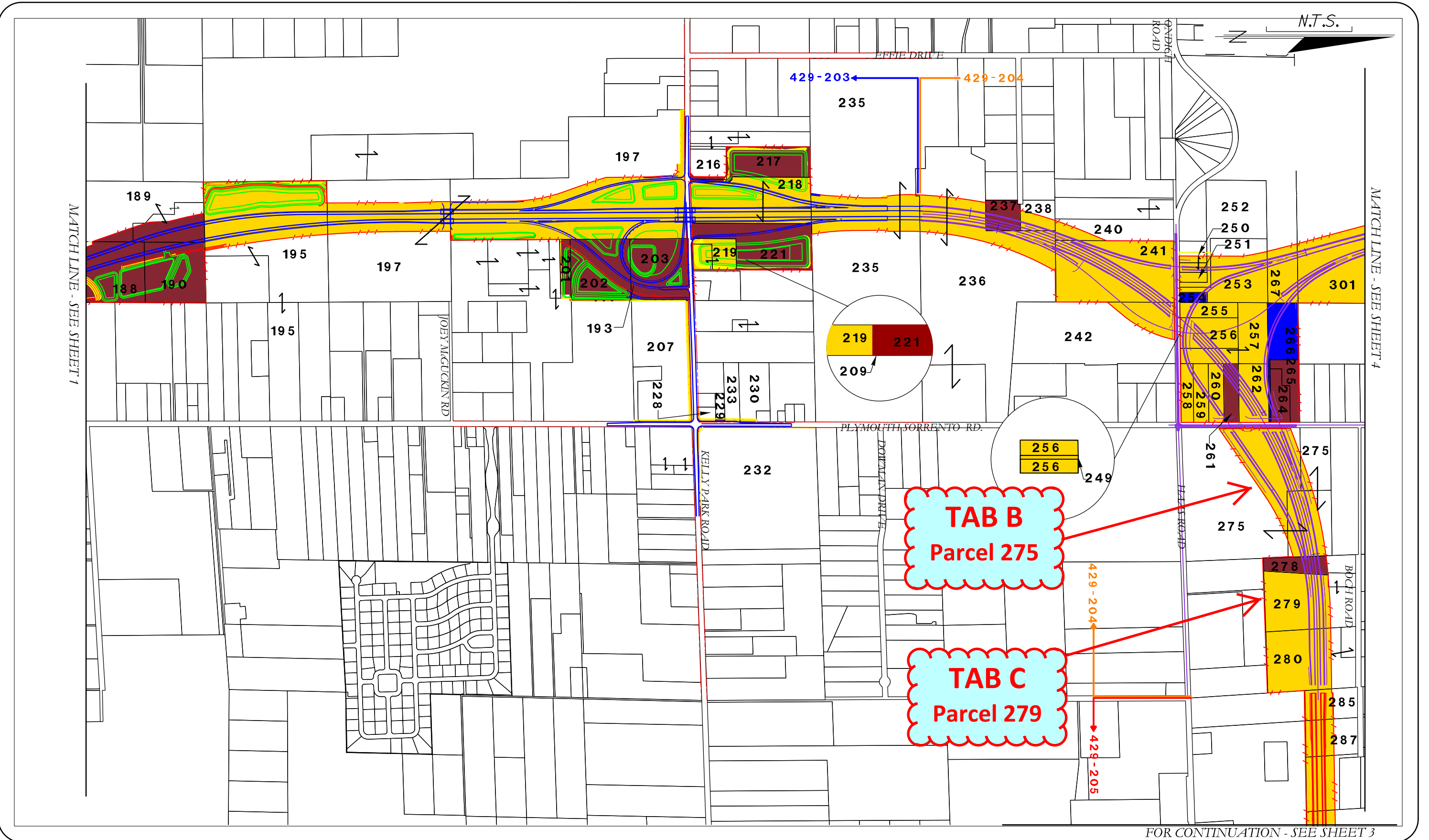
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AUTHORITY

WEKIVA PARKWAY

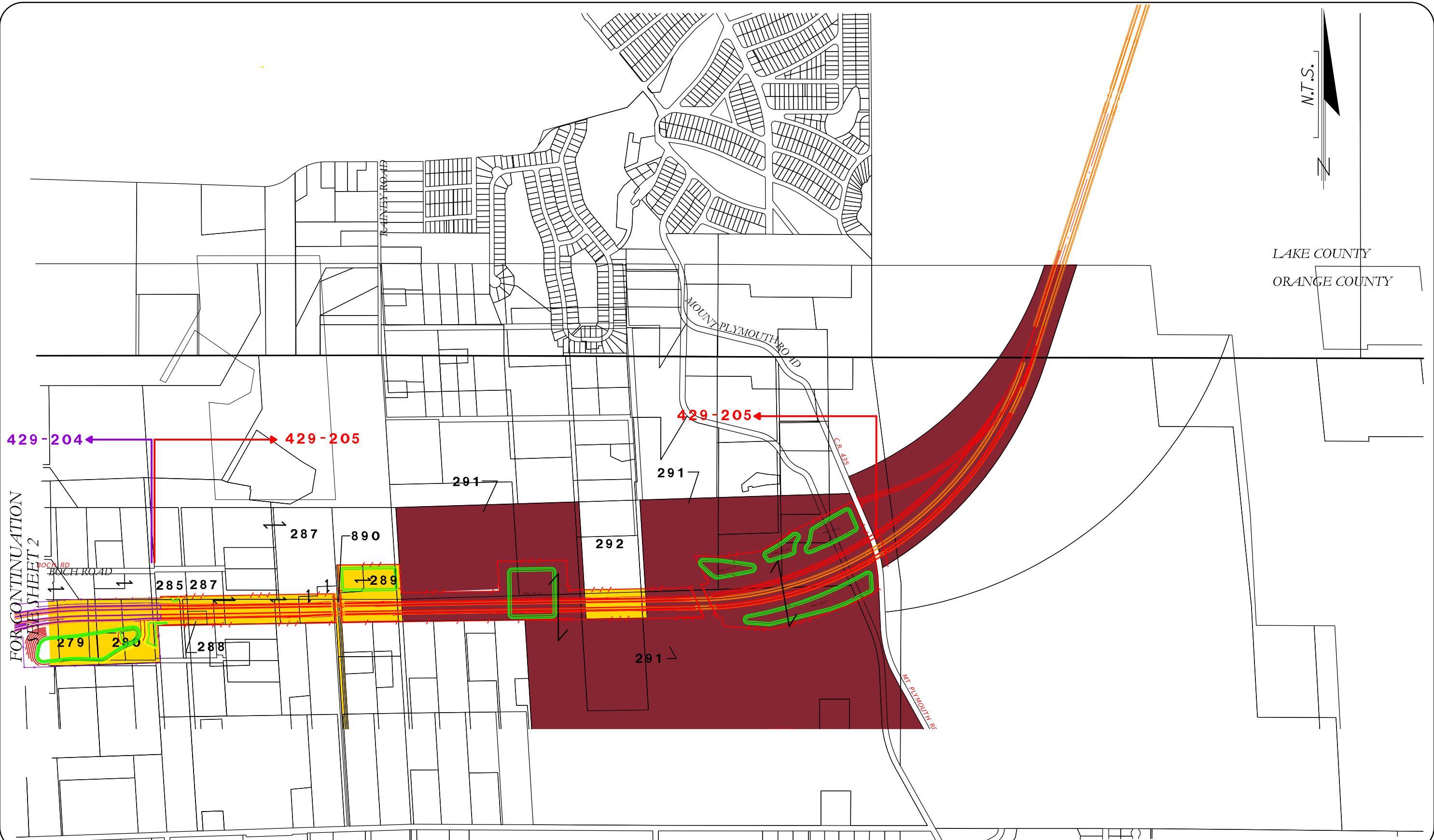
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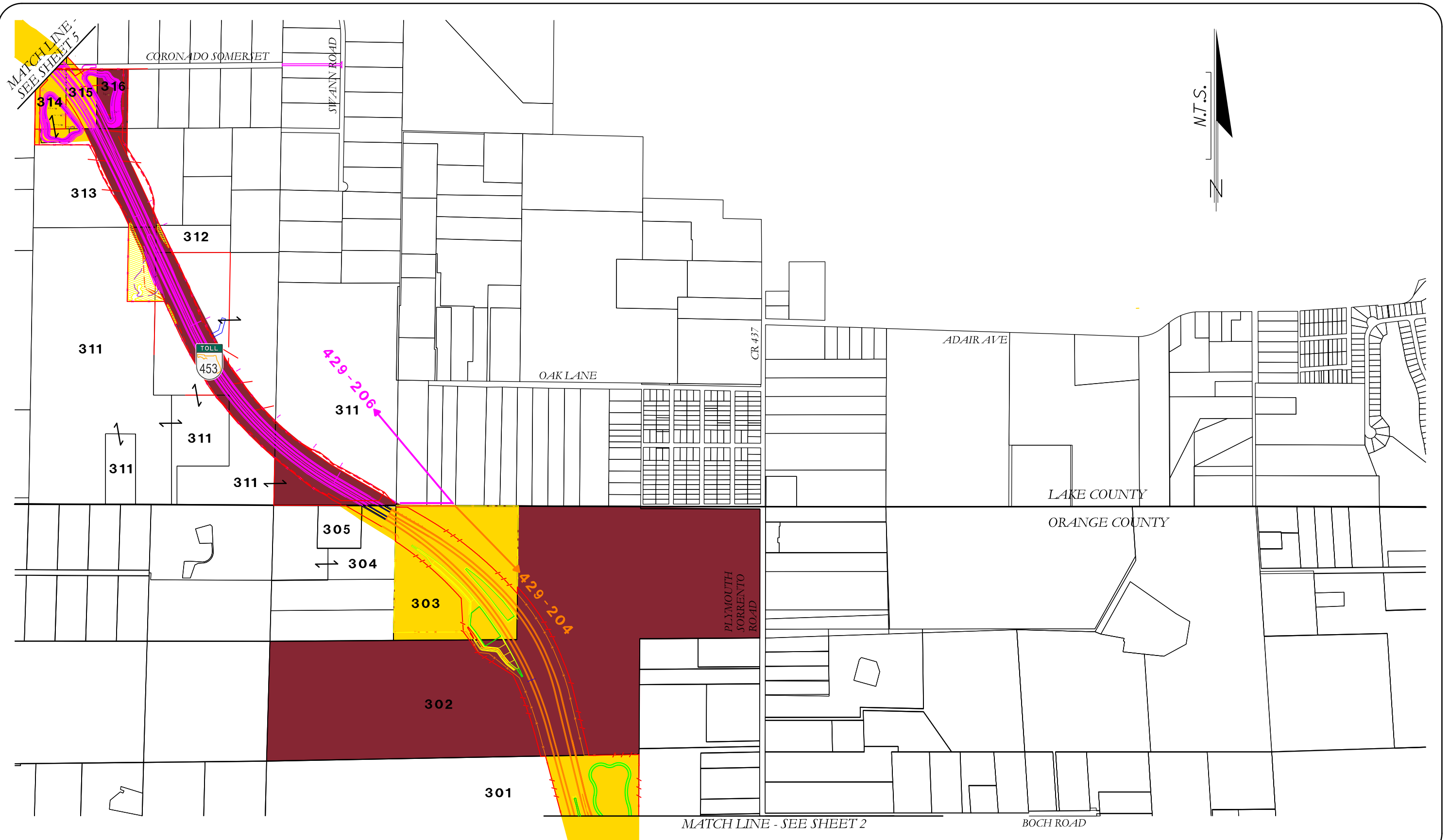
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