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**MEMORANDUM**

**TO: Central Florida Expressway Authority Board Members**

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

**DATE: March 28, 2016**

**RE: S.R. 429 Wekiva Parkway, Project 429-202; Parcel 120 (Parts A & B) –**  
**Approval of Settlement for Fees and Costs**

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Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks this Board's approval of a settlement of expert and attorney's fees and costs with Korus Orchid Corporation ("Korus" or "Owners"), arising from the acquisition of Parcel 120 Parts A & B (the "Taking" or "Property") for the construction of the S.R. 429 Wekiva Parkway, Project 429-202. The date of value for the property is August 6, 2014.

**DESCRIPTION and BACKGROUND:**

Korus's property consists of approximately 14.836 acres, on which it operated an orchid nursery business since early 2001. CFX acquired 8.216 acres through the middle of Korus's property, leaving a 4.793 acre remainder on the east side of the expressway, and a 1.827 acre remainder on the west side. The property was improved with 214,449 square feet of commercial plant nursery / greenhouse space, two manufactured homes, and various related site improvements. Approximately half of the greenhouse space was located within the area of taking.

Korus qualified for, and the parties resolved, business damages for this case. Pursuant to Florida Statute §73.015(2), Korus submitted a business damage claim for \$5,850,000.00, and CFX filed a statutory counter-offer in the amount of \$3,611,000.00. Korus accepted CFX's counter-offer, and the Court entered a Stipulated Partial Final Judgment as to Business Damages in the amount of \$3,611,000.00 on March 19, 2015, thereby resolving the business damage claims. However, this judgment did not resolve the issue of expert or attorney's fees, as expert fees and costs are not a required component of a statutory business damage counter-offer. The Partial Final Judgment therefore reserved jurisdiction to determine attorney's fees and expert fees and costs for the business damage claim.

Regarding the real estate claim, Korus submitted two appraisals for this parcel in excess of \$6 million each. CFX appraised the real estate claims for \$2,240,015.00. CFX's board members approved a resolution of this case for \$3,963,125.00 on September 10, 2015. A Stipulated Final

Judgment was entered on September 29, 2015 for the agreed settlement amount, plus statutory attorney's fees based on betterment. The Stipulated Final Judgment reserved jurisdiction to determine expert fees and costs.

### **PROPOSED SETTLEMENT OF FEES AND COSTS**

The undersigned counsel seeks this Committee's approval of a settlement of attorney's fees for the business damage claim and expert fees and costs for both the business damage and real estate claims. Korus submitted a claim of \$360,427 for expert fees and costs (for both the real estate claim and business damage claim), plus a claim of \$243,026 for attorneys fees (for the business damage claim, as the real estate attorneys fees were based on betterment and already resolved), for a total fee request of just over **\$603,000.00**. After negotiations, opposing counsel is willing to accept **\$450,000.00** in total fees and costs, which equates to reduction of approximately **25%**. A hearing on fees and costs was scheduled for the February 1, 2016 trial docket, but was removed pending Committee and Board approval of the proposed settlement.

Korus was represented by Tom Callan, Esquire. Because Korus accepted CFX's business damage counter-offer, attorney's fees are controlled by §73.015(4)(b), which states that, "if business damages are recovered by...the business owner accepting the condemning authority's initial counteroffer, attorney's fees must be calculated in accordance with s. 73.092(2), (3), (4), and (5) for the attorney's time incurred in presentation of the business owner's good faith offer." The referenced fee statute considers factors such as (1) the novelty, difficulty and importance of the questions involved, (2) the skill employed by the attorney, (3) the amount of money involved, (4) the responsibility incurred and fulfilled by the attorney, and (5) the attorney's time and labor. Mr. Callan initially submitted a fee request in the amount of \$243,026.00. After negotiations, Mr. Callan reduced this request to \$229,000. This reduced fee was then subjected to further negotiations and reduced by approximately 18%. Mr. Callan has submitted his invoices detailing his time and that of his staff, and the undersigned believes that the ultimate result of these negotiations represents a settlement that is in the best interest of CFX.

Korus also submitted expert fees in the amount of \$360,427. After an initial review by the undersigned, these fees were reduced to approximately \$310,000, and further negotiations reduced the fees by another 18%. These fees represent invoices from 14 different experts, including Richard Dreggors and Dan DeRango for appraisal services, and Lloyd Morgenstern and Duke Parrish as business damage experts. The exact break-down provided by Mr. Callan for each expert and the fees requested are attached to this memorandum. The undersigned has reviewed the invoices provided by each expert and has disputed some fees entirely and negotiated reductions on the remainder of the fees. Litigating the fees further will necessitate (1) depositions of the landowner's 14 experts, (2) analyzing the case files of the landowner's experts, (3) depositions and case file analysis of CFX's experts, (4) hiring additional experts to testify regarding the reasonableness of fees, and (5) a (likely) two-day hearing. Considering the attorney's fees and expert fees CFX may incur in this process, the undersigned counsel believes that the settlement proposal contained herein is in the best interest of CFX.

**FEES AND COSTS SUBMITTED BY KORUS**

**REAL ESTATE CLAIM:**

<b>Robert Carr</b>	<b>\$ 11,270.00</b>
<b>Mike Grandley/Tom Shepherd</b>	<b>\$ 2,850.00</b>
<b>Joshua A. Harris, Ph.D., CRE, CAIA</b> <b>(Lakemont Group)</b>	<b>\$ 16,350.00</b>
<b>Jim Hall, AICP, ASLA</b> <b>(VHB)</b>	<b>\$ 12,614.00</b>
<b>Richard C. Dreggors, GAA</b> <b>(Calhoun, Dreggors &amp; Associates, Inc.)</b>	<b>\$ 63,927.00</b>
<b>Dan DeRango</b>	<b>\$ 25,319.00</b>

**BUSINESS CLAIM:**

<b>MEI Civil, LLC</b>	<b>\$ 10,222.00</b>
<b>Lloyd Morgenstern</b> <b>(Morgenstein Phifer &amp; Messina, P.A.)</b>	<b>\$ 40,671.00</b>
<b>J. Duke Parrish, CPA</b> <b>(Parrish &amp; Parrish CPA's, P.A.)</b>	<b>\$ 21,050.00</b>
<b>Rod W. Hollingsworth</b> <b>(Sun Bulb Company)</b>	<b>\$ 4,700.00</b>
<b>Paul Linder</b>	<b>\$ 2,975.00</b>
<b>Robert Scott (Juris Corp.)</b>	<b>\$ 24,210.00</b>
<b>Juris Corporation</b>	<b>\$ 1,573.00</b>
<b>Sang N. Harris, CPA</b>	<b>\$ 22,500.00</b>
<b>Chun K. Choi(Interpreter)</b>	<b>\$ 5,250.00</b>
<b>Charles E. Cawthra III, ASA</b> <b>(Cawthra Consulting &amp; Appraisals, Inc.)</b>	<b>\$ 16,800.00</b>
<b>Callan Law Firm Costs Business</b>	<b>\$ 6,573.00</b>
<b>Callan Law Firm Real Estate</b>	<b>\$ 838.71</b>
<b>Callan Law Firm Attorneys Fees</b>	<b>\$243,026.00</b>
<b>Callan Total Expert Fees</b>	<b>\$360,427.00</b>

**EXPERT FEES SUBMITTED BY CFX**

<b>Les Eiserman, CliftonLarsonAllen, LLP</b>	<b>\$ 18,884.00</b>
<b>Walter Carpenter, Jr., MAI</b>	<b>\$ 51,501.51</b>
<b>John Speer, Speer Construction, LLC</b>	<b>\$ 6,121.25</b>
<b>John Pixley</b>	<b>\$ 425.00</b>
<b>Fred B. Ladue &amp; Associates</b>	<b><u>\$ 18,296.25</u></b>

<b>TOTAL:</b>	<b>\$ 95,228.01</b>
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The reports prepared for the Landowner by the above-listed were provided to Right of Way Committee for their review (although portions of the business damage reports were redacted to protect information deemed confidential pursuant to Section 73.0155, Florida Statutes).

**RECOMMENDATION:**

The proposed settlement was recommended for Board approval by the Right of Way Committee at the March 23, 2016 meeting. We respectfully request that this Board approve the proposed settlement in the amount of **\$450,000.00** in full settlement of all outstanding claims for expert and attorney's fees and costs for Korus Orchid on Parcel 120 Part A and B.

**ATTACHMENTS:**

Sketch of Subject Property

Reviewed by: \_\_\_\_\_

*Joseph J. Lavietre*

**SECTION 36,  
TOWNSHIP 20 SOUTH,  
RANGE 27 EAST**



**DRAWN: PMM CHECKED: JMS**

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