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MEMORANDUM

TO: Central Florida Expressway Authority Board Members

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

DATE: February 23, 2016

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

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks the Board's 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 Board 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 landowners' relocation claims under the Uniform Relocation Act. 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 |
| <u>Damages / Cost to Cure</u> | <u>\$ 487,700</u> |
| 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 landowners claim are subject to "condemnation blight." The landowners' 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 Parkway.

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. MacMillan'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 engineering 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:

The proposed settlement was recommended for Board approval by the Right of Way Committee at the February 24, 2016 meeting. We respectfully request that this Board approve 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

LEGAL DESCRIPTION

PARCEL 275

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE

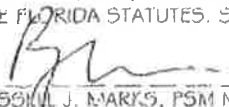
THAT PART OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 20 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA, BEING THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 10460, PAGE 813, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 20 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA (A 1/2" IRON ROD IN WELLBOX AS NOW EXISTS); THENCE, NORTH 87°59'58" EAST, ALONG THE SOUTH LINE OF SAID SOUTHWEST 1/4, A DISTANCE OF 39.20 FEET; THENCE, DEPARTING SAID SOUTH LINE, NORTH 00°06'57" WEST A DISTANCE OF 30.02 FEET TO THE INTERSECTION OF THE EXISTING NORTH RIGHT OF WAY LINE OF HAAS ROAD AND THE EXISTING EAST RIGHT OF WAY LINE OF PLYMOUTH SORRENTO ROAD; THENCE, CONTINUE NORTH 00°06'57" WEST, ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 415.21 FEET TO THE POINT OF BEGINNING; THENCE, CONTINUE NORTH 00°06'57" WEST, ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 783.53 FEET; THENCE, DEPARTING SAID EAST RIGHT OF WAY LINE, NORTH 69°21'50" EAST A DISTANCE OF 359.95 FEET TO A POINT OF TANGENCY; THENCE, RUN NORTHEASTERLY 1085.39 FEET ALONG THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 4662.00 FEET, A CENTRAL ANGLE OF 13°20'22" AND A CHORD BEARING OF NORTH 76°02'01" EAST TO A POINT ON THE EAST BOUNDARY OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 10460, PAGE 813; THENCE, SOUTH 02°31'06" EAST, ALONG SAID EAST LINE, A DISTANCE OF 360.02 FEET TO THE BEGINNING OF A CURVE; THENCE, FROM A TANGENT BEARING OF SOUTH 74°29'44" WEST, THENCE RUN SOUTHWESTERLY 742.84 FEET ALONG THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2256.00 FEET, A CENTRAL ANGLE OF 18°51'57" AND A CHORD BEARING OF SOUTH 65°03'46" WEST TO A POINT OF TANGENCY; THENCE, SOUTH 55°37'47" WEST, A DISTANCE OF 886.20 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH ALL RIGHTS OF INGRESS, EGRESS, LIGHT, AIR, AND VIEW TO, FROM OR ACROSS ANY STATE ROAD 429 RIGHT OF WAY PROPERTY WHICH MAY OTHERWISE ACCRUE TO ANY PROPERTY ADJOINING SAID RIGHT OF WAY.

CONTAINING 17.888 ACRES, MORE OR LESS.

I HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472 OF THE FLORIDA STATUTES. SUBJECT TO NOTES AND NOTATIONS SHOWN HEREON.


RUSSELL J. MARKS, PSM NO. 5623

3/25/14
DATE

NOT VALID WITHOUT SIGNATURE AND ORIGINAL RAISED SEAL

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:

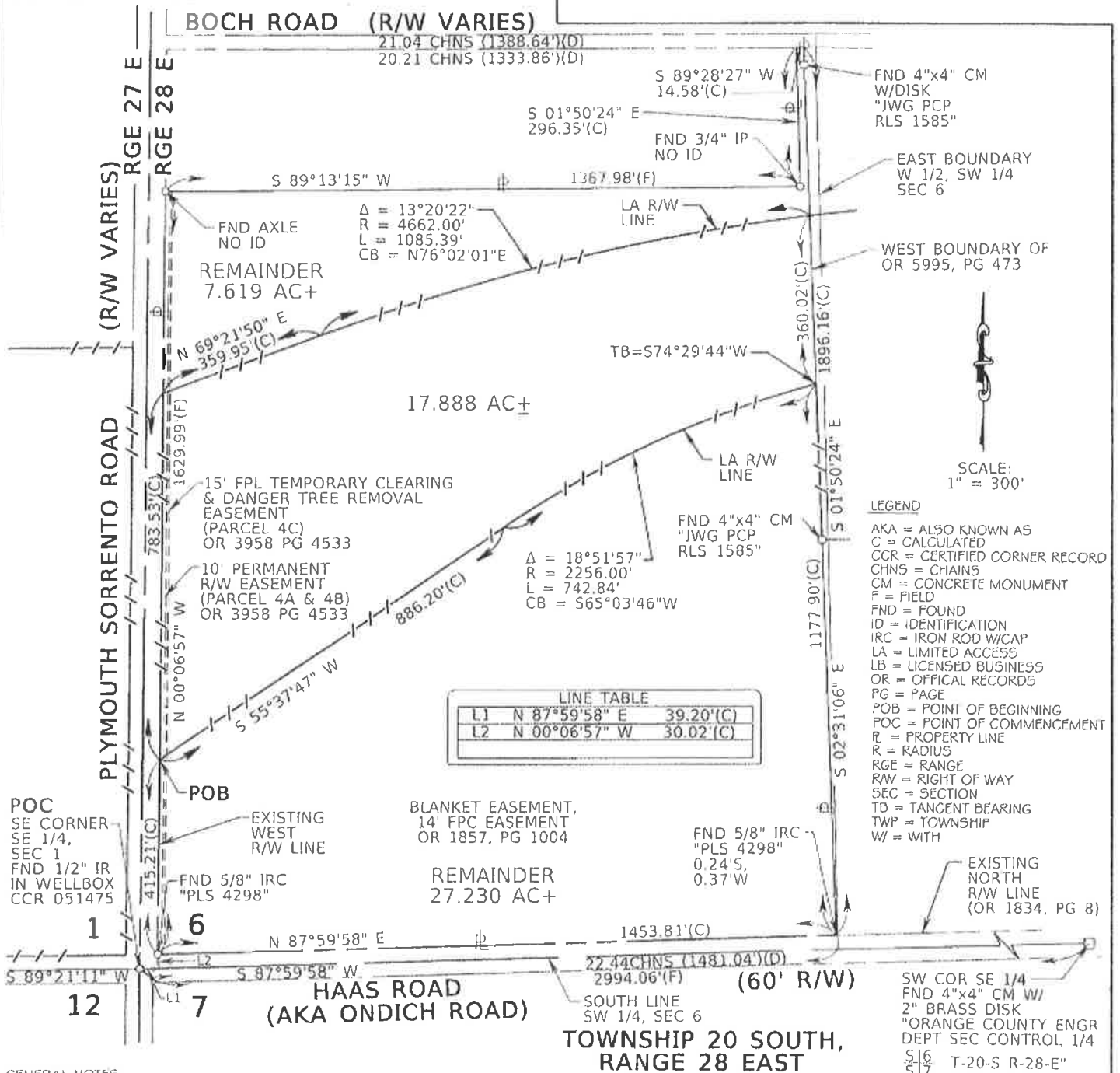
SHEET: 1 OF 2

SKETCH OF DESCRIPTION

PARCEL: 275

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE



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

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REVISIONS:

SHEET: 2 OF 2