

MEMORANDUM

TO: Joseph Passiatore  
Linda Brehmer Lanosa  
Glenn Pressimone

FROM: James M. Spoonhour  
S. Brendan Lynch



DATE: February 18, 2016

SUBJECT: Clarification of easement rights with respect to Parcel 897, Wekiva Parkway

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Parcel 897 is a perpetual easement for the purpose of constructing an overpass to allow access between the eastern and western remainders of property owned by Project Orlando, LLC (parcel 197). Parcel 897 was added to the project to mitigate damages which would result if the eastern remainder was completely severed by the project from the remainder of the property lying on the west side of the Wekiva Parkway project.

Counsel for Project Orlando, LLC has raised the issue that the easement rights taken in connection with parcel 897 were not included in the Board Resolution for the acquisition of this parcel. The appraisers for both sides have acknowledged in their appraisal reports that access to the eastern remainder exists by virtue of this overpass. The appraisers disagree over the amount of damage to the value of the eastern remainder based on this underpass access, but both have noted that it exists.

At the time the overpass (parcel 897) was added to the Wekiva Parkway project, a term sheet was developed setting forth the rights being taken by CFX (air rights for overpass, temporary construction easement to build overpass, and perpetual maintenance easement) and the rights reserved to the property owner (right to put improved access under the overpass). This term sheet was developed from prior CFX overpass easements and vetted by counsel, Atkins and CFX. The construction plans for the project were modified to include this overpass.

The term sheet was not, however, attached to the initial written offer to the owner or the legal description of parcel 897 included in the Resolution for this taking. The Resolution

contained the legal description of parcel 897 (along with the four other parcels owned by Project Orlando) which identified the parcel as a perpetual easement and a sketch of the taking.

After counsel for Project Orlando raised this issue, counsel for CFX formally filed the Term Sheet in both the pending court case and in the Public Records of Orange County (copy of recorded Term Sheet attached). Counsel for Project Orlando asserts that the Board must approve these specific easement terms, and has filed a Motion to Strike the Notice of Filing Terms of Easement for Parcel 897. This Motion has yet to be fully briefed or heard by the Court.

Jury trial is set for March 28, 2016. To help negate this technical objection to the Resolution by Project Orlando and questions about the nature of the perpetual easement, it would be helpful for the Board to confirm by motion that the attached Term Sheet is approved and adopted by the Board. This Term Sheet reiterates in words the nature of the easement taken, that was previously contained in the Resolution and associated construction plans. We are available to discuss this further.

**REQUESTED ACTION: Motion to approve Terms and Conditions for easement Parcel 897 nunc pro tunc to the time of adoption of Resolution of Necessity, March 17, 2014.**

Return to:  
S. Brendan Lynch, Esquire  
Lowndes, Drosdick, Doster,  
Kantor & Reed, P.A.  
215 N. Eola Drive  
Orlando, FL 32801

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

CASE NO.: 2014-CA-005589-O (Div. 37)  
PARCELS: 197/897, 230, 257 & 267

CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY, f/k/a Orlando-Orange County  
Expressway Authority, a body politic and  
corporate, and an agency of the state under  
the laws of the State of Florida,

Petitioner,

v.

PROJECT ORLANDO, LLC, a Florida limited  
liability company; et al.,

Respondents.

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02/09/2016 04:08:39 PM Page 1 of 7  
Rec Fee: \$81.00  
Martha O. Haynie, Comptroller  
Orange County, FL  
PU - Ret To: LOWNDES DROSDICK ET AL



**NOTICE OF FILING TERMS OF  
EASEMENT FOR PARCEL 897**

COMES NOW the Petitioner, Central Florida Expressway Authority, f/k/a Orlando-Orange County Expressway Authority, a body politic and corporate, and an agency of the state under the laws of the State of Florida (hereinafter "CFX"), by and through its undersigned attorneys, and hereby files its Terms of Easement for Parcel 897.

LOWNDES, DROSDICK, DOSTER,  
KANTOR & REED, P.A.

By: 

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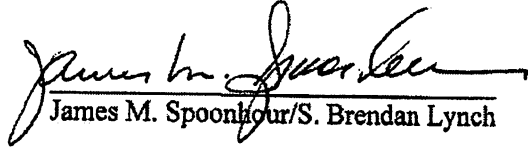
Tel. 407-843-4600 (main)

Fax. 407-843-4444

Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been filed electronically with the Orange County Clerk of Court and copies have been furnished to the parties on the attached Schedule A either electronically or by U.S. Mail on this 20<sup>th</sup> day of January, 2016.

  
James M. Spoonhour/S. Brendan Lynch

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**Schedule A**  
**CFX v. Project Orlando, et al.**

Central Florida Expressway Authority  
c/o James M. Spoonhour, Esquire  
S. Brendan Lynch, Esquire  
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PSP/MRC Debt Portfolio S-1, L.P.  
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ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY  
WEKIVA PARKWAY - PROJECT NO. 429-203  
PERPETUAL EASEMENT  
ESTATE: EASEMENT


## LEGAL DESCRIPTION:

PARCEL 897

A PARCEL OF LAND IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A FOUND 1-1/4-INCH IRON PIPE WITH NO IDENTIFICATION LOCATED IN A WELL BOX MARKING THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA; THENCE RUN SOUTH 89°15'06" WEST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 2110.70 FEET; THENCE DEPARTING SAID NORTH LINE RUN SOUTH 00°21'25" EAST, A DISTANCE OF 2.17 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 00°21'25" EAST, A DISTANCE OF 20.00 FEET; THENCE SOUTH 89°38'35" WEST, A DISTANCE OF 72.42 FEET; THENCE SOUTH 00°21'25" EAST, A DISTANCE OF 36.00 FEET; THENCE NORTH 89°38'35" EAST, A DISTANCE OF 72.42 FEET; THENCE SOUTH 00°21'25" EAST, A DISTANCE OF 10.00 FEET; THENCE SOUTH 89°38'35" WEST, A DISTANCE OF 324.00 FEET; THENCE NORTH 00°21'25" WEST, A DISTANCE OF 10.00 FEET; THENCE NORTH 89°38'35" EAST, A DISTANCE OF 72.42 FEET; THENCE NORTH 00°21'25" WEST, A DISTANCE OF 46.00 FEET; THENCE SOUTH 89°38'35" WEST, A DISTANCE OF 72.42 FEET; THENCE NORTH 00°21'25" WEST, A DISTANCE OF 10.00 FEET; THENCE NORTH 89°38'35" EAST, A DISTANCE OF 324.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 15446 SQUARE FEET, MORE OR LESS

DATE	08/11/2011		SKETCH OF DESCRIPTION.	<b>PARCEL 197/897</b>  SCALE: N/A  SHEET 5 OF 11
PREPARED BY	ALAN		THIS IS NOT A BOUNDARY SURVEY.	
CHECKED BY	ALAN			
DATE	08/11/2011			
PROJECT NO.	429-203		S.R. 429 (WEKIVA PARKWAY)	
SECTION	13		ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY	
TOWNSHIP	20 SOUTH		ORANGE COUNTY, FLORIDA	
RANGE	27 EAST			

**EXHIBIT "B"**

**TERMS OF EASEMENT FOR PARCEL 897**

Owner holds title to certain real property in Orange County, Florida, being more particularly described in Exhibit "A" to the Perpetual Easement (the "Easement Property") to which this Easement Term Sheet is attached, which Perpetual Easement and legal description are incorporated by reference herein. The Authority has condemned certain rights of way, easements and aerial rights in connection with the construction of a portion of State Road 429, the Wekiva Parkway Extension Project (the "Project"), including the construction of an overpass, bridge and appurtenant improvements (the "Highway Facilities") over and upon the foregoing Easement Property, subject to the terms and conditions hereinafter set forth. These easement rights are: (i) a perpetual easement for air rights and for the purpose of construction, operation, improvement, expansion, maintenance, repair and replacement from time to time of the Highway Facilities and the Project (the "Perpetual Easement"), and (ii) a temporary construction easement (the "Temporary Construction Easement") over the Easement Property to facilitate the construction of the Project.

1. **Recitals Incorporated:** The foregoing recitals are true and correct and are incorporated by reference herein and constitute a part of the Perpetual Easement.

2. **Perpetual Easement:** The Authority has a perpetual easement on, over and through the Easement Property, described in the preceding Exhibit "A" for the purpose of construction, operation, improvement, expansion, maintenance, repair and replacement from time to time of the Highway Facilities and the Project, including a perpetual air rights easement that is sixteen (16) feet above current ground level as of the date of taking.

The Authority plans to construct a portion of its Project such that the Highway Facilities are elevated over the Easement Property allowing continued access to the Owner's property on the east side of the Project (the "Eastern Remainder") from the Owner's property on the west side of the Project (the "Western Remainder"), and vice versa, after construction of the Highway Facilities. Thereafter, the Easement Property may be used for streets, sidewalks, storm drainage, lighting, parking and other uses that do not interfere with the Authority's easement rights.

3. **Temporary Construction Easement:** The Authority also has a temporary non-exclusive easement on, over and through the Easement Property for the purpose of access and construction of the Highway Facilities, including the right to perform all work, including without limitation, the right to enter upon the Easement Property for the purposes of sloping, grading, clearing, grubbing, storage of materials and equipment, excavation, and restoration during the Authority's construction of the Highway Facilities, as the Authority deems necessary or prudent. The Temporary Construction Easement shall expire upon the completion of the construction of the Project, but in any event no later than eighteen (18) months from issuance of the Notice to Proceed for this portion of the Project.

4. **Owner's Rights:** Notwithstanding anything contained herein, all other rights not condemned by the Authority herein are reserved to Owner including, but not limited to, the right to construct streets, sidewalks, storm water drainage, lights, and to otherwise use the easement



area to store non-explosive materials, park vehicles and trailers, and/or to place lighting, fencing, or other related improvements, none of which shall intrude upon the Highway Facilities area or be attached to the underside of the overpass contemplated as part of the Highway Facilities.

After completion of the overpass, the Authority's use and enjoyment of the rights granted herein shall not materially interfere with Owner's access to and between the Eastern Remainder and the Western Remainder, including without limitation, access by normal height and size tractor/trailer vehicles to and from the Eastern Remainder. After completion of the overpass contemplated herein, the Authority shall have the right to periodically use the area below the air rights easement for purposes of maintaining and repairing the overpass and supporting structures. Upon completion of any improvement, maintenance, repair and replacement activities of the Highway Facilities and the Project that may occur from time to time, the Authority shall repair, restore or replace in-kind to equivalent or better condition any of Owner's improvements within the Perpetual Easement disturbed or damaged by such activities and repair, restore or replace any landscaping within the Perpetual Easement disturbed by any improvement, maintenance, repair and replacement activities.

Owner has no rights of ingress, egress, or access to the overpass or the Highway Facilities from Owner's remainder property, nor does Owner have any rights of light, air or view from the overpass.

Further, if Owner determines that it wishes to subsequently dedicate or sell the Easement Property for public right-of-way purposes, the Authority will cooperate with Owner in getting the road dedicated to the public entity.

5. **No Liability:** Nothing in this Perpetual Easement shall operate to impose any obligation on the Owner with respect to the operation and maintenance of the Project, nor does this Easement operate to create or impose any liability with respect to the Owner arising from the activities of the Authority.