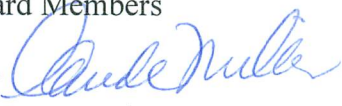


# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: Authority Board Members

FROM: Claude Miller   
Director of Procurement

DATE: May 27, 2015

RE: Award of Contract for  
Right of Way Counsel Services  
Contract No. 001116

In accordance with the Procurement Policy and Procedures for competitive sealed proposals, a Request for Proposals (RFP) from qualified firms to serve as Right of Way Counsel was advertised on April 12, 2015. Responses were received from two firms, Mateer & Harbert, P.A. (Mateer), and Adorno Law Firm, P.L. (Adorno), by the May 4, 2015, deadline. Since less than three proposals were received, the Procurement Procedures Manual requires that the Deputy Executive Director and the Director of Procurement meet to discuss the Authority's options to either reject the proposals and re-advertise for the services or to proceed with the evaluation process. In the absence of the Director of Procurement, the Manager of Procurement met with the Deputy Executive Director and Deputy General Counsel on May 4, 2015. After some discussion the decision was made to proceed with the process.

The Evaluation Committee met on May 18, 2015, and after scoring of the Technical Proposals, the Price Proposals were opened and scored. The total scores were calculated and resulted in the following ranking:

<u>Ranking</u>	<u>Firm</u>
1	Mateer & Harbert, P.A.
2	Adorno Law Firm, P.L.

The Right of Way Committee met on May 27, 2015, and voted unanimously to recommend award of the contract to Mateer.

Board award of the contract to Mateer & Harbert, P.A., in the amount of \$930,500.00 for a three-year contract term is requested.

# **AGREEMENT**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AND  
MATEER & HARBERT, P.A.**

**RIGHT OF WAY COUNSEL SERVICES**

**CONTRACT NO. 001116**

**CONTRACT AMOUNT: \$930,500.00**

**CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY**

**AGREEMENT  
FOR  
RIGHT OF WAY COUNSEL SERVICES**

**CONTRACT NO. 001116**

**June 2015**

**Members of the Board**

**Welton G. Cadwell, Chairman  
S. Scott Boyd, Vice Chairman  
Brenda Carey, Secretary/Treasurer  
Fred Hawkins, Jr., Board Member  
Teresa Jacobs, Orange County Mayor  
Buddy Dyer, City of Orlando Mayor  
Walter A. Ketcham, Jr., Board Member  
Jay Madara, Member  
S. Michael Scheeringa, Member  
Diane Guitierrez-Scaccetti, Non-Voting Advisor**

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**AGREEMENT  
RIGHT OF WAY COUNSEL SERVICES  
CONTRACT NO. 001116**

THIS AGREEMENT ("Agreement") is entered into as of June 11, 2015, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and corporate, and an agency of the State of Florida, 4974 ORL Tower Road, Orlando, Florida 32807 ("AUTHORITY"), and MATEER & HARBERT, P.A. ("COUNSEL").

**WITNESSETH:**

WHEREAS, the AUTHORITY desires to retain the services of competent and qualified legal counsel to provide right-of-way counsel services on an as-needed basis;

WHEREAS, on April 12, 2015, the AUTHORITY issued a Request for Proposals for Right of Way Counsel Services for the acquisition of four parcels along State Road 528 for, in part, All Aboard Florida's proposed intercity passenger rail. The four parcels are described below.

<b>Parcel No.</b>	<b>Owner</b>	<b>Preliminary Estimate of Area Needed</b>	<b>Draft Appraised Value (Restricted)</b>
102	Bal Bay Realty LTD	17.63-Acres	\$ 1,765,000
104	Mattamy (Jacksonville) Partnership	3.05-Gross Acres	\$ 100,000
105	Carlsbad Orlando LLC	166.65-Acres	\$12,500,000
108	B & M Investment LLC	111,078-Net Sq. Ft.	\$ 360,000

WHEREAS, based upon the recommendation of the Evaluation Committee at its meeting held on May 18, 2015, and the recommendation of the Right of Way Committee at its meeting held on May 27, 2015, the Board of Directors of the AUTHORITY at its meeting held on June 11, 2015, selected COUNSEL to serve as Right of Way Counsel; and

WHEREAS, COUNSEL is competent, qualified and duly authorized to practice law in the State of Florida and desires to provide professional legal services to the AUTHORITY according to the terms and conditions stated herein.

WHEREAS, to avoid the need for change orders, COUNSEL has assumed the worst-case scenario for each parcel, including the cost of a trial, and provided a not-to-exceed amount for the condemnation of each of these four parcels.

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, the AUTHORITY and COUNSEL agree as follows:

**SECTION 1. SERVICES.** The AUTHORITY does hereby retain COUNSEL to furnish professional services and perform those tasks generally described as legal services related to AUTHORITY right of way matters as further described in the Scope of Services attached hereto and incorporated herein as Exhibit "A."

## **SECTION 2. NO ASSURANCE REGARDING SCOPE OR QUANTITY OF SERVICE.**

(a) Although the AUTHORITY currently anticipates using the services of COUNSEL, the AUTHORITY provides no assurance to COUNSEL regarding the amount or quantity of legal services that COUNSEL will provide the AUTHORITY under this Agreement.

(b) It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement may arise from time to time. The AUTHORITY designates the AUTHORITY's General Counsel or Deputy General Counsel as the AUTHORITY employees to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. The designated representatives shall have the authority to transmit instructions, receive information, and interpret and define the AUTHORITY's policy and decisions pertinent to the work covered by this Agreement. The AUTHORITY may, from time to time, notify COUNSEL of additional employees to whom communications regarding day-to-day conduct of this Agreement may be addressed.

## **SECTION 3. RESPONSIBILITIES OF COUNSEL.**

(a) COUNSEL agrees to timely provide the professional services and facilities required by the Scope of Services and to assist the AUTHORITY in other areas of responsibility as deemed necessary by the AUTHORITY. COUNSEL represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. All of the services required herein under shall be performed by COUNSEL or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under the federal, state and local law to perform such services.

(b) COUNSEL shall keep abreast of statutes, regulations, codes, tax codes and applicable case law in all areas of responsibility at its sole expense.

(c) COUNSEL designates \_\_\_\_\_, as the primary attorney to provide services to the AUTHORITY and will be assisted from time to time by other members of the firm, as (he) (she) deems appropriate to the needs of the particular activity.

(d) COUNSEL agrees to utilize associates and legal assistants/paralegals, under the supervision of COUNSEL, where appropriate to accomplish cost effective performance of services.

(e) It shall be the responsibility of COUNSEL to specifically request all required information and to provide itself with reasonably sufficient time to review all information so as not to delay without good cause performance under this Agreement.

(f) COUNSEL shall be responsible for the professional quality, technical accuracy, competence and methodology of the work done under this Agreement.

(g) In providing Services under this Agreement, COUNSEL will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by

members of the same profession currently practicing under similar circumstances. Upon notice by the AUTHORITY, COUNSEL will correct those Services not meeting such a standard. COUNSEL agrees to notify the AUTHORITY in writing of ANY members of the firm that may be reprimanded, suspended, disbarred or otherwise disciplined by the Florida Supreme Court during the course of this Agreement.

#### **SECTION 4. PAYMENT FOR SERVICES AND BILLING.**

In consideration of the promises and the faithful performance by COUNSEL of its obligations, the AUTHORITY agrees to pay COUNSEL a fee based on the hourly rates times the number of hours, with a not-to-exceed amount, attached hereto as Exhibit A, subject to any alternate billing methods set forth in the negotiated price sheet. COUNSEL agrees to only utilize the named in Exhibit A at the rates set forth therein. No other individuals may provide services under this Contract unless specifically authorized by the General Counsel in writing.

(a) The AUTHORITY will not provide a retainer and there will be no increase in the rates during the three year term of the agreement. The AUTHORITY, through its General Counsel, reserves the right to contest any charge or charges including a request for greater clarification and detail on any line item submitted for payment. The parties agree that the AUTHORITY reserves the sole right to determine if any discrepancies in billing practices or invoices are significant. If deemed significant, the AUTHORITY unilaterally reserves the right to terminate the Agreement pursuant to the termination provisions contained in this Agreement.

(b) Reimbursable expenses shall be paid in addition to the payment due under subsection (a) above and shall include actual expenditures made by COUNSEL, its employees or its professional consultants in the interest of the work effort for the expenses listed in the following subsections; provided; however, that all reimbursements of expenses shall be subject to the AUTHORITY's policies and procedures, including those for travel expenses:

(1) Reasonable expenses of transportation, when traveling outside of Orange, Lake, Seminole, or Osceola Counties, pursuant to Section 112.061, Florida Statutes.

(2) COUNSEL will be reimbursed for the following out-of-pocket expenses, but only at cost and with the submittal of receipts in support of the expenses, and only to the extent they are incurred directly in connection with the Scope of Services: court reporters, deposition transcripts, exhibits. COUNSEL will not be reimbursed for expenses such as telecopy, local or long-distance telephone, internal word processing, data processing, computer research, courier, scanning, copies, meals, or other service that would be deemed to be part of your firm's overhead expenses. However, COUNSEL will notify the General Counsel's Office of any large copy and print jobs in order for a determination to be made as to how the copying will be handled and expensed.

(3) Express approval by the AUTHORITY's Board is required before the retention of consultants equal to or in excess of \$25,000. Written authorization from the General Counsel's Office is required for consultant or expert contracts less than \$25,000.

(c) COUNSEL will not bill the AUTHORITY for duplicate services, such as the attendance of more than one attorney to prepare for and attend attorney conferences,

meetings, depositions, hearings, mediations, and trial, unless approved by the General Counsel in advance. COUNSEL will not bill the AUTHORITY for secretarial or clerical work such as typing, filing, scheduling, and other such tasks.

(d) COUNSEL will not bill the AUTHORITY for travel time or mileage within Orange, Lake, Seminole, or Osceola County, or travel time to court appearances, mediations, hearings, or meetings.

**SECTION 5. TIME OF ESSENCE.** Time is of the essence concerning the performance of all terms and conditions of this Agreement.

**SECTION 6. GENERAL TERMS AND PAYMENT.**

(a) Invoices should provide a concise summary of each entry which will sufficiently describe the particular entry. COUNSEL shall record and bill time in one-tenth of an hour increments (or *every* six minutes). The AUTHORITY shall reserve the right request additional documentation for any charge and the parties may agree to delete, strike or waive any disputed charges submitted. The AUTHORITY also reserves the right to request new invoicing be submitted, if necessary, at no additional charge.

(b) The AUTHORITY will pay COUNSEL within thirty (30) days of receipt of a valid invoice.

(c) COUNSEL agrees to maintain any and all books, documents, papers, accounting records and other evidences pertaining to services performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at its office at all reasonable times during the Agreement period and for five (5) years from the date of final payment under this Agreement.

**SECTION 7. OWNERSHIP OF DOCUMENTS.** All legal opinions or any other form of written instrument or document that may result from COUNSEL's services or have been created during the course of COUNSEL's performance under this Agreement shall become the property of the AUTHORITY after final payment is made to COUNSEL; however, COUNSEL retains the right to retain copies of its work product and to use same for appropriate purposes. COUNSEL shall incorporate a similar provision into any subcontracts.

**SECTION 8. TERM.** This Agreement shall become effective \_\_\_\_\_, 2015, and, unless earlier terminated as provided for herein, shall run for a term of three (3) years, with two one-year renewals at the AUTHORITY's option. The options to renew are at the sole discretion and election of the AUTHORITY. Renewals will be based, in part, on a determination by the AUTHORITY that the value and level of service provided by COUNSEL are satisfactory and adequate for the AUTHORITY's needs. If a renewal option is exercised, the AUTHORITY will provide COUNSEL with written notice of its intent at least 90 days prior to the expiration of the initial 3-year Contract Term.

**SECTION 9. CONFLICT OF INTEREST.** COUNSEL hereby certifies that no officer, agent or employee of the AUTHORITY has any "material interest" (as defined in Section 112.312(15), Florida Statutes) either directly or indirectly, in the business of COUNSEL, and that no such person shall have any such interest at any time during the term of this Agreement.



(a) COUNSEL warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for COUNSEL to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for COUNSEL, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

**SECTION 10.** COUNSEL further represents that no person having any interest shall be employed for said performance. COUNSEL shall promptly notify the AUTHORITY of all potential conflicts of interest for any prospective business association, interest or other circumstances which may influence or appear to influence COUNSEL's judgment or quality of services being provided hereunder. COUNSEL shall also notify the AUTHORITY in writing, of any potential conflicts regarding the representation of the AUTHORITY and any other clients COUNSEL may represent. The disclosure and ability to waive or not waive any conflicts shall be at the sole discretion of the AUTHORITY and pursuant to any professional rules of conduct promulgated by either the Supreme Court or the Florida Bar governing potential or actual conflicts.

**SECTION 11. NO ASSIGNMENT.** The parties fully understand and agree that the professionalism and specialization involved in serving as Right-of-Way Counsel is of paramount importance and that this Agreement would not be entered into by the AUTHORITY except for its confidence in, and assurances provided for, the character, abilities, and reputation of COUNSEL. Therefore, COUNSEL shall not assign or transfer their rights, duties and obligations provided for herein, nor allow such assignment or transfer by operation of law or otherwise without the prior written approval of the AUTHORITY.

**SECTION 12. AMENDMENT.** No waiver, alterations, consent or modification of any of the provisions of this Agreement, including any change in the Scope of Services, shall be binding unless made in writing and duly approved and executed by the parties hereto.

**SECTION 13. LOSS OF ESSENTIAL LICENSE.** The parties agree that any occurrence, whether within or beyond the control of COUNSEL, which renders one or more key personnel incapable of performing the duties and obligations required hereunder, including the loss or suspension of license to practice law in Florida, shall constitute an extraordinary breach of this Agreement and shall give the AUTHORITY the right to terminate this Agreement immediately upon written notice to COUNSEL. It shall be solely within the discretion of the AUTHORITY whether the affected member of COUNSEL's law firm is considered key personnel for purposes of this Agreement. This Section shall apply irrespective of the reason for the loss or suspension of any essential license.

**SECTION 14. INDEPENDENT CONTRACTOR.** COUNSEL shall be considered as an independent contractor with respect to all services performed under this Agreement and in no event shall anything contained within this Agreement or the Scope of Services be construed to create a joint venture, association, or partnership by or among the AUTHORITY and COUNSEL (including its officers, employees, and agents), nor shall COUNSEL hold itself out as or be considered an agent, representative or employee of the AUTHORITY for any purpose, or in any

manner, whatsoever. COUNSEL shall not create any obligation or responsibility, contractual or otherwise, on behalf of the AUTHORITY nor bind the AUTHORITY in any manner.

**SECTION 15. INSOLVENCY.** If COUNSEL shall file a petition in bankruptcy or shall be adjudged bankrupt, or in the event that a receiver or trustee shall be appointed for COUNSEL, the parties agree that the AUTHORITY may immediately terminate this Agreement with respect to the party in bankruptcy or receivership.

**SECTION 16. INSURANCE.** COUNSEL, at its own expense, shall keep and maintain at all times during the term of this Agreement:

- (a) Professional Liability or Malpractice Insurance with coverage of at least One Million Dollars (\$1,000,000) per occurrence.
- (b) Workers' Compensation Coverage as required by Florida law.

COUNSEL shall provide the AUTHORITY with properly executed Certificate(s) of Insurance forms on all the policies of insurance and renewals thereof in a form(s) acceptable to the AUTHORITY. The AUTHORITY shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action.

All insurance policies shall be issued by responsible companies licensed and authorized to do business under the laws of the State of Florida and having a financial rating of at least B+ Class VI and a claims paying ability rating of at least A+ from Best, or equivalent ratings from another nationally recognized insurance rating service.

**SECTION 17. INDEMNIFICATION.** COUNSEL shall indemnify and hold harmless THE AUTHORITY, its officers, agents, and employees harmless from and against all claims, suits, actions, damages and/or cause of action which may arise from any negligent act or omission of COUNSEL, its agents, servants, or employees as a result of the performance of services under this Contract, and from and against all costs, attorney's fees, expenses and liabilities incurred in or by reason of the defense of any such claim, suit or action, and the investigation thereof. Nothing in the Contract shall be deemed to affect the rights, privileges and immunities of the AUTHORITY as set forth in Section 768.28, Florida Statutes.

**SECTION 18. ALTERNATIVE DISPUTE RESOLUTION.** In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among all parties participating.

**SECTION 19. WAIVER.** The failure of the AUTHORITY to insist upon strict and prompt performance of any of the terms and conditions of this Agreement shall not constitute a waiver of the AUTHORITY's right to strictly enforce such terms and conditions thereafter.

**SECTION 20. NOTICES.** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, with return

receipt requested, addressed to the party to whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to wit:

For the AUTHORITY:

Mr. Joseph Passiatore, General Counsel  
Ms. Linda Brehmer Lanosa, Deputy General Counsel  
Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, Florida 32807

For COUNSEL:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 21. TERMINATION.** The AUTHORITY may, by written notice to COUNSEL terminate this Agreement, in whole or in part, at any time, with or without cause. Upon receipt of such notice, COUNSEL shall:

(a) immediately discontinue all services affected (unless the notice directs otherwise); and

(b) deliver to the AUTHORITY all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by COUNSEL in performing this Agreement, whether completed or in process.

**SECTION 22. COMPLIANCE WITH LAWS; EQUAL OPPORTUNITY EMPLOYMENT.** COUNSEL shall conform and comply with and take reasonable precaution to ensure that every one of their directors, officers and employees abides by and complies with all applicable laws of the United States and the State of Florida, and all local laws and ordinances. Furthermore, COUNSEL agrees to and shall comply with all federal, state and local laws and ordinances prohibiting discrimination with regard to race, color, national origin, ancestry, creed, religion, age, sex, marital status or the presence of any sensory, mental or physical handicap or other disability, and will take affirmative steps to insure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, disability or national origin. This provision shall include, but not be limited to, the following: employment; promotion; demotion; transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**SECTION 23. SEVERABILITY.** Should any term, provision, covenant, condition or other portion of this Agreement be held illegal or invalid, the same shall not affect the remainder of this Agreement, and the remainder shall continue in full force and effect as if such illegality or invalidity had not been contained herein.

**SECTION 24. ENTIRE AGREEMENT.** It is understood and agreed that the entire Agreement of the parties is contained herein (including all attachments, exhibits and appendices) and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof.

**SECTION 25. PUBLIC ENTITY CRIMES.** COUNSEL hereby acknowledges that it has been notified that under Florida Law a person or affiliate, as defined in §287.133, Florida Statutes, who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in §287.017, Florida Statutes, for CATEGORY TWO, for a period of 36 months from the date of being placed on the convicted vendor list.

**SECTION 26. RIGHTS AT LAW RETAINED.** The rights and remedies of the AUTHORITY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

**SECTION 27. APPLICABLE LAW; VENUE.** This Agreement shall be construed in accordance with and governed by the Laws of the State of Florida. Venue for any action brought hereunder, in law or equity, shall be exclusively in Orange County, Florida.

IN WITNESS WHEREOF, the authorized signatures named below have executed this Contract on behalf of the parties as of the day and year first above written. This Contract was awarded by the Authority's Board of Directors at its meeting on June 11, 2015.

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

By: \_\_\_\_\_  
Director of Procurement

Print Name: \_\_\_\_\_

**MATEER & HARBERT, P.A.**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

\_\_\_\_\_  
Title

ATTEST: \_\_\_\_\_ (Seal)

Approved as to form and execution, only.

\_\_\_\_\_  
General Counsel for the AUTHORITY

## **Exhibit A**

### **SCOPE OF SERVICES RIGHT OF WAY COUNSEL**

This Scope of Services is a general guide and is not intended to be a complete list of all work and materials that may be required by the Authority. Services are non-exclusive and shall apply to those future right of way matters not currently assigned to other counsel. Services to be performed by Counsel include, but are not limited to, the acquisition of four parcels along State Road 528 for, in part, All Aboard Florida's proposed intercity passenger rail. The parcels are described below.

<b>Parcel No.</b>	<b>Owner</b>	<b>Preliminary Estimate of Area Needed</b>	<b>Draft Appraised Value (Restricted)</b>
102	Bal Bay Realty LTD	17.63-Acres	\$1,765,000
104	Mattamy (Jacksonville) Partnership	3.05-Gross Acres	\$100,000
105	Carlsbad Orlando LLC	166.65-Acres	\$12,500,000
108	B & M Investment LLC	111,078-Net Sq. Ft.	\$360,000

Assuming the worst-case scenario (each case is tried) the services to be rendered may include:

- Assist with negotiations for the acquisition of real property, as requested
- Prepare and review proposed real estate contracts and agreements, as requested
- Order title reports and commitments, as needed, and issue title opinions for any parcels that are acquired through voluntary negotiations
- Review the project and plans and provide recommendations, advice, and direction for condemnation proceedings
- Review the Contract for Purchase of a Rail Easement and associated easement and provide input, recommendation, direction, and modifications or amendments, as needed
- Hire and retain consultants such as appraisers, land use experts, etc., with General Counsel approval (Note that Woody Hanson, MAI, and Hal Collins, AICP, have been retained by the Authority)
- Telephone or in person consultations with Authority staff Provide legal opinions, as needed, on issues or cases relevant to the acquisition of the property
- Initiate and represent the Authority in eminent domain proceedings for each of these parcels, as needed, including:
  - Pre-Order of Taking services
  - Post-Order of Taking services
  - Trial
- Provide estimated fees and costs for each case assigned to the law firm, upon request
- Provide no less than monthly reporting to the General Counsel on pending matters

- Transmit each parcel file to the Authority upon closure
- Such other matters as may arise as part of the acquisition of the S.R. 528 corridor or other matters (based upon the proposed hourly rates and subject to further negotiation)

PRICE PROPOSAL  
RIGHT OF WAY COUNSEL SERVICES  
CONTRACT NO. 001116

PRICE PROPOSAL OF

**Mateer & Harbert, P.A.**

(NAME)

**225 E. Robinson Street, Suite 600, Orlando, FL 32801 (407) 425-9044**

(ADDRESS)

(TELEPHONE NUMBER)

Submitted **May 1, 2015**

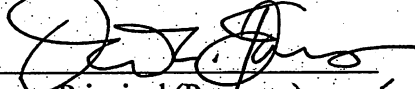
Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, FL 32807

We, the undersigned, hereby declare that no person or persons, firm or corporation, other than the undersigned, are interested in this Price Proposal as principals, and that this Price Proposal is made without collusion with any person, firm or corporation. We have carefully and to our full satisfaction examined the Scope of Services and Contract included in the RFP package. We hereby agree to furnish all labor, equipment, and materials, as specified in the Scope of Services. We will fully complete all necessary work in accordance with the Scope of Services, Contract and addenda, if any, and the requirements under them for the not-to-exceed amounts shown on the Price Proposal sheet.



I (We), the undersigned, hereby certify that I (we) have carefully examined this Price Proposal after the same was completed, and have verified each item placed thereon; and I (we) agree to indemnify, defend, and hold harmless the Authority against any cost, damage, or expense which it may incur or be caused by any error in my (our) preparation of same.

CORPORATION: **Mateer & Harbert, P.A.**

, President  
Principal (Proposer)

By: **David L. Evans**

President or Vice President



Attest: **Kurt E. Thalwitzer**

Secretary or Assistant Secretary

(Affix

Corporate

Seal)

INDIVIDUAL OR FIRM TRADING AS:

\_\_\_\_\_  
Principal (Proposer)

Signature: \_\_\_\_\_  
Individual or Owner

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

PARTNERSHIP:

\_\_\_\_\_  
Principal (Proposer)

Signature: (1) Co-Partner or General Partner

Signature: (2) Co-Partner or General Partner

Witness: (1) \_\_\_\_\_

Witness: (1) \_\_\_\_\_

Witness: (2) \_\_\_\_\_

Witness: (2) \_\_\_\_\_

(If Partnership, list names and addresses of each partner on separate sheet and attach.)

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
PRICE PROPOSAL  
RIGHT-OF-WAY COUNSEL SERVICES - CONTRACT NO. 001116**

ITEM NO.	PARCEL	NOT-TO-EXCEED AMOUNT
1	PARCEL 102 - BAL BAY REALTY, LTD	\$ <u>250,000.00</u>
2	PARCEL 104 - MATTAMY (JACKSONVILLE) PARTNERSHIP	\$ <u>150,000.00</u>
3	PARCEL 105 - CARLSBAD ORLANDO LLC	\$ <u>150,000.00</u>
4	PARCEL 108 - B&M INVESTMENT LLC	\$ <u>380,500.00</u>
TOTAL PROPOSAL AMOUNT		\$ <u>930,500.00</u>

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
PRICE PROPOSAL  
RIGHT-OF-WAY COUNSEL SERVICES - CONTRACT NO. 001116

NAME	CLASSIFICATION	TASKS TO BE PERFORMED	HOURLY RATE
Jay W. Small	Principal attorney	See Exhibit "A" attached	\$250.00
James R. Lussier	Partner	See Exhibit "A" attached	\$250.00
Thomas R. Harbert	Partner	See Exhibit "A" attached	\$250.00
Matthew J. Brown	Senior Associate	See Exhibit "A" attached	\$200.00
Leslie A. Evans	Associate	See Exhibit "A" attached	\$160.00
Melissa Cupps Battles	Senior Associate	See Exhibit "A" attached	\$200.00
Shannon M. Marshall	Paralegal	See Exhibit "A" attached	\$85.00
DeAnna Malinowski	Paralegal	See Exhibit "A" attached	\$85.00

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
PRICE PROPOSAL  
RIGHT-OF-WAY COUNSEL SERVICES - CONTRACT NO. 001116

**Exhibit "A"**

<b>NAME</b>	<b>TASKS TO BE PERFORMED</b>
Jay W. Small	Pre-suit negotiations, depositions, expert witness management and coordination, attendance at meetings, mediation, hearings and trial.
James R. Lussier	Pre-suit negotiations, depositions, expert witness management and coordination, attendance at meetings, mediation, hearings and trial.
Thomas R. Harbert	Review of legal documents, contracts, title policies and opinions, drafting closing documents, attendance at required meetings.
Matthew J. Brown	Drafting of pleadings, discovery, factual investigation, depositions as assigned by litigation partners.
Leslie A. Evans	Drafting of pleadings, discovery, factual investigation, legal research.
Melissa Cupps Battles	Negotiating and drafting purchase and sale agreements and closing documents, due diligence, title review, environmental assessment review.
Shannon M. Marshall	Organize calendars, schedule meetings and telephone conferences, organize and manage files, draft pleadings and correspondence, prepare timelines, review title searches, draft title commitments and policies.
DeAnna Malinowski	Document management, discovery, indexing depositions, organizing case law and documents for hearings, mediation and trial.



**TECHNICAL PROPOSAL**  
*(Original)*

Proposal For: RIGHT-OF-WAY COUNSEL SERVICES  
Contract No.: 001116  
Submitted To: CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
Submitted By: MATEER & HARBERT, P.A.  
225 E. ROBINSON STREET, SUITE 600  
ORLANDO, FL 32801  
(407) 425-9044  
JAY W. SMALL  
JSMALL@MATEERHARBERT.COM  
MAY 1, 2015



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## **Tab 1**



A T T O R N E Y S   A T   L A W

ORLANDO • OCALA

JAY W. SMALL  
E-MAIL ADDRESS  
jsmall@mateerharbert.com

DIRECT LINE  
(407) 377-6174

May 1, 2015

Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, Florida 32807  
Attn: Claude Miller, Director of Procurement

Re: Authority Contract No. 001116; Right of Way Counsel; Transmittal Letter

Dear Mr. Miller:

Thank you for your consideration of Mateer & Harbert, P.A.'s response to the Request for Proposals ("RFP") for right-of-way counsel services, Contract No. 001116. This Transmittal Letter includes the information required by Section 3.1 A. of the RFP. I am the partner who is responsible for this response. Please direct any questions, comments, or requests for additional information to me regarding this response. In addition, this letter has been signed by an officer of the firm authorized to commit the firm's resources to this representation as required by Section 3.1.A of the RFP.

Mateer Harbert has the continuity and expertise to provide the Central Florida Expressway Authority ("CFX") with right-of-way counsel services for the All Aboard Florida ("AAF") project. Since it was founded in 1960, Mateer Harbert has represented public and private clients in a wide variety of condemnation cases in Central Florida and throughout the state. Its lawyers have litigated and tried to jury verdict numerous cases for public and private clients for acquisitions involving right-of-way, rail corridors, airport expansion, the construction of public educational facilities, flood control, community redevelopment, county and municipal purposes, inverse condemnation cases involving physical and regulatory takings, and disputes under the Bert J. Harris, Jr., Private Property Rights Protection Act, Chapter 70, Fla. Stat. (2015).

The two litigation partners who will be responsible for managing the right-of-way counseling assignment under this contract cumulatively have over 50 years of experience practicing in the area of condemnation law. Each is a member of the eminent domain committee of the Florida Bar, and Mr. Small frequently writes and lectures about condemnation and property rights issues. Each has represented public and private clients in condemnation cases. Mateer Harbert has never focused its practice upon representing exclusively condemnors or condemnees. This affords CFX the unique benefit of retaining counsel who are capable of developing case management strategies and trial plans that anticipate the legal positions and tactics which may be taken by opposing counsel.



**MATEER HARBERT**

Central Florida Expressway Authority  
May 1, 2015  
Page 2


Although Mateer Harbert approaches each condemnation case it handles for a condemnor as if the case will involve a taking challenge or a jury trial, the firm is mindful that ultimately public dollars are being spent to acquire land and to pay for the fees and costs to acquire that land. Mateer Harbert understands that its role also includes being a proper steward of public dollars. Consequently, while Mateer Harbert's lawyers are prepared to try cases when needed, they also recognize the need to explore every opportunity to negotiate reasonable settlements for CFX so that its right-of-way acquisition dollars are spent on land, not attorneys' fees and costs.

As will be detailed further in the Technical Proposal section of this response, Mateer Harbert is aware of CFX's need to secure title to the land necessary for AAF as soon as possible. Based on the information attached in the RFP appendix, Mateer Harbert has developed a timeline and case management plan for obtaining title to the property. Mateer Harbert has already committed the manpower resources necessary to represent CFX in all transactional and litigation aspects of this project.

With its experience in this practice area and its scoping of this project, Mateer Harbert is prepared to represent CFX. Its lawyers have worked with the in-house counsel of its private institutional clients, and they have worked with the legal departments of similarly sized governmental entities. Its lawyers are familiar with how public entities operate and the need to comply with public meeting agenda deadlines and public records law. They are aware of the need to provide CFX's General Counsel, Right-of-Way Committee, and Board with detailed and timely information regarding the strengths and weaknesses of CFX's case and the owners' cases. Finally, Mateer Harbert is committed to providing the finest legal services, in a timely and responsive manner, at a reasonable cost.

Thank you for your consideration of this proposal.

By:

  
David L. Evans, President

Very truly yours,

  
Jay W. Small

JWS:mmm

4832-8463-2611, v. 1

## **Tab 2**

## **TECHNICAL PROPOSAL**

### **I. Experience of the Firm - Section 3.1.B. of the RFP**

Although the RFP does not request inclusion of business licenses in the Technical Proposal, Mateer Harbert affirmatively represents that it is authorized to do business in the State of Florida and meets the qualification requirements of Section 1.6. of the RFP.

Mateer Harbert is capable of assisting CFX in a wide range of areas. Since 1960, Mateer Harbert has been a full service law firm with a practice in administrative and governmental law, condemnation, corporate and business law, real estate and land development, construction litigation, and governmental relations. It can handle the matters in the Scope of Services attached as Exhibit "A" to the RFP.

The same skills and legal services Mateer Harbert provides to its private institutional clients will assist in the CFX representation. Some significant real estate transactions the firm has handled include the preparation of title work and the issuance of a loan title policy for a \$218,000,000.00 bond closing in metropolitan Orlando. It has represented a seller in a \$92,000,000.00 sale of a mixed use commercial, retail, and residential project in Orlando and a seller of medical office buildings in excess of \$20,000,000.00.

The transactions described above are just a few examples of the types of transactions that have been handled by the real estate department of Mateer Harbert. The firm has more than 25 years of experience in drafting, negotiating, and finalizing documents to consummate complex commercial real estate transactions. The firm's duties in that regard have also included the oversight of due diligence, title review (including resolving complex title defects), comprehensive plan and zoning compliance, environmental assessment review, and other related matters.

Mateer Harbert's experience representing governmental transportation-related planning and other governmental agencies will assist in the CFX representation. Since 1977, Mateer Harbert has served as general counsel to Metroplan Orlando. In the past, Mateer Harbert has represented Orange County in its right-of-way acquisitions, for a period of time in excess of 5 years, and has represented the Florida Department of Transportation in limited access takings. It has also represented the Greater Orlando Aviation Authority in condemnations related to the construction of new runways and clear zone protection. Although not condemnation related, it also represents the Orange County Tax Collector and the Orange County Property Appraiser. By virtue of this public sector practice, the firm is familiar with public records request compliance and complying with the administrative policies of public entities.

Although it has not recently represented governmental entities that acquire right-of-way, the firm has extensive experience representing the School Board of Orange County and Orange County Public Schools ("OCPS") in condemnation cases since 2005. In 2013, OCPS issued a Request for Proposal for legal services. Although several other law firms competed for that work, Mr. Small was part of one of the highly ranked joint proposals awarded the legal services contract. When he left his prior firm, the legal services contract with OCPS was assigned to

Mateer Harbert by the District's General Counsel. Thus since 2005, the lawyers comprising Mateer Harbert's legal team have represented the District in complex condemnation cases totaling in excess of \$50,000,000.00 in value.

The acquisition of real estate for educational purposes by OCPS is initiated by OCPS's Real Estate Manager and the Facilities Department. When negotiations are unsuccessful, OCPS and its legal counsel review the scope of the proposed public improvement project. Rarely does OCPS have construction plans available at this stage. In this preliminary phase, Mateer Harbert's responsibilities include recommending ways to minimize the impacts of the acquisition on the parcels that are needed. OCPS staff establishes a date by which it needs property to open a new school or renovate an existing campus.

Mateer Harbert then provides the Office of the General Counsel and senior OCPS staff with a detailed "worst case scenario" litigation budget which estimates the costs of land acquisition, including the value of the part taken and, when feasible, damages, along with soft costs such as owners' anticipated attorneys' fees and costs and OCPS's anticipated attorneys' fees and costs. The lawyers of Mateer Harbert have handled several OCPS condemnation cases which have involved multiple parcels with numerous parties represented by separate law firms. With this litigation background, Mateer Harbert has the experience to estimate effectively the litigation costs of high dollar amount condemnation cases. Mateer Harbert also regularly deals with accelerated condemnation schedules. This experience will assist CFX in this project.

Mateer Harbert retains the District's expert witnesses, provides them with legal instructions and direction, and manages the coordination and delivery of multiple appraisal and expert witness reports. Some of the District's acquisitions involved partial takings without construction plans. Mateer Harbert is experienced in dealing with projects, the engineering details of which are not final at the beginning.

Specific examples of cases demonstrating Mateer Harbert's expertise as condemnor's counsel follow:

1. **Gotha Middle School Expansion.** The District condemned three (3) acres of property from Joy and Michael McGinty, well known and sympathetic property owners who operated an aquatics and swim academy on Morton Jones Road. The property was surrounded on all sides by Gotha Middle School. The owners contested the taking and valuation of their property. The jury trial was extensively covered by WFTV TV. OCPS's trial position was \$1,050,000.00, and the owners sought \$2,500,000.00. OCPS successfully obtained a jury verdict of \$1,150,000.00.

2. **Edgewater High School Expansion.** This involved the successful representation of the District in one of the most complex condemnation cases involving a single parcel of property in the history of Orange County, Florida. As a result of this representation, the District saved in excess of \$10,000,000.00 in property acquisition costs and fees. OCPS was considering purchasing a shopping center north of the existing high school to expand the campus. While OCPS was identifying its property needs, the owners, Edgewater 3348, LLC, represented by GrayRobinson, P.A., purchased additional property, increasing the size of the parent tract and

making it more suitable for mixed used development. This litigation strategy by the owners and their counsel was designed to increase the District's land acquisition costs, and the owners made a pre-suit settlement demand of \$35,000,000.00, exclusive of fees and costs. Before receiving this settlement proposal, the office of the General Counsel, the Superintendent, and senior OCPS staff were provided with a detailed analysis estimating that the owners would seek compensation of between \$30,000,000.00 and \$33,000,000.00. Despite the owner's efforts to increase the District's land acquisition costs, the litigation strategy and valuation theory pursued by counsel successfully resulted in a favorable settlement for the District. Notwithstanding the owner's position and their efforts to increase the cost of the acquisition, the District retained marketing experts to forecast the demand for future mixed use development and likely absorption time. The District was then able to argue that, despite the property's land use, the period of time it would take to develop the property was so long that it did not support the owner's theory of valuation. The owner's theory was anticipated and countered even before the owner made its initial demand. The ability to anticipate the owner side's argument will assist CFX. The owners settled the case for \$27,860,000.00, only \$932,635.00 higher than the initial offer. The matter also involved a challenge to the taking and an inverse condemnation counterclaim. The District ultimately obtained a final judgment on its appraised value and defeated the inverse taking claim.

**3. Evans High School Expansion.** This condemnation involved the assemblage of multiple parcels of property from separate owners along the north side of Silver Star Road for the Evans High School expansion. The attorneys coordinated and reviewed numerous appraisal reports, land planning reports, contractor reports, billboard appraisals, and cell tower appraisals. Regarding the cell-tower appraisals, despite the fact that co-locator value data from cell tower owners was virtually impossible to obtain, a valuation analysis was developed which accurately reflected the value of the cell tower. This assisted OCPS staff in reconfiguring its design to avoid condemning the cell tower, thereby saving the District approximately \$1,250,000.00 to \$1,500,000.00 in property acquisition costs. In addition, because of the discovery of subsurface groundwater on approximately eight (8) acres of property originally sought for the project, the District abandoned the original proposed taking and redesigned the project. Notwithstanding these changes, title to all properties was acquired eight (8) months in advance of the date by which OCPS needed to begin construction on the property. During the litigation, Orange County indicated its interest in acquiring land for the future widening of Pine Hills Road. An inter-local agreement was negotiated with Orange County, Florida, which allowed OCPS to obtain reimbursement of a portion of its land acquisition costs from the County when the County widened Pine Hills Road. This also decreased the District's land acquisition costs by \$250,000.00. The total condemnation project, which involved multiple parties and parcels and a change in the project scope, was brought in under the litigation budget of \$13,365,000.00 and ahead of schedule. The ability to move quickly, shift direction rapidly, and provide cost effective service will also assist CFX.

**4. Wekiva High School.** This representation involved a joint condemnation of property by the District and the Orlando/Orange County Expressway Authority. The District condemned property needed for a new high school to relieve overcrowded conditions at Apopka High School. This condemnation occurred while OOCEA was acquiring title to property for the Maitland Extension. The District was assisted in coordinating the timing of its project with

OOCEA, and the representation assured that the OOCEA project would not adversely impact the school site.

5. **Horizon's West High School.** This matter involved the condemnation of 38.24 acres of property as part of an assemblage of property acquired by the District in 2004. The owner expressed an interest in retaining about 10 acres of property, and an agreement was negotiated under which the owner waived any severance damage claims, fees and costs, and accepted \$1,372,800.00 less than the District's appraised value of \$5,740,000.00.

6. **Florida Department of Transportation — Hungerford Elementary Acquisition.** This involved the representation of the Board and OCPS when the Florida Department of Transportation acquired a portion of the Hungerford Elementary School site while OCPS was in sensitive negotiations with the City of Eatonville to sell the site to the City. The Department's acquisition was for a retention pond in the uplands portion of the property. The pond location caused significant severance damages to the remainder because its location would have interfered with the future development of the property and would have adversely affected its value, thereby impacting OCPS's negotiations with the City. Mateer Harbert negotiated a joint pond utilization and modification agreement with the Department. That agreement allowed the reconfiguration or joint use of the pond when the property was ultimately developed, thereby mitigating severance damages. That joint use pond agreement has become a template used by District V for other acquisitions. The Department still paid the Board \$6,442,900.00 for the property, \$640,000.00 higher than the Department's initial appraisal. Mateer Harbert has the ability to negotiate complex development agreements in connection with condemnations which will assist CFX in this case.

Per Section 3.1.B.2. of the RFP, the following list specifically identifies eminent domain matters handled by Mateer Harbert for other governmental agencies within the last 3 years:

1. **Dr. Phillips Relief; 80-H-SW-4.** Mateer Harbert developed a detailed cost estimate which included land and improvement costs, severance damages, owners' expert fees and attorneys' fees, and the District's estimated expert fees, costs, and attorneys' fees for several different land acquisition options to build a new high school in the Dr. Phillips area. Depending on the option, the cost estimate could be well in excess of \$20,000,000.00. The acquisition will require the reengineering of a large 400 plus acre residential P.D. in the Dr. Phillips area located on the east and west side of Apopka-Vineland Road. The property owner had previously conveyed land for a middle school site to the District as part of a Capacity Enhancement Agreement. This land is located along the property's Apopka-Vineland Road frontage. In connection with pre-suit negotiations, OCPS staff and Mateer Harbert presented the owner with a proposal which involved the District returning the middle school site to the owner in exchange for dedicating other land in the P.D. to the District. The land to be conveyed by the owner will be adjacent to other property the District will purchase. These parcels will then be contiguous to one another and will allow for the joint use of some facilities for the middle school and high school. The pre-suit settlement will not require the District to buy new land from the developer, will afford the owner greater frontage along Apopka-Vineland Road, and will locate all educational facilities in an area of the development removed from the residences. The approach

pursued by Mateer Harbert avoids the need to file suit, benefits the private property owner, preserves the owner's development, and decreases litigation costs.

2. **Ocoee Elementary School Expansion; School No. 200-E-N-7.** Mateer Harbert represented the District in a condemnation case with Tom West, Inc. The District condemned about 6.5 acres to permit the expansion of Ocoee Elementary School. The Board's initial written offer was in the amount of \$710,000.00, although its trial position was \$599,875.00. The owner sought \$1,116,500.00, exclusive of fees and costs. Issues were raised concerning land use, the reasonable probability that the owner can obtain a land use change, the market demand for various uses of property, and the highest and best use of the property before the taking and after the taking. The District's exposure for compensation and fees and costs was in excess of \$1,275,000.00. The case was settled for a lump sum payment to the owner of \$975,000.00, including fees and costs.

3. **K-8; School No. 131-K-SW-5; Parramore Area.** As part of another pre-suit acquisition, Mateer Harbert provided legal support to OCPS's Real Estate Department for the acquisition of multiple parcels of property for a new K-8 school located next to the new Creative Arts Village. This acquisition was complicated by the fact that the school's timely opening was a high priority to the Board, the District's public and private partners, and the District's staff. Mateer Harbert was responsible for coordinating the delivery of and reviewing appraisal reports valuing over 20 separate ownership interests. The District successfully negotiated the purchase of all parcels, avoided condemnation, and did so without any delay to the construction start date.

4. **Akira Wood, Inc., etc. v. Environmental Consulting & Technology, Inc.; Case No.: CA 2012-710; Eighteenth Judicial Circuit.** Within in the past month, Mateer Harbert was retained to represent the State of Florida, Department of Environmental Protection ("DEP"), a named defendant in a multi-count complaint alleging various legal theories including strict liability, promissory estoppel, and inverse condemnation, including physical and regulatory takings. The plaintiffs are seeking compensation for damages to their large commercial and industrial buildings allegedly caused by sheet pile driving on the property. The sheet pile driving was performed as part of the remediation of on-site contaminants like coal-tar, petroleum, and other pollutants. The plaintiffs have presented a novel legal theory. They contend that DEP's mere approval of a remediation plan, which is required by statute and regulation, can subject it to liability under an inverse condemnation theory even if DEP does not supervise, manage, or direct the remediation plan. DEP reviews remediation plans for regulatory compliance and technical sufficiency, and it relies on the expertise of private remediation contractors in developing and executing the plan. It assumes no responsibility for directing or managing the remediation. This case presents important legal questions because it would make DEP the guarantor against damages for the actions of private entities over which DEP exercises no control merely because DEP is statutorily and by regulation required to approve a remediation plan. Under the plaintiff's theory, if the remediation plan was technically sufficient, DEP would be liable for damages if the remediation contractor negligently implemented the plan. Mateer Harbert filed a motion to dismiss the complaint and will begin the discovery phase of the representation.

Since Mateer Harbert does not confine its condemnation practice to public sector clients, it views any potential case for public clients by taking into account the perspective of the

property owner and private owners' legal counsel. Representing the District from this perspective has assisted the District in anticipating the owner's theory of the case. In the Dr. Phillips case, Mateer Harbert's ability to view a case from the perspective of an owner has proven invaluable in developing a case management plan which avoids litigation and decreases acquisition costs. Mateer Harbert believes this sort of case managing would assist CFX in this project.

Mateer Harbert has represented property owners in a wide variety of condemnation cases, including an owner whose property was bisected by a nearly one mile long corridor of a railroad right-of-way that serves the Curtis Stanton Power Plant. The case was tried to a jury on the issues of the value of the land taken and severance damages. The jury returned a verdict which adopted Mateer Harbert's theory of severance damages. The firm also represented at trial a property owner whose property was severely impacted by the Osceola Parkway and obtained a multi-million dollar verdict. In addition to right-of-way takings, the lawyers comprising the Mateer Harbert team have represented owners in valuation trials in regulatory takings cases and under the Bert J. Harris Property Protection Act. The firm represented an owner in a case involving the taking of several hundred acres of property in Escambia County acquired for the treatment of tertiary treated effluent. Collectively, the lawyers comprising the Mateer Harbert team have tried to jury verdicts over two dozen condemnation cases for private and public clients.

Notable results obtained by the lawyers of Mateer Harbert are not limited to merely monetary benefits. To represent private owners effectively in condemnation cases, particularly involving right-of-way takings, Mateer Harbert's lawyers need to have the competence to review construction plans and transportation planning reports and negotiate with the condemning authority to change plans. For many private clients, having their property impacted as little as possible is even more important than having a large monetary settlement or final judgment.

Significant non-monetary benefits have been obtained by Mateer Harbert. Obtaining non-monetary benefits requires focusing on a private client's objectives while assisting the governmental sector in achieving its objectives. The firm represented WESH-TV2 in pre-suit negotiations to convey land for the I-4 Ultimate project to the Florida Department of Transportation. This representation resulted in the preservation of WESH-TV2's helicopter landing pad. The firm also negotiated a pre-suit settlement on behalf of South Seminole Hospital for the S.R. 434 widening project. Its representation resulted in the Department redesigning an intersection in front of the property and adding additional turn lanes not originally included in the Department's design.

Another representation resulting in a significant non-monetary benefit involved the representation of Clear Channel Outdoor, Inc., during the I-4 widening project. The Department intended to acquire several billboards in Clear Channel's portfolio of outdoor advertising structures. An innovative approach was developed to create a pilot relocation program that allowed for the relocation of these structures instead of their outright acquisition. This program allowed Clear Channel to relocate sign structures and be paid for the costs of moving the structures and compensated for their decreased value because of impaired visibility. The program involved coordination with the state, District V, the Department Central Office, and the



City of Orlando. The Department initially estimated that the value of the structures was \$3,351,000.00, and Clear Channel estimated their value at \$6,629,635.00. The pre-suit settlement, which included fees and costs, permitted the relocation of the billboards and decreased the Department's costs by \$3,278,635.00.

In connection with the Department's I-75 widening project, the firm represented Mr. Rickie Fincher, the owner of approximately 100 acres of property on the east side of I-95, west of Dade City in Pasco County. The property had tremendous topography and extensive lake frontage. The parent tract had a future land use designation of EC, Economic Center, a mixed use land use category permitting residential, professional/office, and light industrial uses designed to encourage high density development at interchanges. Because of market conditions, the highest and best use of the property was for long term holding and investment pending future demand. The property owner lived on the property and maintained it as an equine estate, improved with a high end custom home, riding trails, and stables. This represented an interim use until the property was ripe for development. Of the 100 acres, about 60 acres was jurisdictional wetlands along the perimeter of the property leaving 40 acres of uplands in the middle.

The Department's plan to construct a 20 acre retention pond and compensating storage area in the middle of the uplands portion of the property would have seriously damaged the remainder's short-term and long-term development potential. Based on this proposed pond location, the Department's initial offer was \$556,000.00. Mateer Harbert resolved the case by identifying alternative locations for two new ponds on the property in lieu of the Department's original location. This case required coordination of revised construction plans developed by the civil engineer retained by Mateer Harbert and an understanding of pond siting design criteria and pond sizing calculations. Mateer Harbert needed to understand how the location of the 100-year flood plain elevation and the functional classification of wetlands on the property affected the alternative pond locations. The firm also prepared a detailed analysis demonstrating to the Department that its original design would result in the owner's trial position exceeding \$1,300,000.00. Although constructing two smaller ponds had somewhat higher construction costs for the Department, these additional costs were more than offset by the greater land acquisition costs which would have been spent based on the original design. The revised pond design is currently being constructed by the Department. The redesign suggested and coordinated by Mateer Harbert saved the Department money, allowed the project to proceed without delay, and preserved the owner's property.

In 2014, Mateer Harbert was retained by Meritage Homes of Florida, Inc., ("Meritage") and KB Home of Florida, LLC, ("KB Home") to represent them concerning the proposed extension of Osceola Parkway by the Osceola County Expressway Authority ("OCX"). Meritage was the owner and developer of two subdivisions, Fells Landing on Narcoossee Road and Lake Preserve on Ward Road. Fells Landing was substantially developed at the time of the representation. Meritage had obtained PSP approval of Lake Preserve and was constructing model homes and marketing the property at the time of the representation.

OCX was, and still is, in the PD & E study phase to consider several alignments for the extension of the Osceola Parkway, a component of which is a proposed western connector from

Osceola Parkway to S.R. 417. One proposed alignment along the existing Ward Road alignment would have bisected the Lake Preserve development. Lake Preserve, when completely platted, would have had 309 lots. The Ward Road alignment would have eliminated approximately 40 lots and left 269 non-contiguous landlocked lots in a subdivision bisected by a high speed elevated limited access roadway. KB Home had a property under contract just south of the Lake Preserve development. The proposed Ward Road alignment would have resulted in the loss of 24 lots and damages to 32 remaining lots. The drainage systems and internal roadways for both developments also would have had to been redesigned and reengineered.

Mateer Harbert extensively researched public records of OCX, the Orlando-Orange County Expressway Authority, the City of Orlando, Orange County, and the Greater Orlando Aviation Authority to develop a comprehensive project history. Mateer Harbert then developed a matrix for OCX's consulting engineer to consider concerning the project's costs, its consistency with local comprehensive land use plans, and the environmental impacts of the Ward Road alignment. The matrix demonstrated that the environmental impacts of the Ward Road alignment were greater than the impacts of the Boggy Creek alignment. A consulting engineer retained by the owners then proposed a different concept for the Western Connector adjacent to Boggy Creek Road.

The public records indicated that OCX did not include in its project cost estimates anything other than the right-of-way costs of properties directly impacted by the alignments. Acquisition cost factors (legal fees, etc.), severance damages, and business damages were not included. OCX estimated that its land acquisition costs for the Ward Road alignment of the Western Connector were about \$67,000,000.00. Mateer Harbert prepared an estimate considering the value of the lots lost, damages, and the acquisition costs that OCX would have to pay for its attorneys and experts and the owners' attorneys and experts. This estimate exceeded \$221,000,000.00. Relying on this information, OCX has recently re-estimated the land acquisition costs for the Ward Road alignment and found them to be in excess of \$230,000,000.00. Its Board and consultants have now indicated their preference for the Boggy Creek Road alignment. This representation required the firm to develop a solution which considered the concerns of its clients, major land-owning stakeholders along Boggy Creek Road, and OCX.

These examples demonstrate Mateer Harbert's desire to structure innovative ways to complete the project efficiently and in a financially responsible manner and its understanding of the governmental sector's planning of large scale public projects will assist CFX.

Per Section 3.1.B.3 of the RFP, there are no disciplinary, administrative, or malpractice claims or proceedings involving any of the lawyers or professional staff who will provide services to CFX under this proposal.

## **II. Experience of the Attorneys Assigned and Availability - Section 3.1.C. of the RFP**

This section of the Technical Proposal provides information concerning the key personnel in Mateer Harbert who will be responsible for the representation of CFX. Included with this Technical Proposal are resumes of the key personnel at Tab 3. Mateer Harbert

proposes to manage the representation of CFX with two partners in its Condemnation and Property Rights Practice Group and one partner in its Real Estate Practice Group. The key personnel in the Mateer Harbert team are identified below.

This section of the Technical Proposal outlines (1) the proposed function of the individuals involved in the representation, (2) their accessibility and availability during the course of the representation, and (3) their office location. This section contains information for both lawyers and paralegals.

Mateer Harbert will appropriately staff the case to avoid unnecessary duplication of attorney time. To achieve that goal, specific areas of responsibility have been identified for each member of the team. Each team member is located in the Orlando office. Each will be available and accessible to CFX during the course of the representation. All live locally and are available to work for CFX outside normal business hours. Each lawyer will provide the General Counsel, Deputy General Counsel, and senior CFX staff with personal cell phone numbers to be available on a round-the-clock basis. Each is committed to effective and aggressive representation of CFX.

#### **Lawyers**

##### **Jay W. Small**

**Function.** Jay W. Small, who has practiced primarily in the area of condemnation and property rights since being admitted to the bar in 1986, will be primarily responsible for this response. He has tried, to jury verdict, condemnation cases for condemning authorities and private property owners throughout the State of Florida, and he has argued, as chief appellate lawyer, cases before the Fifth and First District Courts of Appeal.

He also has significant experience dealing with real estate appraisals. He was appointed by Governor Jeb Bush to serve as a consumer member on the Florida Real Estate Appraisal Board and served as the Board's Vice-Chairman and Chairman. While serving as Chair, the Board completed a substantial rewrite of its administrative regulations. He is a frequent instructor for the Appraisal Institute. Last year was the primary instructor and course material author for an Appraisal Institute course dealing with the condemnation valuation of property and the reasonably probability of a comprehensive land use amendment.

He currently serves as the Chairman of the Orange County Bar Association's Real Property Committee, and in May he will be the instructor and instructional materials author for a major Orange County Bar Association CLE course dealing with development exactions and unlawful land use conditions.

He will act as the partner-in-charge during the term of this contract. He will assume responsibility for assuring all invoicing of legal services is in accordance with the contract and CFX policies and procedures and will have authority to address any questions or concerns which may arise with respect to billing. He will be the primary point of contact between CFX, the expert witnesses, and the Right of Way Committee and CFX Board. He will coordinate the case

management plans for acquisition. He will act as lead trial counsel and coordinate assigning all legal work to Mateer Harbert's lawyers.

**James R. Lussier**

**Function.** With almost thirty years' experience in eminent domain matters, James R. Lussier will provide senior case management assistance to Mr. Small in all aspects of the anticipated legal services. Mr. Lussier will work on all aspects of the assigned cases from the beginning of this representation through trial and appeal, if any. To the extent the workload will be divided between Mr. Small and Mr. Lussier, it will be continuously coordinated so that consistent methodologies and case prosecution result.

**Matthew J. Brown**

**Function.** Matthew J. Brown's background and experience is in litigation, real estate, and development, with over forty past trials, most of which were before juries. He will be the senior litigation associate providing litigation support under this contract.

Mr. Brown will be responsible for producing drafts of complaints, legal memoranda, and other pleadings, as well as resolutions. He will also be responsible for researching legal issues when necessary. Mr. Brown will be directly involved in fact investigation and discovery matters, including review of public records, site visits, and evaluations, and both propounding and responding to written discovery requests. As directed he will be responsible for select court hearings, depositions, and obtaining witness statements, and he will coordinate work product of experts. Mr. Brown may assist at trial or evidentiary hearings.

**Leslie A. Evans**

**Function.** Leslie A. Evans is a junior associate who will assist with the litigation aspects of this contract. She will be responsible for conducting legal research, preparing legal memoranda, and drafting pleadings, along with any other assignments delegated to her by Messrs. Small and Lussier. She will participate in fact investigations and discovery matters as directed.

**Thomas R. Harbert**

**Function.** Thomas R. Harbert is the managing partner in charge of the firm's Real Estate Practice Group. He will be responsible for managing and supervising all aspects of the transactional portion of this representation, as well as personally handling specific acquisitions at the request of the client.

Mr. Harbert has over 25 years of experience practicing real estate law, both in Florida and Georgia. His practice specializes in negotiating and closing large commercial real estate transactions of both vacant and developed property. He also represents lenders in complex commercial real estate lending transactions. Mr. Harbert has extensive experience resolving title and survey matters and has relationships with several large title insurance underwriters in the

Central Florida area. He has also negotiated and drafted closing documents related to the pre-condemnation acquisition of private property by public entities.

#### **Melissa Cupps Battles**

**Function.** Melissa Cupps Battles is an associate in the firm's real estate practice group. She will provide counsel on all aspects of the transactional portion of this representation, as well as handle specific acquisitions at the request of the client. Ms. Battles has eight years of experience practicing in the area of commercial real estate. She counsels clients on a wide range of complex real estate matters, including all aspects of the acquisition, disposition, development, leasing, and operation of commercial properties. Her duties will include negotiating and drafting purchase and sale agreements and closing documents, as well as due diligence, title review, and may include environmental assessment review.

#### **Paralegals**

##### **Shannon Marshall**

**Function.** Ms. Marshall will be working closely with the attorneys and assisting them in the representation of CFX in the condemnation process, both prior to initiation of condemnation proceedings and during those proceedings. She will manage the attorneys' calendars and schedule meetings, telephone conferences, site visits, and deadlines. She will organize and manage the files both electronically and through hard copy filing and will assist in the drafting of pleadings, correspondence, and any other requested documents.

She is also experienced in handling commercial and residential real estate transactions and condemnation cases and will assist with review of contracts, prepare timelines, review title searches and surveys, assist attorneys to clear title and survey objections, draft title commitments and policies, and draft real estate closing documents.

##### **DeAnna Malinowski**

**Function.** Ms. Malinowski's background and experience is in litigation, including complex construction, foreclosures, condemnation, administrative, real estate, civil rights, and malpractice cases. She has managed documents for numerous state and federal court trials. She will provide legal support to all attorneys under this contract. Primarily, Ms. Malinowski will be responsible for document management, discovery, and organization such as indexing depositions and organizing case law and documents for hearings, mediation, and trial as necessary and directed by the attorneys under this contract.

Per Section 3.C.2 of the RFP, required client references are included in this proposal at Tab 4.

### **III. Approach to Assignment. - Section 3.1.D of the RFP**

This section of Mateer Harbert's response describes its approach to quality control and effective and efficient client servicing, along with the availability of the attorneys to attend group work sessions, scheduled meetings, and impromptu discussions. It also provides a preliminary case management plan for the representation and, to the extent possible given the information provided in the RFP, a plan for each parcel through closure.

The experience of the partners managing this representation is the chief determinant of quality legal representation. Quality control also requires that the client be fully informed about the management and progress of its case. In recognition of this, the firm culture of Mateer Harbert includes the commitment by its lawyers to be client focused and results driven. That commitment contemplates that CFX's staff, consultants, and General and Deputy General Counsel will be integral members of the case team. It is, and always has been, the firm's practice to assure that its clients are fully informed about the status of their case and copied on all substantive correspondence. Discussed below is the firm's plan to schedule regular status conferences, at least through the earliest stages of the representation. This will afford CFX an opportunity to monitor the progress of the representation.

Furthermore, Mateer Harbert will provide no less than quarterly written status reports to the General Counsel and Deputy General Counsel discussing significant legal and valuation issues, the progress of the case in terms of pre-suit actions, court filings, and hearings, and a description of future actions required to be undertaken as part of the representation. In addition, Mateer Harbert recommends that either the General Counsel or Deputy General Counsel appear as co-counsel in any condemnation case the firm files. Finally, if requested by CFX and if feasible depending on systems compatibility, Mateer Harbert can provide the General Counsel and Deputy General Counsel with a secure, encrypted access link to the firm's Intranet system so that CFX has round-the-clock access to the firm's electronic files pertaining to the representation.

Mateer Harbert is also committed to delivering efficient and cost effective legal services to CFX. The firm is committed to containing litigation costs. Mateer Harbert's practice has been, and will continue to be, to staff cases appropriately. Without prior CFX approval, the firm will not bill CFX for more than one attorney to prepare for and attend depositions. It will not bill CFX for multiple attorneys to attend hearings or mediation. It will not bill for joint attorney conferences or meetings. Mateer Harbert is prepared to continue these practices as part of its agreement with CFX. These are not insubstantial concerns. Recent Florida appellate court decisions have raised justifiable concerns about the attorney's fees incurred by condemnors because these can have a direct relationship on the attorney's fees incurred by condemnees. Ultimately, all of these fees are borne by the public, and Mateer Harbert remains cognizant that CFX is a steward of public funds.

Mateer Harbert is aware that CFX has already retained expert witnesses and charged them with the responsibility of producing appraisal reports. Without knowing the scope of their assignments or the data upon which their reports are prepared, no opinion can be offered about their legal sufficiency or persuasiveness to a jury. Absent an early pre-suit settlement, these

reports will need to be updated before suit is filed. Given CFX's need to complete this project in a timely manner and therefore the need to assure sufficient reports, it is Mateer Harbert's plan to schedule regular meetings or conference calls, no less than on a bi-weekly basis, to assure that all updated appraisal reports and expert witness reports are coordinated and delivered in a timely manner. It is anticipated that participants in those regular meetings or conference calls will include counsel, a representative of the Office of General Counsel, the expert witnesses, Ms. Deborah D. Keeter, Mr. William K. Hurt, Jr., and CFX's engineering consultants.

The availability of the lawyers to attend group meetings is largely covered in the response to Section 3.1.C.1. of the RFP. Mateer Harbert is confident that it has dedicated the man-power resources to this potential representation to guarantee the availability of one of the senior attorneys from the list above who is knowledgeable about the case. It would be our expectation, however, that Messrs. Small or Lussier will be primarily responsible for attending any meetings described in section 3.1.D. of the RFP.

Per Section 3.1.D of the RFP, the case management plan is included in this proposal at Tab 5.

### **Tab 3**



## **RESUMÉ**

### **JAY W. SMALL**

225 E. Robinson Street, Suite 600  
Orlando, Florida 32801  
(407) 425-9044  
E-mail: [jsmall@mateerharbert.com](mailto:jsmall@mateerharbert.com)

## **EMPLOYMENT**

### **Mateer Harbert (2013-present)**

#### *Partner*

Practice in eminent domain, administrative, and land use law.

### **Wilson, Garber & Small, P.A. (2002-2013)**

#### *Partner*

Practice in eminent domain and administrative law.

### **Wilson, Leavitt & Small, P.A. (1993-2002)**

#### *Partner*

Practice in eminent domain and administrative law.

### **Brigham, Moore, Gaylord, Wilson, Ulmer, Schuster & Sachs, P.A. (1990-1993)**

#### *Litigation Associate*

Practice in eminent domain.

### **Foley & Lardner, van den Berg, Gay, Burke, Wilson & Arkin (1986-1990)**

#### *Litigation Associate*

Practice in eminent domain; commercial foreclosure; and general commercial litigation.

### **Foley & Lardner, van den Berg, Gay, Burke, Wilson & Arkin (1985)**

#### *Law Clerk*

Responsibilities included drafting research memoranda, filing court pleadings and general file investigation. Assignments involved litigation, real estate and corporate law.

### **John A. Barley & Associates, Tallahassee (1984)**

#### *Law Clerk*

Responsibilities included legal research, drafting and filing pleadings and appellate briefs and general file investigation.

## **EDUCATION**

J.D. (1985) **University of Florida** (Gainesville, FL) (*with Honors*)

B.A. (1982) **University of Florida** (Gainesville, FL) English, 3.74 GPA

## ***PROFESSIONAL***

### ***Public Clients***

School Board of Orange County and Orange County Public Schools regarding acquisition of approximately \$50,000,000.00 worth of property for expansion of school facilities including Apopka Relief High School, Edgewater High School, Evans High School, Gotha Middle School, Walker Middle School, Ocoee Elementary School.

Greater Orlando Aviation Authority acquisition of property for expansion, additional runways and clear-zone protection.

St. Johns River Water Management District acquisition of property for upper St. Johns River Water Management District.

City of Ocoee, City of Orlando, City of Deltona, City of Port Orange regarding expansion of municipal facilities, community redevelopment, and inverse condemnation claims.

### ***Private Clients***

Twenty-five (25) years of experience representing property owners and condemning authorities in condemnation cases throughout the state of Florida. Trial and appellate court experience representing private developers, landfill owners and operators, national convenience store owners, retail establishments and single family residential homeowners, outdoor advertising companies and cellular communication tower owners.

## ***BAR ADMISSIONS, ASSOCIATIONS AND RECOGNITIONS***

Florida Bar Member (1986)

Eminent Domain Committee (1989-present)

Environmental and Land Use Committee

U.S. District Court, Middle District of Florida (1988)

United States Circuit Court of Appeals, Eleventh Circuit (2000)

Member Orange County Bar Association

Chairman, Real Property Committee

American Bar Association

Litigation Section

AV rated by Martindale-Hubbell

Association of Eminent Domain Professionals

Best Lawyer's in America since 2007

Orlando's Best Lawyers since 2007

Foundation for Seminole County Public Schools (2013-present)

Florida Real Estate Appraisal Board (2003-2008)

Vice-Chairman (2004-2005)

Chairman (2006-2007)

## ***PUBLICATIONS AND PRESENTATIONS***

Author, "*Eminent Domain Case Law Update*," Association of Eminent Domain Professionals, Winter 2013.

Author, "*Severance Damages*," ALI-ABA CLE course, Fall 2013,

Author, "*Valuation of Property During Abnormal Market Conditions*," East Florida Chapter of the Appraisal Institute, July 2011.

Lecturer, Appraiser as an Expert Witness, The Appraisal Institute, June 2011.

Author and Speaker, "*The Role of Uniform Standards of Professional Appraisal Practice ("USPAP") in Litigation*," The Appraisal of Real Estate Seminar, May 10-11, CLE- International 2004.

Speaker, Current Issues Regarding Chapter 457, Part II, Fla. Stat. 6131 Florida Administrative Code and Condemnation Appraisals, ALI-ABA CLE course, Spring 2004.

Co-Author, "*Community Redevelopment Projects - Recent Case Law & Practical Guide*," Eminent Domain Seminar, ALI-ABA, January 2002.

Speaker, Ethics in Appraising, Association of Eminent Domain Professionals, June 22, 2001.

Speaker, Orange County Bar Association and Central Florida Association of Environmental Professionals, March 15, 2001.

Author, "*Florida Condemnation Valuation and Appraiser Liability*," Seminar for East Florida Chapter of the Appraisal Institute, April 1997; Seminar for Appraisal Institute, August 1997; Seminar for National Business Institute, October 1997.

Instructor, Florida Eminent Domain Valuation and Appraiser Liability, The Appraisal Institute, May 19, 1997.

Author, "*Special Benefits and Project Enhancement*," Seminar for Association of Eminent Domain Professionals, March, 1995.

## ***COLLEGE HONORS AND ACTIVITIES***

### ***Law***

Moot Court - Best Brief Award for Outstanding Written Argument, Fall, 1983

Intramural Cup Competition

Vice-chairman for Moot Court Board Administration, Spring Semester 1985

Semi-finalist ABA Law Student Division National Appellate Advocacy

Championship, Washington D.C., August, 1985

Dean's List, four semesters  
Honors in Appellate Advocacy, Spring Semester 1983

***Pre-Law***

Dean's List 9 terms, President's List 2 terms  
Phi Eta Sigma and Sigma Tau Sigma honor societies  
English department representative on college student council  
Director of College of Liberal Arts and Sciences composition tutor service

4833-6577-2579, v. 1

## **RESUMÉ**

### **JAMES R. LUSSIER**

225 E. Robinson Street, Suite 600

Orlando, Florida 32801

(407) 425-9044

E-mail: [jlussier@mateerharbert.com](mailto:jlussier@mateerharbert.com)

## ***EMPLOYMENT***

### **Mateer Harbert (1985 - present)**

#### *Partner*

Practice in eminent domain, intellectual property, real estate, land use law, civil litigation, arbitration.

### **Administrative Office of the U.S. Courts**

#### *Judicial Law Clerk (1983-1985)*

Honorable John A. Reed, Jr., U.S. District Court Judge (deceased)

### **United States Navy**

(1974-1980 active duty; 1980 – 1983 reservist)

Lieutenant Commander

Naval Aviator (SH-3 Aircraft Commander)

U.S. Naval Officer Programs Recruiter

## ***EDUCATION***

J.D. (1982) **University of Florida** (Gainesville, FL)

B.A. (1974) **University of Notre Dame** (South Bend, In.)

## ***PROFESSIONAL***

Jim Lussier's initiation to the legal profession as a judicial law clerk at the U.S. District Court exposed him to numerous areas of practice, many of which he has been able to pursue over his thirty year career. Eminent domain work has made up a significant portion of his practice. He has represented dozens of land owners and worked on hundreds of parcels. His civil practice otherwise includes a wide variety of litigation and transactional matters. He has tried over a dozen cases to juries, and numerous more before judges and arbitrators. His cases have ranged from large, multi-party construction disputes to inverse condemnation and direct condemnation matters. He regularly handles intellectual property litigation and administration in the areas of trade secrets, copyright and trademarks. He has been involved in a wide variety of commercial matters, including contracts, real estate, and other business disputes. His office practice includes residential and commercial real estate contracts and closings, corporate formation and other business matters. He regularly serves as an arbitrator for the American Arbitration Association.

### ***BAR ADMISSIONS, ASSOCIATIONS AND RECOGNITIONS***

Florida Bar Member (1983)  
Eminent Domain Committee (1990-present)  
U.S. District Court, Middle District of Florida (1985)  
United States Circuit Court of Appeals, Eleventh Circuit (2004)  
Orange County Bar Association (1985)  
Young Lawyers Section (Chair, 1987)  
American Bar Association  
Intellectual Property Section  
Arbitrator, American Arbitration Association (Construction and Commercial)  
AV rated by Martindale-Hubbell  
Commercial Pilot (fixed wing and helicopter)  
City of Orlando  
Board of Zoning Adjustment, Chair  
Public Arts Advisory Board, Co-Chair  
Downtown Orlando Partnership (President, 1997)  
Downtown Arts District, Inc. (President, 2004)  
Central Florida Theatre Alliance (Director)  
Orlando Visual Artists' League, Inc. (President 2004-6).

### ***PRESENTATIONS***

Mr. Lussier regularly makes presentations to business and civic groups on legal topics, including:

Trademark and Copyright Issues and Protections.  
Cybersecurity liability and Protections  
Electronic Discovery

Groups addressed include:

Florida Writer's Association Convention  
SNAP! Photographer's Forum  
Florida Institute of CPAs (Orlando and State meetings)  
International Christian Film Festival

## **RESUMÉ**

### **MATTHEW J. BROWN**

225 E. Robinson Street, Suite 600

Orlando, Florida 32801

(407) 425-9044

Cell (407) 619-1281

E-mail: [mbrown@mateerharbert.com](mailto:mbrown@mateerharbert.com)

## **EMPLOYMENT**

### **Mateer Harbert (2007 – Present)**

#### *Associate Attorney*

Practice in civil litigation, real property, business, contracts, and construction.

Examples of civil litigation subjects include various property title defense cases, actions to quiet title, commercial landlord/tenant disputes and evictions, business and breach of contract, and past county tax collection in eminent domain matters.

### **WB Development Services, LLC and O & B Commercial Development, LLC (2003-2007)**

#### *In-House Counsel/Project Manager*

Various duties including contract preparation, review and negotiation, land use and zoning, legal research, and project management.

### **J.A. Jurgens, P.A. (2002-2003)**

#### *Litigation Attorney*

Practice in environmental and commercial litigation.

### **Seminole County State Attorney's Office (1998 – 2003)**

#### *Assistant State Attorney/Prosecutor*

Positions included case intake and filing decisions, police department liaison (Winter Springs, Oviedo, Longwood, and Altamonte Springs) and trial attorney (misdemeanor and felony).

Tried over 40 cases, mostly before juries.

1999 Top DUI Enforcement Award from MADD

### **Internship with Circuit Judge Dave Seth Walker (1998)**

#### *Judicial Intern*

Research legal issues and report same to Judge.

### **Stetson University College of Law (1997)**

#### *Teaching Fellow/Research Assistant for Research and Writing I*

Preparing research assignments and review of student work.

### **WELBRO Construction Co. (now WELBRO Building Corp., Inc.) (1986-1997)**

Various positions in Family-owned business, including laborer, runner, mason's tender, marketing assistant, accounting assistant, and estimating assistant.

### ***PROFESSIONAL***

Matthew Brown grew up and worked in various areas and aspects of the construction industry, the son of a local commercial contractor. After completing his BSBA in Economics and his Juris Doctorate Degree, Matthew worked as an Assistant State Attorney in Seminole County. While there he tried numerous jury cases at both the misdemeanor and felony levels, and was for a time the liaison to several police departments. Briefly turning to civil law, Matthew then took advantage of an economic opportunity to work in real estate development in new family businesses. In addition to assisting in project management, he handled many of the companies' legal matters including contracts, real estate concurrency, variances, and other applications to and approvals from government entities. Developments included small box, triple-net leases for established chains, shopping centers, and work on condominium projects prior to the slowdown in the economy. He joined Mateer Harbert in 2007.

His practice includes civil litigation in the areas of real estate, business, contracts, construction. Landlord/tenant matters, tax collection (including in eminent domain proceedings) and assessment issues for the Orange County Property Appraiser and the Orange County Tax Collector, tort, contract and construction lien litigation.

### ***EDUCATION***

J.D. (1998) Stetson University College of Law (St. Petersburg, FL)  
Graduated *Cum Laude*; Honors in Research and Writing  
B.S.B.A. (1995) University of Central Florida (Orlando, FL)  
Economics; 3.44 GPA

### ***BAR ADMISSIONS, ASSOCIATIONS AND RECOGNITIONS***

Florida Bar Member (1998)  
U.S. District Court, Middle District of Florida  
Orange County Bar Association  
Kiwanis Club of Central Orlando – Current President and Past Vice President  
Orlando Jaycees/Junior Chamber of Commerce – Past Board Member and Member



## **RESUMÉ**

### **LESLIE A. EVANS**

225 E. Robinson Street, Suite 600

Orlando, Florida 32801

(407) 425-9044

E-mail: [levans@mateerharbert.com](mailto:levans@mateerharbert.com)

## **EMPLOYMENT**

### **Mateer Harbert (2014 - present)**

#### *Associate Attorney*

Practice in civil litigation, real estate and land development, intellectual property, and health care

## **PROFESSIONAL**

In her third year of law school, Leslie served as an Articles Editor of the Wake Forest University Journal of Business and Intellectual Property Law. She managed fifteen journal staffers and meticulously reviewed and revised articles prior to their publication in the Journal. She also participated as a student clinician in the Wake Forest University Community Law and Business Clinic. During her time at the Clinic, under the supervision of the Clinic director, she assisted local small businesses with various matters including drafting agreements, forming business entities, and negotiating an amendment to an existing trademark registration. She additionally gave presentations on intellectual property law to a local artists' organization and to art students at the nearby Winston-Salem State University.

After completing law school, she joined Mateer Harbert. She practices in the areas of civil litigation, real estate and land development, intellectual property and healthcare law.

## **EDUCATION**

### **J.D. (2014) Wake Forest University (Winston-Salem, NC)**

Articles Editor, Journal of Business and Intellectual Property Law (2013 – 2014)

### **B.S. (2010) Florida State University (Tallahassee, FL)**

Economics with a minor in Information Technology, summa cum laude, 2010

Finance, summa cum laude, 2010

## **BAR ADMISSIONS, ASSOCIATIONS AND RECOGNITIONS**

Florida Bar Member (2014)

Orange County Bar Association

2013-14 Recipient of the North Carolina Association of Women Attorneys Scholarship

4844-5681-5907, v. 1

## RESUMÉ

### THOMAS R. HARBERT

225 E. Robinson Street, Suite 600

Orlando, Florida 32801

(407) 425-9044

E-mail: [tharbert@mateerharbert.com](mailto:tharbert@mateerharbert.com)

## EMPLOYMENT

### Mateer Harbert (1993 - present)

*Partner; Firm Executive Committee/Managing Partner*

Practice in Real Estate & Land Development; Corporate & Business; Banking; Contracts

### Robinson & Harbert (1987 - 1993)

*Partner*

Practice in General Civil Matters; Real Estate & Land Development; Corporate & Business

## PROFESSIONAL

After being raised in Orlando, Tom Harbert began his legal career in Atlanta, Georgia. His small firm handled commercial real estate matters as well as general business transactions and civil litigation. Family ties and professional opportunities in Orlando caused him to return to Orlando in 1993, when he joined the firm his father founded in 1960. Tom has assumed the leadership of the firm as Managing Partner. He has helped manage the Firm's growth to its current 30 lawyers in two cities.

His practice focuses on complex real estate transactions. His duties include drafting and negotiating closing documents, due diligence, title review, remedy complex title defects, comprehensive plan and zoning compliance, environmental assessment review and other related matters. He has served as closing agent and title agent in numerous multi-million dollar real estate transactions. His practice includes all aspects of commercial loan closings including drafting of all loan documents, due diligence, acting as closing agent and other related lending matters. He represents landlords and tenants in negotiation of complex commercial leases, commercial lenders, large institutional land owners, and development entrepreneurs. His expertise extends to areas of banking and bond finance.

## EDUCATION

J.D. (1987) Emory University (Atlanta, GA)

BA (1984) Vanderbilt University (Nashville, TN) Economics

## BAR ADMISSIONS, ASSOCIATIONS AND RECOGNITIONS

Florida Bar Member (1989)  
Georgia Bar Member (1987)  
U.S. District Court, Northern District of Georgia (1988)  
U.S. District Court, Middle District of Florida (1989)  
Orange County Bar Association  
American Bar Association  
Rotary Club of College Park (President, 1999)  
Vistage (2009 – present)  
NAIOP (2009 – present)  
AV rated by Martindale-Hubbell  
St. Michael's Episcopal Church (Warden & Vestry member)

4810-8452-9955, v. 1

## **RESUMÉ**

### **MELISSA CUPPS BATTLES**

225 E. Robinson Street, Suite 600

Orlando, Florida 32801

(407) 425-9044

E-mail: [mbattles@mateerharbert.com](mailto:mbattles@mateerharbert.com)

## ***EMPLOYMENT***

### **Mateer Harbert (2007 - present)**

*Associate Attorney*

Practice in Real Estate & Land Development; Contracts; Health Care

### **Mateer Harbert (2006)**

*Summer Associate*

Perform legal research and draft legal documents. Assist in all aspects of representation with regard to various civil matters.

### **Judicial Internship, Thirteenth Judicial Circuit, Hillsborough County, Florida (2005)**

*Intern to Judge Ronald Ficarrotta*

Perform legal research and draft legal documents. Observe court proceedings.

## ***PROFESSIONAL***

A graduate of the University of Central Florida, Ms. Battles began her legal career after graduation from the University of Florida law school. A summer associate position at Mateer Harbert turned into an offer for full time employment after graduation.

Her practice focuses on commercial real estate transactions. She counsels clients on a wide range of complex real estate matters, including all aspects of the acquisition, disposition, development, leasing, and operation of commercial properties. Her duties include negotiating and drafting purchase and sale agreements and closing documents, as well as due diligence, title review, environmental assessment review, Florida transaction taxes, and related matters. She represents landlords and tenants in negotiation of complex commercial leases, including office, retail, and industrial leases, and the resolution of lease disputes. She has extensive experience handling real estate matters for a large hospital system, including the negotiation of purchase and sale contracts and leases, ensuring compliance with state and federal healthcare regulations, and resolving issues regarding tax assessments and exemptions.

## ***EDUCATION***

JD, *cum laude* (2006) University of Florida (Gainesville, Florida)

Journal of Law and Public Policy

BA (2003) University of Central Florida (Orlando, Florida) Political Science

SGA Judicial Advisor, SGA Senator, Greek Woman of the Year 2002, Golden Rule Review Committee, Admissions and Standards Committee, SOAR Advisor

***BAR ADMISSIONS, ASSOCIATIONS AND RECOGNITIONS***

Florida Bar Member (2007)  
Orange County Bar Association  
Orange County Bar Association, Real Property Committee Executive Council  
NAIOP (2012 – present)  
Leadership Orlando, Class 76  
Legal Aid Society of the Orange County Bar Association, Volunteer (2007 – present)

4831-1248-0547, v. 1

## **RESUMÉ**

**SHANNON M. MARSHALL**  
225 E. Robinson Street, Suite 600  
Orlando, Florida 32801  
(407) 425-9044  
smarshall@mateerharbert.com

### **EMPLOYMENT**

#### **Mateer Harbert (2010 - Present)**

##### *Paralegal*

Assist a team of attorneys in all matters regarding condemnation/eminent domain, including drafting pleadings, client correspondence and other necessary documents, managing document collection by both electronic and hard copy filing, communicating with team to ensure proper documents are received and in order, research property records, prepare timelines, organize depositions, consultations, hearings, and conferences by maintaining the attorneys' calendars. Assist with real estate transactions including negotiations, contracts, leases, pre-closing, closing and post-closing. Review title commitments and surveys and assist in the clearing of title/survey objections. Prepare title policies, endorsements, and closing binders and indexes. Perform similar duties for other forms of civil litigation and arbitration. Assist in administration of firm's intellectual property practice. Experience with probate and estate matters. Proficient in information technology and trial presentation technology. Preserve client relationships by providing excellent customer service and protecting their confidential information.

#### **Akerman Senterfitt (2006-2009)**

##### *Commercial Real Estate Paralegal*

Duties included assisting in all matters regarding commercial real estate, including negotiations, reviewing contracts, amendments, and leases. Prepared checklists, title commitments, title/survey summaries, all closing documents, and title policies, endorsements, and closing binders and indexes.

#### **Pierce and Associates, P.A. (2005-2006)**

##### *Legal Secretary*

Performed administrative duties such as court filings and preparation of legal documentation, and heavy filing. Managed calendar and organized client consultations, depositions, hearings and real estate closings.

### **EDUCATION**

Valencia Community College (2006)  
Associates in Arts degree

## RESUMÉ

### DeANNA L. MALINOWSKI

225 E. Robinson Street, Suite 600

Orlando, Florida 32801

(407) 425-9044

E-mail: [dmalinowski@mateerharbert.com](mailto:dmalinowski@mateerharbert.com)

## EMPLOYMENT

### Mateer Harbert (2009 – Present)

#### *Litigation Paralegal*

Provide support to attorneys in firm with all aspects of civil litigation. Examples of civil litigation subjects include various condemnation, malpractice, construction, product liability, in both state and federal court. Work involves indexing depositions, organizing discovery responses, case management, preparation of case law and documents for hearings, mediation and trial.

### Cooney, Mattson, *et al.* (2005-2009)

#### *Litigation Paralegal*

Involved in providing assistance to attorneys in malpractice, construction litigation and insurance defense cases.

### Gurney & Handley, P.A. (1994-2005)

#### *Litigation Paralegal*

Involved in providing assistance to attorneys in malpractice, civil rights and insurance defenses cases.

## EDUCATION

B.S. (1986) University of Central Florida (Orlando, FL)

(Allied Legal Services)

A.A. (1984) Edison Community College (Ft. Myers, FL)

(General Business)

## ASSOCIATION AND RECOGNITION

Orlando Jaycees/Junior Chamber of Commerce – Past President and Member

Florida Jaycees – Past Board Member and Member

Christian Service Center Volunteer

Junior Chamber International Senator #60050

Notary Public 1982 to Present

Florida Real Estate Sales License 1982-1992

## **Tab 4**



### **References**

Per section 3.1 C.2.b., this section of the Technical Proposal provides the firm's references.

1. **Orange County Public Schools**  
445 West Amelia Street  
Orlando, FL 32801  
Diego Rodriguez "Woody"  
General Counsel  
(407) 317-3335
2. **Orange County Public Schools**  
445 West Amelia Street  
Orlando, FL 32801  
Eileen D. Fernandez  
Associate General Counsel  
(407) 317-3200 x 2945
3. **MetroPlan Orlando**  
315 East Robinson Street  
Orlando, FL 32801  
Harold W. Barley  
Executive Director  
(407) 481-5672 x313

## **Tab 5**

### **Case Management Plan - Section 3.1.D of the RFP**

The development of a case management plan requires input from CFX's staff and General Counsel or Deputy General Counsel. It would be our expectation that the following preliminary case management plan will be revised based on their input. In developing a case management plan, it is assumed that the reports that CFX is already obtaining will not require significant changes. Although many aspects of the representation will be handled in parallel with one another, Mateer Harbert's initial focus will be directed to the following tasks, and they merit a brief separate discussion. To avoid the disclosure of attorney work-product/mental impressions and because only documents provided in RFP have been reviewed, the discussion is necessarily general in nature. Mateer Harbert anticipates accomplishing the tasks listed below within the first sixty (60) days of its being retained.

1. **Public Purpose and Statutory Delegation.** Rendering a legal opinion on public purpose will be one of the first tasks to be accomplished in the representation. In the Draft Environmental Impact Statement ("DEIS"), AAF concedes that its project is dependent on the ability of CFX to condemn property to accommodate the proposed rail corridor since AAF, as a private entity, has not been delegated eminent domain powers by the Legislature. Because of the public-private nature of the AAF project, after the amendment of Article X, Section (6) of the Florida Constitution, CFX may face a public purpose challenge, especially if an owner wants to leverage a challenge to achieve a high settlement. Subject to direction by the General Counsel or Deputy General Counsel, a legal opinion will also need to confirm CFX's delegated authority to acquire the land for the stated purposes and for operation of an intermodal transportation corridor.

2. **Easement Review.** Related to the preceding task, another task to be accomplished early in the representation is a review of the terms of the proposed easements described in the Scope of Services attached as Exhibit "A" to the RFP. Unless directed otherwise by CFX, it is anticipated that these instruments will be reviewed, not only to determine whether they create any public purpose issues, but also for legal sufficiency. Review of the legal sufficiency of the easement will be handled under the supervision of Thomas R. Harbert, who will coordinate the transactional part of the representation.

3. **Construction Plan Review and Appraisal Review.** Review of these documents is necessary to determine construction and necessity issues. Review of the construction plans is also important in evaluating the sufficiency of the appraisal reports because severance damages can only appropriately be estimated based on the type of public improvements to be constructed within the new right-of-way. Since each of the proposed takings is a partial taking, severance damages must be considered by CFX's appraiser. There is not enough information provided to allow for a definitive opinion whether the takings cause damages or the amount thereof. However, it should be anticipated that the owners' counsel will raise the issue of severance damages. Severance studies may need to analyze sales of properties located next to similar high speed inter-city rail corridors with similar highest and best uses, future land uses, and densities as the subject properties. Consideration may also have to be given to the intermodal nature of the facilities to be constructed in the right-of-way including the fact that potentially they will allow for the construction, operation, and maintenance of freight and commuter rail transit.

Additionally, Mateer Harbert has developed a case management plan for the potential representation which contemplates several target dates. This case management plan is based solely on the information provided in the RFP. These target dates are provided for planning purposes only and are subject to revision. These dates do not account for unforeseen circumstances. Any case management plan is dependent on numerous factors beyond the control of counsel such as the sufficiency of expert witness reports already being obtained, the review of the items separately identified above, the court's docket, the dates and agenda deadlines of CFX's Board, and the cooperation of the property owners and their counsel. The case management plan divides the scope of the representation into three distinct phases: (1) pre-suit; (2) pre-order of taking and order of taking; and (3) post-order of taking and trial.

#### **Pre-Suit**

<b>Task</b>	<b>Target Date</b>
Review and update title work, initial meetings with experts	30 days after retention
Pre-suit notices	30 days after retention
Prepare preliminary suit package	30 days after retention
Resolution of necessity	July 31, 2015
Initial offer	August 3, 2015
Pre-suit negotiations	September 11, 2015
Update title work	September 11, 2015

The tasks above will be performed in parallel to the tasks discussed on pages 11 and 12 of this Technical Proposal.

#### **Pre-order of Taking and Order of Taking**

<b>Task</b>	<b>Target Date</b>
File suit	September 14, 2015
Order of taking	December 14, 2015
Notice of deposit	January 4, 2016

Either shortly before or after suit is filed, follow up meetings with experts will be scheduled to prepare them to testify at the order of take hearing. During this phase, appraisals may need to be updated to account for the passage of time or the availability of new information.

#### **Post-order of Taking and Trial**

To bring each parcel to closure, Mateer Harbert proposes to file a motion for a case management conference 4 months after the date that title to the property is obtained. The exact date of a case management conference will be dependent on factors such as the likelihood of negotiating settlements with the owners, the court's docket, and the judge to whom the case is assigned. Based on our past experience, a case management order should have dates by which the parties are required to identify expert witnesses, exchange written reports summarizing the experts' trial opinions, identify rebuttal experts, and require the exchange of written rebuttal reports. Since a property owner may also be permitted to testify at trial, the case management

order should require disclosure of whether the owner will testify and the nature and amount of compensation the owner will seek. This will avoid unnecessary surprise during the litigation and at mediation.

A separate mediation order should also require the owner's counsel to provide expert witness invoices at least 30 days before the mediation. Mateer Harbert has found this useful in achieving a settlement of compensation and owner's fees and costs issues at mediation. Barring a settlement, Mateer Harbert is committed to trying these cases as soon as possible.

Some very preliminary observations can be made regarding each parcel. The draft restricted appraisal reports were prepared without right-of-way maps, legal descriptions of the parent tracts and remainders, construction plans, discussion of the comparable sales, or land-planning reports, or consideration of severance damages. Moreover, except in the most general terms, the DEIS does not describe the precise nature of the improvements to be constructed in the right of way.

Regarding the Mattamay (Jacksonville) Partnership property, parcel 104, the CFX taking will require its appraisers and land planners to consider whether the developer's Preliminary Subdivision Plan ("PSP") and development plan will need to be amended. The PSP was designed without consideration of the proposed AAF rail corridor. The elevated rail corridor will be visible from the northern portions of the development, especially as its elevation increases when the rail line begins to cross S.R.417. Although the proposed taking appears to only impact the property's storm water management system, CFX should anticipate the owner's claim for severance damages. Since the Mattamay property has an approved PSP, the appraisers and lawyers need to formulate an opinion of the relevant parent tract to estimate damages. The firm is familiar with various aspects of the Randal Park development. During Mateer Harbert's representation of the District in a recent condemnation case, a parcel of property within the development was used as a comparable sale. As part of its investigation of this comparable sale, the firm has had the occasion to review many of Orange County's development files regarding Randall Park.

Parcel 102, owned by Bal Bay Realty, Ltd., contains over 530 gross acres with primary access available from Narcoossee Road. Its future land use designation includes Urban Activity Center, Mixed Use Development - Commercial, Residential Low, and Conservation. The draft restricted report estimated the value of the property at \$1,765,000.00, based on a gross per acre value estimate of \$100,000.00 per acre. The underlying data for this estimate has not been provided.

Issues unique to parcel 102 may include the future demand for the mixed-use development. The allowable development of the property includes 1000 - dwelling units, 1.387 million square feet of commercial, 207,600 square feet of office, and 300 hotel rooms. Although south-east Orange County has one of the stronger real estate markets, that strength has largely been driven by the Lake Nona development. Additional future competitive properties are within the Osceola County Northeast Sector Study Area, an area which will benefit from the Osceola County Expressway Authority's Osceola Parkway Extension project, a key component of that agency's 2040 Master Plan. In light of this competitive environment, a question arises

concerning the time period for absorption of development on parcel 102, and consideration should be given to retaining a market consultant to assist the appraiser in determining the maximally productive component of highest and best use.

Additionally, given the different uses, consideration should be given to the determination of highest and best use of the parent tract. Presumably, the owner may argue that the impact of the rail corridor may be more severe for one property use as opposed to another.

Parcel 105, owned by Carlsbad Orlando, LLC, based on a draft restricted appraisal report, is subject to a remediation agreement precluding the issuance of development permits without a prior inspection to determine the presence of unexploded ordinance. Given the size of the property and the timing of the extension of Innovative Way, a case management plan should consider the stigma and impacts, if any, that may attach to the property because of this remediation agreement and the future demand for the property. Consideration should also be given to the effect the lack of public utilities has on the development of the property and the timing of that development. The extraordinary development costs of providing utilities should be considered in the property's valuation.

Parcel 108, owned by B&M Investments, LLC, is a partial taking from a parent tract containing about 3.05 acres of developable land with an Industrial future land use designation. A portion of the parent tract is improved with about .5 acres of a retention pond. The property is contiguous to another parcel which contains about 18.5 non-developable acres.

The proposed use to which parcel 108 will be put may not adversely impact the property from a highest and best use stand point. Since the remainder's future land use designation is industrial, issues raised by the taking include consideration of the impacts of the taking on the property's stormwater management plan and retention pond system and how the taking will impact the remainder. As with the other parcels, there are issues that concern the timing of the development of the property, which may require the assistance of a marketing consultant.

**Tab 6**

MAY 1, 2015  
CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
POTENTIAL CONFLICT DISCLOSURE FORM

Project: SR 528 Multi-Modal Corridor

Name/Company: Mateer & Harbert, P.A.  
Address: 225 E. Robinson Street, Suite 600  
Orlando, FL 32801

Relationship to CFX: ☐ Board or Committee Member ☐ Employee ☒ Consultant/Vendor

<b>1.</b>	<b>Disclosure of Relationships (Refer to Section 348.753(8))</b>		
	Do you have any relationship which affords a current or future financial benefit to you or to your relative or business associate and which a reasonable person would conclude has the potential to create a prohibited conflict of interest?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
	If yes, check the applicable relationships below and provide the full names, addresses, and relationships on page 4.		
	Self	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Relative (as defined in Section 112.312(21), Fla. Stat.), including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to you or who otherwise holds himself or herself out as or is generally known as the person whom you intend to marry or with whom you intend to form a household, any other natural person having the same legal residence as you.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Business Associate, as defined in Section 112.312(4), Fla. Stat., includes any person or entity engaged in or carrying on a business enterprise with you as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Other (explain) _____ _____ _____ _____	Yes <input type="checkbox"/>	No <input type="checkbox"/>



2.	<b>Disclosure of Lobbyists (Refer to Section 348.753(8))</b> Do you have a relative who is a registered lobbyist?	Yes___	No <u>X</u>
	If yes, list the full names and addresses of the lobbyist and the lobbyist's clients on page 4.		
3.	<b>Disclosure of Property Interests within a Project (Section 348.753(8))</b> Do you or any of your relatives (as defined in Section 112.312(21), Fla. Stat.), principals, clients, or business associates have any interest in real property located within any actual or prospective Authority project?  The actual or prospective Authority projects include the Wekiva Parkway and All Aboard Florida. The corridor maps and property ownership lists reflecting the ownership of all real property within the disclosure areas, or alignment maps with lists of associated owners, are attached hereto or available upon request.	Yes___	No <u>X</u>
	If yes, check the applicable relationship types and disclose the full names and addresses and identify the real property on page 4.		
	Self	Yes___	No___
	Relative (as defined in Section 112.312(21), Fla. Stat.), including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to you or who otherwise holds himself or herself out as or is generally known as the person whom you intend to marry or with whom you intend to form a household, any other natural person having the same legal residence as you.	Yes___	No___
	Principal or Client	Yes___	No___
	Business Associate, as defined in in Section 112.312(4), Fla. Stat., includes any person or entity engaged in or carrying on a business enterprise with you as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property.	Yes___	No___
	Other (explain)_____	Yes___	No___

4.	<p><b>Disclosure of Property Interests Within a One-Half Mile Radius of a Project (but Outside of a Project)</b> (Refer to Section 348.753(8))</p> <p>Do you or any of your relatives (as defined in Section 112.312(21), Fla. Stat.), principals, clients, or business associates have any interest in real property located within a one-half mile radius of any actual or prospective Authority project, but outside of any actual or prospective Authority project?</p> <p>The actual or prospective authority projects include the Wekiva Parkway and All Aboard Florida. The corridor maps and property ownership lists reflecting the ownership of all real property within the disclosure areas, or alignment maps with lists of associated owners, are attached hereto or available upon request.</p>	Yes___	No <u>X</u>
	<p>If yes, check the applicable relationship types and disclose the full names and addresses and identify the real property on page 3.</p>		
	<p>Self</p>	Yes___	No___
	<p>Relative (as defined in Section 112.312(21), Fla. Stat.), including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to you or who otherwise holds himself or herself out as or is generally known as the person whom you intend to marry or with whom you intend to form a household, any other natural person having the same legal residence as you.</p>	Yes___	No___
	<p>Principal or Client</p>	Yes___	No___
	<p>Business Associate, as defined in in Section 112.312(4), Fla. Stat., includes any person or entity engaged in or carrying on a business enterprise with you as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property.</p>	Yes___	No___
	<p>Other (explain)_____</p>	Yes___	No___

5.	<b>Solicitation or Acceptance of Gifts</b> Have you solicited or accepted anything of value, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that your action or judgment regarding Authority business would be influenced thereby? (For reference, see Section 112.313(2), Florida Statutes)	Yes___	No <u>X</u>
6.	<b>Unauthorized Compensation</b> Have you or your spouse or minor child accepted any compensation, payment, or thing of value when you knew, or, with the exercise of reasonable care, should know, that it was given to influence your action regarding Authority business? (For reference, see Section 112.313(4), Florida Statutes)	Yes___	No <u>X</u>
7.	<b>Misuse of Position</b> Have you used or attempted to use your position with the Authority or any property or resource which may be within your trust, to secure a special privilege, benefit, or exemption for you or others? (For reference, see Section 112.313(6), Florida Statutes)	Yes___	No <u>X</u>
8.	<b>Conflicting Employment or Contractual Relationship</b> Do you have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, the Authority, that will create a continuing or frequently recurring conflict between your private interests and the performance of your duties to the Authority or that would impede the full and faithful discharge of your duties to the Authority, subject to the exemptions set forth in Section 112.313(12) & (15), Florida Statutes? (For reference, see Section 112.313(7), Florida Statutes)	Yes___	No <u>X</u>

If you answered any of the above questions in the affirmative, provide a detailed explanation below. Attach additional sheets as necessary.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 1<sup>st</sup> 2015

Signature: Jay W. Small

Print Name: Jay W. Small

Print Title: Partner

Return this form by mail, email or fax to:

Darleen Mazzillo, Executive Assistant  
Central Florida Expressway Authority  
4974 ORL Tower Road, Orlando, FL 32807  
Phone: 407-690-5310 Fax: 407-690-5034  
Email: [Darleen.Mazzillo@CFXWay.com](mailto:Darleen.Mazzillo@CFXWay.com)

**Tab 7**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**CONFLICT/NONCONFLICT OF INTEREST STATEMENT**

**CHECK ONE**

☒ To the best of our knowledge, the undersigned firm has no potential conflict of interest due to any other clients, contracts, or property interest for this project. The Authority's Potential Conflict of Interest Disclosure Form is attached.

**OR**

☐ The undersigned firm, by attachment to this form, submits information which may be a potential conflict of interest due to other clients, contracts or property interest for this project.

**LITIGATION SUMMARY**

**PLEASE DISCLOSE AND PROVIDE A SHORT SUMMARY AND DISPOSITION OF ANY CIVIL LITIGATION IN FLORIDA INVOLVING THE FIRM OR THE ATTORNEYS WHO MAY BE ASSIGNED TO THIS MATTER AS A NAMED PARTY OR PARTIES WITHIN THE LAST FIVE (5) YEARS.**

**ALSO DISCLOSE ANY ACTIONS AGAINST THE FIRM OR THE ATTORNEYS WHO MAY BE ASSIGNED TO THIS MATTER BY THE FLORIDA BAR, THE DEPARTMENT OF PROFESSIONAL REGULATION, ANY OTHER FEDERAL, STATE OR LOCAL REGULATORY AGENCY AND THE DISPOSITION OF SAME. DISCLOSE ANY CLAIMS INVOLVING MALPRACTICE, WRONGDOING OR OVERCHARGING AGAINST THE FIRM OR THE ATTORNEYS WHO MAY BE ASSIGNED TO THIS MATTER AND THE DISPOSITION OF SAME.**

**CHECK ONE**

☐ The undersigned firm has had no litigation, actions by regulatory agencies, or claims involving malpractice or wrongdoing in the last five (5) years.

**OR**

☒ The undersigned firm, **BY ATTACHMENT TO THIS FORM**, submits a summary and disposition of individual cases of litigation in Florida during the past five (5) years; actions by any Federal, State, and local agency, or claims involving malpractice, wrongdoing, or overcharging

Mateer & Harbert, P.A.

COMPANY NAME

Jay W. Small 5/1/15  
AUTHORIZED SIGNATURE

Jay W. Small

NAME (PRINT OR TYPE)

Partner

TITLE

Failure to check the appropriate blocks above may result in disqualification of your proposal. Likewise, failure to provide documentation of a possible conflict of interest, or a summary of past litigation, may result in disqualification of your proposal.

**ATTACHMENT TO FORM**  
**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**CONFLICT/NONCONFLICT OF INTEREST STATEMENT**

1. Everett Weaver vs. Mateer and Harbert, P.A., et al  
Case No. 5:09-cv-514-Oc-34TBS

On November 23, 2009, after unsuccessfully prosecuting a case in state court, Mr. Everett Weaver filed a *pro se* lawsuit in federal district court (Case No. 5:09-cv-514-Oc-34TBS) against Mateer Harbert, Ms. Renee Thompson, a lawyer in the firm's Ocala office, Florida State Circuit Court Judge Jack Singbush, AAA Reporting Inc., and others. Among the numerous allegations were counts for fraud and conspiracy. As a precaution Mateer Harbert reported this action to its professional liability carrier but requested that the firm undertake the defense of the claim. Mr. Rick Allen, a partner in the firm, represented Mateer Harbert and Ms. Thompson in the case and elected to conduct minimal discovery. After the court ordered time for discovery had expired, Mateer Harbert filed a motion for summary judgment. On July 27, 2012, Judge Marcia Morales Howard granted Mateer Harbert's motion and entered judgment in its favor. That judgment absolved Mateer Harbert of any liability. The plaintiff appealed that summary judgment to the 11<sup>th</sup> Circuit Court of Appeals which affirmed Judge Howard's ruling.

In order to preserve the privacy of the complainants identified in the following matters which were investigated by the Florida Bar, initials of the complainants have been used in lieu of proper names.

1. Complaint filed with the Florida Bar by M. H. against Ms. Sharon Jablonski Henry - RFA No.: 14-2642

M.H., a *pro se* plaintiff in a medical malpractice case, filed a complaint against Ms. Sharon Jablonski Henry, a partner in Mateer Harbert's Orlando office which arose out of her representation of Orlando Health, Inc. M. H. was the husband of a patient, and he had pursued a loss of consortium claim against Orlando Health, Inc. M. H. sent two letters to the Florida Bar in this matter, RFA No.: 14-2642. The initial complaint, dated August 2, 2013, occurred after M. H., who was incarcerated at the time, attended a hearing by telephone on Orlando Health's motion to dismiss the case. Orlando Health's motion was granted. The court asked directed Ms. Henry to prepare a detailed order of the court's ruling, and she did after receiving the hearing transcript to ensure accuracy. M. H., who is still incarcerated, was unhappy that the proposed order was not prepared as quickly as he would have liked. He filed a grievance with the Florida Bar which responded by noting that it was unclear exactly what M. H. was alleging. The Bar concluded that the matters referenced in his complaint did not constitute violations of the Rules of Professional Conduct and, thereby, did not fall within the purview of the grievance system framework. The matter was closed by letter dated August 19, 2013.

M. H. subsequently mailed a "Request for Appeal of Decision of August 19, 2013, to Executive Director, For Final Action. Sharon K. Duncan FRA No. 14-2642" dated August 23, 2013. This Request appeared to be asking the Florida Bar to reconsider its decision to close the complaint. The Florida Bar found there was no basis to reopen the file as there was "no evidence

that Ms. Duncan violated the rules adopted by the Supreme Court of Florida which govern attorney conduct.” The file remained closed.

2. Complaint filed with the Florida Bar by G.L. against Mr. Francis E. Pierce, III - Florida Bar File No. 2014-30,439(9E)

In November of 2013, G. L., a client discharged by Mr. Francis E. Pierce, III, filed a complaint with the Florida Bar. Mr. Pierce discharged her as a client in a potential personal injury case because, after conducting a thorough factual investigation of the matter and after receiving an independent expert toxicologist’s report, it was his opinion that no facts supported filing any cause of action on her behalf. In January of 2014, Mr. Pierce responded to complaint in Florida Bar File No. 2014-30,439(9E). After a complete investigation by the Bar Counsel, the Florida Bar concluded that there was no evidence to support a grievance complaint against him for violating any Florida Bar rule. The file was then closed.



**Tab 8**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
DRUG-FREE WORKPLACE FORM**

The undersigned, in accordance with Florida Statute 287.087 hereby certifies that

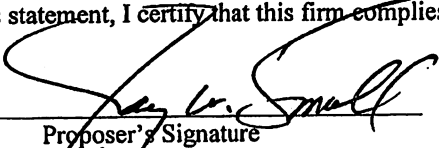
**Mateer & Harbert, P.A.**

does:

\_\_\_\_\_  
Name of Business

1. Publish a statement of notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in Paragraph 1.
4. In the statement specified in Paragraph 1, notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employees will abide by the terms of a statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Florida Statute 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction of, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1 thru 5.

As the person authorized to sign this statement, I certify that this firm complies with the above requirements.

  
\_\_\_\_\_  
Proposer's Signature

  
\_\_\_\_\_  
Date

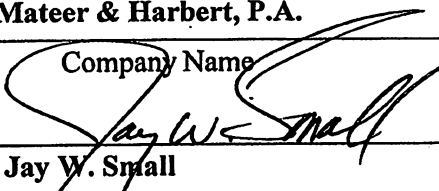
## **Tab 9**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
RIGHT-OF-WAY COUNSEL SERVICES  
CONTRACT NO. 001116**

**ACKNOWLEDGMENT OF STANDARD OF CONDUCT AND  
CODE OF ETHICS**

If awarded the Contract, the undersigned covenants and agrees that it and its employees shall be bound by the standards of conduct provided in Florida Statutes, Chapter 112, Part III, and Sections 348.753, and 104.31, as it relates to work performed under the Contract, which standards will by reference be made a part of the Contract as though set forth in full. The undersigned agrees to incorporate the provisions of this requirement in any subcontract into which it might enter with reference to the work performed or services provided.

The undersigned further acknowledges that it has read the Authority's Code of Ethics and, to the extent applicable to the undersigned, agrees to abide with such policy.

**Mateer & Harbert, P.A.**  
\_\_\_\_\_  
Company Name  
By:  5/1/15  
Jay W. Small  
Title: Partner  
\_\_\_\_\_

(Note: Failure to execute and submit this form may be cause for rejection of the submittal as non-responsive.)

**RFP-001116 Committee Meeting May 18, 2015 Minutes**

Evaluation Committee for **Right-of-way Counsel, 001116**, held a duly noticed meeting on Monday, May 18, 2015, commencing at 10:04 a.m. in the Pelican Conference Room at the CFX Administrative Bldg., Orlando, Florida.

**Committee Members Present:**

Joe Passiatore, General Counsel, CFX  
Linda Lanosa, CFX Deputy General Counsel  
William Chip Turner, Orange County, Assistant County Attorney  
Laurie Botts, City of Orlando, Real Estate Director

**Other Attendees:**

Robert Johnson, Manager of Procurement, CFX

**Discussion and Motions:**

Robert commenced the meeting with introductions, collected the committee member disclosure forms, and explained the RFP process and the purpose of today's meeting which was to finalize the technical and price proposal evaluations, and make a final recommendation to the Board with regard to Right of Way Counsel.

**Proposal Evaluation Portion:**

Robert stated the evaluation portion of the meeting is open to the public in accordance with Florida Statutes. The committee members were given the opportunity to discuss the technical proposals prior to submitting their evaluation forms. General discussion ensued about the proposals that were submitted. The committee members submitted their evaluations to Robert for tallying. Robert Johnson tallied the score sheets utilizing the raw scores assigned by each committee member for each Proposal received. Attached are the summary results of the individual committee member scores. Robert Johnson tallied the committee member score sheets utilizing the raw scores assigned by each Committee member and averaged the raw scores for each Proposal received onto the final summary sheet.

**Pricing, Total Points and Rankings**

Upon completion of the evaluation of the technical portion, Robert opened the pricing proposals and scored the pricing proposals in accordance with the RFP requirements. See attached final summary sheet for pricing, total points and ranking results.

Committee recommends CFX Board approve ranking and award the contract to the top ranked firm, Mateer & Harbert P.A.. The Committee agreed that Linda Lanosa would review and approve the minutes on behalf of the committee.

There being no other business to come before the Committee; the meeting was adjourned at 10:30am.

These minutes are considered to be the official minutes of the Technical Review Committee meeting held Monday, May 18, 2015, and no other notes, tapes, etc., taken by anyone takes precedence.

Submitted by:

  
Robert Johnson





Approved by:

  
Linda Lanosa Linda Lanosa

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
TECHNICAL AND PRICE PROPOSAL SCORING SUMMARY  
ROW COUNSEL SERVICES RFP-001116

EVALUATOR	Adomo Law Firm, PL		Mateer & Herbert, P.A.									
	TECHNICAL	PRICE	TECHNICAL	PRICE	TECHNICAL	PRICE	TECHNICAL	PRICE	TECHNICAL	PRICE	TECHNICAL	PRICE
Linda Lanese	35		80									
Joe Passiatore	68		78									
William Chip Turner	25		85									
Laurie Botts	35		80									
TOTAL	163		303									
AVG. TECH. POINTS	40.75		75.75									
PRICE PROPOSAL SUMMARY												
PROPOSER	PROPOSAL AMOUNT		POINT VALUE		POINT TOTALS AND FINAL RANKING							
Adomo Law Firm, PL	\$742,300.00		20.00		PROPOSER	TECHNICAL POINTS	PRICE POINTS	TOTAL POINTS	FINAL RANKING	FINAL RANKING		
Mateer & Herbert, P.A.	\$830,500.00		15.95		Adomo Law Firm, PL	40.75	20.00	60.75	2			
					Mateer & Herbert, P.A.	75.75	15.95	91.70	1			

Committee Members:

Monday, November 17, 2014  
 Monday, November 17, 2014  
 Monday, November 17, 2014  
 Monday, November 17, 2014

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

**TO:** Laura Kelley  
Executive Director

**FROM:** Linda Lanosa *Linda L. Lanosa*  
Deputy General Counsel

Robert Johnson  
Manager of Procurement

**SUBJECT:** Right-of-Way Counsel Services  
Contract No. 001116  
Recommendation for Award of Contract

**DATE:** May 18, 2015

A Request for Proposals (RFP) from qualified firms to provide the subject services was advertised on February 15, 2015. Responses to the request were received from two (2) firms (Mateer & Harbert, P.A., and Adorno Law Firm, P.L.) by the May 8, 2015, deadline for submittal of technical proposals. Since less than three submittals were received, the Deputy Executive Director, Deputy General Counsel, and the Manager of Procurement met (in accordance with the Procurement Procedures Manual) on May 8, 2015, and agreed that the review and evaluation process for the two submittals should proceed.

Copies of the technical proposals were distributed to the Evaluation Committee for review and scoring. Price proposals from the firms were received on May 8, 2015. The Committee met on May 18, 2015, to discuss the proposals, open the price proposals and record the scores. That scoring resulted in the following ranking of the firms: 1) Mateer & Harbert, P.A.; 2) Adorno Law Firm, P.L.

In accordance with the Procurement Procedures Manual, Article V, Procurement Processes, as it relates to a recommendation of award when less than three sealed proposals are received, and for the reasons stated in the Manager of Procurement's memo to the file dated, May 4, 2015, it is our joint recommendation that the contract be awarded to Mateer & Harbert, P.A. in the amount of \$930,500.00. We believe that the Authority's best interests would be served by awarding the contract to Mateer & Harbert, P.A.

Accept Recommendation ☒ Reject Recommendation ☐

*[Signature]*  
Laura Kelley, Executive Director

*5-18-15*  
Date

If rejected, reason(s) for rejection:

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# **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

## **MEMORANDUM**

**TO:** File

**FROM:** Robert Johnson  
Manager of Procurement

**SUBJECT:** Right-of-Way Counsel Services  
Contract No. 001116

**DATE:** May 4, 2015

As required by the Procurement Procedures Manual, this memo documents the results of a meeting held on May 4, 2015, between the Deputy Executive Director of Finance and Administration, Deputy General Counsel, and the Manager of Procurement regarding the fact that only two submittals were received for the subject contract on the due date of May 4, 2015. The purpose of the meeting was to decide if the RFP review process should continue for the two submittals or if the proposals should be rejected and the contract re-advertised.

The submittals were received from Mateer & Harbert, P.A., and Adorno Law Firm, P.L. Based on staff's knowledge of the number of law firms notified of this RFP, the number of law firms conflicted out for one reason or another, and the time constraints imposed to have the properties acquired through an expedited schedule, it was the opinion of staff that re-advertising the solicitation to generate more participation would not be successful and would possibly cause a delay in acquiring the properties by the end of the year.

Based on the above, it was agreed that the RFP review process should continue for the two responses received.