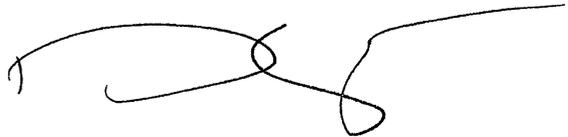




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MEMORANDUM

TO: Central Florida Expressway Authority
Board Members

FROM: David A. Shontz, Esq., Right-of-Way Counsel 

DATE: March 3, 2015

RE: Second Addendum to Agreement for Engineering Expert Witness Consulting Services for Wekiva Parkway Project Numbers 429-203, 429-204, 429-205, and 429-206

Shutts & Bowen LLP, Right-of-Way Counsel, seeks approval of the Board of a Second Addendum to the Agreement for Engineering Expert Witness Consulting Services by Donald W. McIntosh Associates, Inc. ("Engineering Expert Witness Consultant") to perform engineering expert witness and consulting services for the Wekiva Parkway Project Numbers 429-203, 429-204, 429-205, and 429-206. A copy of the proposed Second Addendum to Agreement for Engineering Expert Witness Consulting Services is attached for your review. The Right-of-Way Committee recommended approval of this Second Addendum at its meeting on February 25, 2015.

BACKGROUND/DESCRIPTION

On October 10, 2013, the Engineering Expert Witness Consultant entered into an agreement to provide pre-litigation and litigation engineering consultation services for the Wekiva Parkway Project ("the Agreement"). The original contract price was limited to \$150,000.00 (the "upset limit"). Upon notification to Shutts & Bowen by the Engineering Expert Witness Consultant that it was close to reaching the upset limit, an Addendum to Agreement for Engineering Expert Witness Consulting Services was requested and on September 11, 2014, increased by an additional \$100,000.00.

The Engineering Expert Witness has eleven (11) assigned parcels in section 429-203 that are post order-of-taking and are currently being litigated. We would estimate a budget of an additional \$15,000 per parcel for expert trial witness testimony and support for a total estimate of \$165,000. Additionally, the engineering expert witness has eight (8) assigned parcels in sections

429-204, 205 and 206 that are pre-order of taking. We would estimate a budget of \$35,000 to complete the remaining eight engineering reports and a budget of an additional \$15,000 per parcel for expert trial witness testimony and support for a total estimate of \$120,000. This would bring the total remaining additional budget necessary to complete all the parcels assigned to this Engineering Expert Witness to \$320,000. The Engineering Expert Witness Consultant is assisting the appraisers with site evaluation, including but not limited to, wetland/usable acreage analysis, public services/utilities issues, access issues, drainage issues, development costs and before/after analysis. Accordingly, we are requesting approval of the attached Second Addendum to increase the upset limit by an additional \$200,000.00. The increase is necessary to allow the Engineering Expert Witness Consultant to continue to provide pre-condemnation consultation services, engineering consultation services and litigation support services for the Wekiva Parkway Project for the parcels set forth herein. All invoices submitted pursuant to the agreement shall be reviewed for accuracy by Shutts & Bowen LLP.

As litigation proceeds, funds must be available to allow the Engineering Expert Witness Consultant to provide litigation services including production of documents and deposition and possible trial testimony. The requested increase in the upset limit will allow uninterrupted continuation of those services.

REQUESTED ACTION

It is respectfully requested that the Board approve the terms of the Second Addendum to Agreement for Engineering Expert Witness Consulting Services and authorize execution of the Second Addendum. Second Addendum Value: \$200,000.00.

ATTACHMENT

Second Addendum to Agreement for Engineering Expert Witness Consulting Services for Wekiva Parkway Project Numbers 429-203, 429-204, 429-205, and 429-206.

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**SECOND ADDENDUM TO AGREEMENT FOR ENGINEERING EXPERT WITNESS
CONSULTING SERVICES FOR WEKIVA PARKWAY
PROJECT NUMBERS 429-203, 429-204, 429-205, AND 429-206**

THIS AGREEMENT is effective this _____ day of _____, 2015, by and between Shutts & Bowen LLP ("Client"), whose business address is 300 South Orange Avenue, Suite 1000, Orlando, Florida 32801, and Donald W. McIntosh Associates, Inc. ("Engineering Expert Witness Consultant"), whose business address is 2200 Park Avenue North, Winter Park, Florida 32789.

WHEREAS, the Engineering Expert Witness Consultant and Client have entered into an agreement for engineering expert witness consulting services dated October 10, 2013; and

WHEREAS, pursuant to the terms set forth in the Agreement for Engineering Expert Witness Consulting Services dated October 10, 2013, payments made to the Engineering Expert Witness Consultant shall not exceed an upset limit of One Hundred Fifty Thousand Dollars (\$150,000.00) without an addendum; and

WHEREAS, the Engineering Expert Witness Consultant and Client have entered into an addendum to the agreement for engineering expert witness consulting services dated September 11, 2014, which increased the upset limit by One Hundred Thousand Dollars (\$100,000.00); and

WHEREAS, the Engineering Expert Witness Consultant has notified the Client that the Engineering Expert Witness Consultant will reach the total upset limit of Two Hundred Fifty Thousand Dollar (\$250,000.00) upset limit; and

WHEREAS, the Client desires that the Engineering Expert Witness Consultant continue to furnish it with engineering expert witness consulting services, and the Engineering Expert Witness Consultant represents that he is fully qualified to perform such services and will furnish such services personally;

NOW, THEREFORE, the Client and the Engineering Expert Witness Consultant, for the consideration and under the conditions hereinafter set forth, do agree as follows:

ARTICLE 1 - Upset Limit is increased by Two Hundred Thousand Dollars (\$200,000.00)

All payments made pursuant to this Second Addendum to the Agreement for Engineering Expert Witness Consulting Services dated October 10, 2013, shall not exceed a total of Two Hundred Thousand Dollars (\$200,000.00). It shall be the responsibility of the Engineering Expert Witness Consultant to monitor the total of all payments pursuant to this Addendum and to notify the Client prior to reaching the Two Hundred Thousand Dollar (\$200,000.00) upset limit.

ARTICLE 2 - Payment

Payment for all other services shall be made in accordance with the Agreement for Engineering Expert Witness Consulting Services dated October 10, 2013.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement, effective as of the date set forth above.

Attest:

SHUTTS & BOWEN LLP

Witness Signature

Terri L. Martin

Printed Name

Witness Signature

Mary Ellen Farmer

Printed Name

Witness Signature

Printed Name

Witness Signature

Printed Name

By: _____

David A. Shontz, Esquire
Legal Counsel to the Central Florida
Expressway Authority

**DONALD W. McINTOSH
ASSOCIATES, INC.**

By: _____

Donald W. McIntosh