




MEMORANDUM

TO: Central Florida Expressway Authority Board Members
FROM: David A. Shontz, Esq., Right-of-Way Counsel
DATE: January 22, 2016
RE: Donald W. McIntosh Associates, Inc., Second Agreement for Engineering Expert Witness Consulting Services for Wekiva Parkway Project Numbers 429-203, 429-204, 429-205, and 429-206

A handwritten signature in blue ink, appearing to be "D. Shontz", is written over the "FROM" and "DATE" lines.

Approval is sought from the Central Florida Expressway Authority Board for the attached Second Agreement for Engineering Expert Witness Consulting Services by Donald W. McIntosh Associates, Inc., ("Engineering Expert Witness Consultant") to perform engineering consulting services and litigation support services for the Wekiva Parkway Project Numbers 429-203, 429-204, 429-205, and 429-206.

BACKGROUND/DESCRIPTION

On October 10, 2013, the Engineering Expert Witness Consultant entered into an Agreement to provide pre-litigation, litigation appraisal and expert witness services for the Wekiva Parkway Project with a limit of \$150,000. The limit was increased by an additional \$100,000 under the terms of the Addendum to Agreement for Engineering Expert Witness Consulting Services dated September 11, 2014. The limit was increased by an additional \$200,000 with the execution of the Second Addendum of Engineering Expert Witness Consulting Services on March 12, 2015. The attached Second Agreement will replace the original Agreement and its two Addenda to comply with the restriction prohibiting issuance of Addenda after two (2) years from the effective date of the original Agreement contained in paragraph 6.1 "Term of Agreement."

The engineering expert witness consultant is within the current budget of \$450,000 for all engineering expert reports for the assigned parcels, plus post-order of taking expert witness litigation services. The engineering expert witness consultant has completed reports for all assigned parcels, worked closely with appraisers and other expert witnesses to analyze issues arising from the acquisition of various parcels through eminent domain, and provided testimony

for pre-order of taking and order of taking purposes. Additionally, the engineering expert witness has provided litigation support for a number of parcels. The remaining work to be provided by the engineering expert witness consultant includes expert witness and litigation support services, which includes rebuttal reports, deposition testimony, trial preparation and expert witness testimony at trial. Several of the parcels assigned to McIntosh Associates are set for trial in the next 90 days. Accordingly, this request for a second agreement is to allow the engineering expert witness consultant to continue to support the CFX for trial preparation and as an expert witness post order of taking. Approval of the attached Second Agreement with an upset amount of \$150,000.00 is requested to allow McIntosh Associates to continue to provide consultation and litigation services for completion of the Wekiva Parkway Project. All invoices submitted pursuant to the Second Agreement shall be reviewed for accuracy by Shutts & Bowen LLP.

The Right-of-Way Committee recommended approval of the Second Agreement with McIntosh Associate at its January 27, 2016, meeting.

REQUESTED ACTION

It is respectfully requested that the CFX Board approve the terms of the Second Agreement for Engineering Expert Witness Consulting Services and authorize execution of the Second Agreement in the amount of \$150,000.00 to allow continuation of services by McIntosh Associates related to anticipated litigation costs for the Wekiva Parkway Project.

ATTACHMENT

Second 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 AGREEMENT FOR ENGINEERING EXPERT WITNESS CONSULTING
SERVICES FOR WEKIVA PARKWAY
PROJECTS 429-203, 429-204, 429-205 AND 429-206**

THIS SECOND AGREEMENT is effective this ____ day of _____, 2016, 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.

WITNESSETH:

WHEREAS, the Client, in its capacity as Right-of-Way Counsel to the Central Florida Expressway Authority, desires to employ the Engineering Expert Witness Consultant to provide engineering expert witness consulting services as described herein; and

WHEREAS, the Engineering Expert Witness Consultant is licensed, qualified, willing and able to perform the engineering expert witness consulting services required on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Client and the Engineering Expert Witness Consultant do hereby agree as follows:

ARTICLE 1 - SERVICES TO BE PROVIDED BY THE ENGINEERING EXPERT WITNESS CONSULTANT

1.1 Engineering Expert Witness Consulting Services

The Engineering Expert Witness Consultant agrees to perform engineering expert witness consulting services for Wekiva Parkway Projects 429-203, 429-204, 426-205 and 429-206. It is understood and agreed that the performance of the engineering expert witness consulting services requires the expertise of an individual engineer and the exercise of his or her independent judgment and that the continued and uninterrupted performance of the services is essential, and, therefore, if the Engineering Expert Witness Consultant of Record leaves the Engineering Expert Witness Consultant's employ, for any reason, the Client shall have the option, in its sole discretion, of assigning this Agreement, and any Addenda hereto, to the Engineering Expert Witness Consultant of Record so that the services shall be rendered without interruption or shall require the Engineering Expert Witness Consultant to appoint a different individual as the Engineering Expert Witness Consultant of Record. If the Agreement is assigned to another engineering firm, payment shall be made to the Engineering Expert Witness Consultant for all services rendered. Payment for engineering expert witness consulting services shall be made in accordance with the compensation schedule set forth in **Exhibit A**.

The Engineering Expert Witness Consultant of Record shall prepare and deliver a color copy of the engineering report(s) and the report(s) in electronic format to David A. Shontz, Esquire, at Shutts & Bowen LLP, 300 South Orange Avenue, Suite 1000, Orlando, Florida 32801, within the timeframe set forth in the Addendum.

The Engineering Expert Witness Consultant shall commence work on the engineering report(s) immediately and shall perform the work in the most expeditious manner and shall complete the engineering report(s) within the specified timeframe, which the Engineering Expert Witness Consultant acknowledges is reasonable. Upon the request from the Client, the Engineering Expert Witness Consultant shall provide a progress report which shall advise as to the status of the services to be performed by the Engineering Expert Witness Consultant.

It is agreed and understood that all services rendered under this Agreement, and any Addenda hereto, are at the direction of the Client, and, as such, all communications and documents of any kind are privileged work product and shall not be provided to any person unless directed by the Client.

The Engineering Expert Witness Consultant shall consult with the Client regarding services to be performed by the Engineering Expert Witness Consultant at such time(s) as may be mutually convenient for the parties to this agreement. The Engineering Expert Witness Consultant shall initiate such consultations whenever the Engineering Expert Witness Consultant needs legal advice on any aspect of the engineering report to be furnished under this Agreement.

1.2 Litigation Support Services

If requested by the Client, the Engineering Expert Witness Consultant of Record shall personally testify under oath as an expert witness on behalf of the Central Florida Expressway Authority in any judicial proceeding involving any engineering expert witness consulting work performed under this Agreement. Payment for such litigation support services shall be in accordance with the compensation schedule attached hereto as Exhibit A and shall include such reasonable time as may be required for re-inspection of the property, revising the engineering report, participation in pretrial conferences with the Client, and preparation for and testifying at depositions, trial, or other judicial proceedings as requested.

1.3 Sub-consultants

The Engineering Expert Witness Consultant shall have the right, with the prior written consent of the Client, to employ other firms or individuals to serve as sub-consultants in connection with the Engineering Expert Witness Consultant's performance of any services. Upon the written request of the Client, which may be made with or without cause, the Engineering Expert Witness Consultant agrees to terminate promptly the services of any sub-consultant and to replace promptly each such terminated sub-consultant with a qualified firm or individual approved by the Client.

The Client shall have no liability or obligation to the sub-consultants hereunder. The Central Florida Expressway Authority shall have the right, but not the obligation, based upon sworn statements of accounts from the sub-consultants, to pay a specific amount directly to a sub-consultant. In such event, the Engineering Expert Witness Consultant agrees any such payments shall be treated as a direct payment to the Engineering Expert Witness Consultant's account. Sub-consultant fees shall be invoiced at cost with no additional markup applied by the Engineering Expert Witness Consultant.

1.4 Engineering Expert Witness Consultant's Standards of Performance

The Engineering Expert Witness Consultant shall use professional standards of performance to perform all services in such sequence, and in accordance with such reasonable time requirements and reasonable written instructions, as may be requested or provided by the Client. The Engineering Expert Witness Consultant has represented that it is possessed of that level of skill, knowledge, experience and expertise that is commensurate with firms of national repute and acknowledges that the Client has relied on such representations. By executing this Agreement, the Engineering Expert Witness Consultant agrees that the Engineering Expert Witness Consultant will exercise that degree of care, knowledge, skill and ability and agrees to perform the services in an efficient and economical manner.

1.5 Engineering Expert Witness Consultant's Obligation to Correct Errors or Omissions

The Engineering Expert Witness Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion, and coordination of all data, designs, specifications, calculations, estimates, plans, drawings, photographs, reports, memoranda, other documents and instruments, and other services furnished by the Engineering Expert Witness Consultant. The Engineering Expert Witness Consultant shall, without additional cost or expense to the Client, correct or revise any errors, omissions, or other deficiencies in the services performed by the Engineering Expert Witness Consultant.

1.6 Non-Exclusive Rights

The rights granted to the Engineering Expert Witness Consultant hereunder are non-exclusive, and the Client reserves the right to enter into agreements with other engineering expert witness consultants to perform engineering expert witness consulting services, including without limitation, any of the services provided for herein.

1.7 Engineering Expert Witness Consultant's Compliance with Laws and Regulations

The Engineering Expert Witness Consultant and its employees and sub-consultants shall promptly observe and comply with all applicable federal, state and local laws, regulations, rules and ordinances then in effect or as amended ("laws"). The Engineering Expert Witness Consultant shall procure and keep in force during the term of this Agreement all necessary licenses, registrations, certificates, permits and other authorizations as are required by law in order for the Engineering Expert Witness Consultant to render its services hereunder.

1.8 Engineering Expert Witness Consultant Is Not Client's Agent

The Engineering Expert Witness Consultant is not authorized to act as the Client's agent and shall have no authority, expressed or implied, to act for or bind the Client. The Engineering Expert Witness Consultant is not authorized to act as the agent of the Central Florida Expressway Authority and shall have no authority, expressed or implied, to act for or bind the Central Florida Expressway Authority.

1.9 Reduced Scope of Services

The Client shall have the right, by written notice to the Engineering Expert Witness Consultant, to reduce the scope of services to be rendered hereunder. If the Client reduces the services to be rendered, the Engineering Expert Witness Consultant will be paid in accordance with the compensation schedule set forth in the attached Exhibit A for any time spent in connection with the reduced services. The Engineering Expert Witness Consultant shall not be entitled to any anticipated profit as a result of the reduced scope of services.

ARTICLE 2 - TIME

2.1 The date for commencement of the Engineering Expert Witness Consultant Services (described in Article 1.1) is the effective date of this Agreement. The date for commencement of the Litigation Support Services (described in Article 1.2) is the date such services are required by the Client.

2.2 The Due Date for the delivery of the engineering report(s) shall be included in an Addendum. By executing an Addendum, the Engineering Expert Witness Consultant acknowledges that the Due Date is both realistic and achievable, and that the report(s) will be completed by that time.

2.3 If, at any time prior to completion of the services, the Engineering Expert Witness Consultant determines that the services are not progressing sufficiently to meet the Due Date, the Engineering Expert Witness Consultant shall immediately notify the Client's Representative in writing and shall provide a description of the cause of the delay, the effect on the scheduled Due Date and the recommended action to meet the Due Date.

2.4 No extensions of time shall be granted unless in writing and approved by the Client's Representative. Any requests for extensions shall be in writing explaining in detail why such extension is necessary and shall be made at least seven (7) days prior to the Due Date to be extended.

ARTICLE 3 - PAYMENT

3.1 When Payment Is To Be Made By The Client

All payments made pursuant to this Agreement will be paid to the Engineering Expert Witness Consultant by the Client only after payment by the Central Florida Expressway Authority to the Client. Payment for services rendered by any sub-consultants shall be paid to the Engineering Expert Witness Consultant and the Engineering Expert Witness Consultant shall be fully responsible for making payment to any sub-consultant retained by the Engineering Expert Witness Consultant. The Engineering Expert Witness Consultant acknowledges and understands that the Client shall not be responsible for making any payment for any services rendered hereunder unless reimbursed by the Central Florida Expressway Authority.

It is expressly agreed and understood that the Client is obtaining Engineering Expert Witness Consultant's services on behalf of the Central Florida Expressway Authority and,

although the Client will direct the services hereunder, including making payment for the services, it shall assume no liability or responsibility for any payment due hereunder.

3.2 Compensation for Consultation Services

It is expressly agreed and understood that the Engineering Expert Witness Consultant shall be paid for all pre-condemnation consultation services in accordance with the compensation schedule set forth in **Exhibit A** within thirty (30) days after receipt of each monthly invoice; provided that the invoice is received by the 3rd of each month. It is expressly agreed and understood that although the Client will direct the services hereunder, it shall assume no liability or responsibility for any payment due hereunder.

3.3 Compensation For Engineering Expert Witness Consulting Services

It is expressly agreed and understood that the Engineering Expert Witness Consultant shall be paid for satisfactorily performed engineering expert witness consulting services in accordance with the compensation schedule set forth on **Exhibit A**. No payment shall be made for engineering expert witness consulting services until after the receipt of the engineering report(s) by the Client. Once a final engineering report(s) has been provided to the Client, the Central Florida Expressway Authority shall pay all invoices for engineering expert witness consulting services within forty-five (45) days after receipt of the invoice.

The Engineering Expert Witness Consultant shall receive compensation in accordance with **Exhibit A** for services performed in connection with the modification or preparation of any supplement or update to any engineering report furnished under this agreement if (1) the property has been materially altered since the initial engineering (i.e., fire or act of God), (2) the boundaries of the property to be acquired have been revised, or (3) if requested by the Client for any other reason not the fault of the Engineering Expert Witness Consultant.

The Engineering Expert Witness Consultant shall not receive compensation for services performed in connection with the modification or preparation of any supplement or update to any engineering report furnished under this agreement if (1) applicable principles of law require the modification on or supplementing of such engineering report, (2) material omissions, inaccuracies, or defects in the engineering report are discovered, or (3) the Engineering Expert Witness Consultant receives or becomes aware of relevant additional information in existence prior to the date the Engineering Expert Witness Consultant signed the report.

3.4 Compensation for Litigation/Consultation Services

It is expressly agreed and understood that the Engineering Expert Witness Consultant shall be paid for all litigation support services in accordance with the compensation schedule set forth in **Exhibit A** within thirty (30) days after receipt of each monthly invoice, provided that the invoice is received by the 3rd of each month. It is expressly agreed and understood that although the Client will direct the services hereunder, it shall assume no liability or responsibility for any payment due hereunder.

3.5 Invoices

The Engineering Expert Witness Consultant shall submit detailed invoices to the Client for all services rendered. The Engineering Expert Witness Consultant represents and warrants that all billable hours and rates furnished by the Engineering Expert Witness Consultant to the Client shall be accurate, complete and current as of the date of this Agreement or the Addendum. The Client shall forward such invoices to the Central Florida Expressway Authority for payment as provided herein.

The Client shall notify the Engineering Expert Witness Consultant in writing of any objection to the amount of such invoice, together with the Client's determination of the proper amount of such invoice. Any dispute over the proper amount of such monthly invoice shall be resolved by mutual agreement of the parties, and after final resolution of such dispute, the Central Florida Expressway Authority shall promptly pay the Engineering Expert Witness Consultant the amount so determined, less any amounts previously paid with respect to such monthly invoice.

3.6 Right to Withhold Payment

The Client or the Central Florida Expressway Authority shall have the right to withhold payment on any invoice in the event that the Engineering Expert Witness Consultant is in default under any provision of this Agreement (including any Addenda) or if liquidated damages are assessed against the Engineering Expert Witness Consultant.

3.7 Total Payments Not To Exceed

All payments made pursuant to this Agreement shall not exceed a total of Two Hundred Thousand Dollars (\$200,000.00), without an Addendum to this Agreement that shall be approved by the Central Florida Expressway Authority. It shall be the responsibility of the Engineering Expert Witness Consultant to monitor the total of all payments made pursuant to this Agreement and notify the Client prior to reaching the Two Hundred Thousand Dollars (\$200,000.00) upset limit so that Client may timely present the necessary Addendum to the Central Florida Expressway Authority.

ARTICLE 4 - LIQUIDATED DAMAGES

4.1 Engineering Reports

If the Engineering Expert Witness Consultant fails to submit any engineering report by the Due Date, the Engineering Expert Witness Consultant will be assessed one percent (1%) of the lump sum amount for such report per calendar day for the first seven (7) calendar days the engineering report is delayed. If the Engineering Expert Witness Consultant submits the draft or final engineering report more than seven (7) calendar days after the Due Date, the Engineering Expert Witness Consultant will be assessed two percent (2%) of the lump sum for such report per calendar day thereafter, until the engineering report is received by the Client.

4.2 Responses, Modifications, or Corrections

The Client will notify the Engineering Expert Witness Consultant of any modifications, corrections or additional services that, in the sole discretion of the Client, are determined to be necessary. All modifications, corrections, or additional services shall be completed within five (5) calendar days after the request is made by the Client. Once the Engineering Expert Witness Consultant completes the requested modifications, corrections or additional services, the Engineering Expert Witness Consultant shall submit a revised engineering report to the Client.

The revised engineering report shall be reviewed within five (5) calendar days for compliance with the requested modifications, corrections or additional services and a final report submitted to the Client within three (3) calendar days of such review.

ARTICLE 5 - RECORDS

5.1 Maintenance of Records

The Engineering Expert Witness Consultant shall maintain complete and accurate records relating to all services rendered by Engineering Expert Witness Consultant and any sub-consultants pursuant to this Agreement. Records shall be kept in a form reasonably acceptable to the Client. Records and invoices for services shall include all of the information required in order to determine the Engineering Expert Witness Consultant's monthly hours for each employee rendering services hereunder, and shall identify the services rendered by each employee in a manner acceptable to the Client.

5.2 Records Availability and Audit

All of the Engineering Expert Witness Consultant's records relating to services shall, upon reasonable notice by the Client, be made available to the Client, and the Client shall have the right from time to time, through their respective duly authorized representatives, at all reasonable times, to review, inspect, audit or copy the Engineering Expert Witness Consultant's records. Production of such records by the Engineering Expert Witness Consultant shall not constitute promulgation and shall retain in the Engineering Expert Witness Consultant all rights and privileges of workmanship, confidentiality and any other vested interests. If, as a result of an audit, it is established that the Engineering Expert Witness Consultant has overstated its hours of service, per diem or hourly rates for any month, the amount of any overcharge paid as a result of an overstatement shall forthwith be refunded by the Engineering Expert Witness Consultant to the Central Florida Expressway Authority with interest thereon, if any, at a rate of six percent (6%) per annum on the overstated amount accrued from forty-five (45) days after the Client's notice to the Engineering Expert Witness Consultant of the overstatement. If the amount of an overstatement in any month exceeds five percent (5%) of the amount of the Engineering Expert Witness Consultant's statement for that month, the entire reasonable expense of the audit shall be borne by the Engineering Expert Witness Consultant. The Engineering Expert Witness Consultant shall retain all records and shall make same available to the requesting party for a period of five (5) years from the date of payment by the Client of the final invoice for the services to which the records relate.

ARTICLE 6 - TERM OF AGREEMENT AND TERMINATION

6.1 Term of Agreement

Services shall commence upon the execution of the Agreement and shall be provided on a continuous basis until each assigned parcel is completed. The Client can elect to extend the Agreement by exercising up to three additional extensions of one year each.

6.2 Termination

This Agreement and/or any exhibit hereto may be terminated in whole or in part by either party by written notification at any time. Upon notification, the Engineering Expert Witness Consultant will immediately discontinue all services and submit a final invoice to the Client within thirty (30) days of Client's notice of termination to the Engineering Expert Witness Consultant. The Engineering Expert Witness Consultant shall be paid for the services satisfactorily performed by the Engineering Expert Witness Consultant if the engineering report(s) has been provided to the Client. If the engineering report(s) has not been provided to the Client, the Engineering Expert Witness Consultant shall receive no compensation for any services rendered under this agreement or any Addenda hereto.

Upon termination, the Engineering Expert Witness Consultant shall deliver or otherwise make available to the Client all data, designs, specifications, calculations, estimates, plans, drawings, photographs, reports, memoranda, other documents and instruments, and such other information and materials as may have been prepared or accumulated by the Engineering Expert Witness Consultant or its sub-consultants in performing services under this Agreement, whether completed or in process. The Engineering Expert Witness Consultant shall have no entitlement to recover anticipated profit for services or other work not performed.

ARTICLE 7 - CONFIDENTIALITY

Unless otherwise required by law, the Engineering Expert Witness Consultant shall not, without the prior written consent of the Client, knowingly divulge, furnish or make available to any third person, firm or organization, any information generated by the Engineering Expert Witness Consultant or received from the Client, concerning the services rendered by the Engineering Expert Witness Consultant or any sub-consultant pursuant to this Agreement.

ARTICLE 8 - MISCELLANEOUS PROVISIONS

8.1 Notices

All notices required to be given hereunder shall be in writing and shall be given by United States mail, postage prepaid addressed to the parties' representatives at the address set forth in **Exhibit A**. Electronic mail, instant messaging, or facsimile shall NOT be considered notice as required hereunder.

8.2 Change of Address

Any party may change its address for purposes of this Article by written notice to the other party given in accordance with the requirements of this Article.

8.3 Jurisdiction

Any claim, dispute or other matter in question arising out of or relating to this Agreement or the breach thereof, except for claims which have been waived pursuant to this Agreement, shall be brought only in the Circuit Court of the Ninth Judicial District in and for Orange County, Florida. Such claims, disputes or other matters shall not be subject to arbitration without the prior written consent of both the Client and the Engineering Expert Witness Consultant. The parties hereby agree that process may be served by United States Mail, postage prepaid, addressed to the Client's Representative, with a copy to the Client, or the Engineering Expert Witness Consultant's Representative as defined in **Exhibit A**. The parties hereby consent to the jurisdiction the Circuit Court of the Ninth Judicial District in and for Orange County, Florida.

8.4 Governing Law

The Agreement shall be governed by the laws of Florida.

8.5 Transfers and Assignments

The Engineering Expert Witness Consultant shall not transfer or assign any of its rights hereunder (except for transfers that result from the merger or consolidation of the Engineering Expert Witness Consultant with a third party) or (except as otherwise authorized in this Agreement or in an exhibit hereto) subcontract any of its obligations hereunder to third parties without the prior written approval of the Client. The Client shall be entitled to withhold such approval for any reason or for no reason. Except as limited by the provisions of this paragraph, this Agreement shall inure to the benefit of and be binding upon the Client and the Engineering Expert Witness Consultant, and their respective successors and assigns.

8.6 Member Protection

No recourse shall be had against any member, officer, employee or agent, as such, past, present or future, of the Client or the Central Florida Expressway Authority, either directly or indirectly, for any claim arising out of this Agreement or the services rendered pursuant to it, or for any sum that may be due and unpaid. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any Client or the Central Florida Expressway Authority member, officer, employee or agent as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of this Agreement for the services rendered pursuant to it, or for the payment for or to the Client or the or the Central Florida Expressway Authority, or any receiver therefore or otherwise, of any sum that may remain due and unpaid, is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement.

8.7 Conflict of Interest

Except with the Client's knowledge and written consent, the Engineering Expert Witness Consultant and Sub-consultants shall not undertake services when it would reasonably appear that such services could compromise the Engineering Expert Witness Consultant's judgment or prevent the Engineering Expert Witness Consultant from serving the best interests of the Client. Except with the Client's knowledge and written consent, the Engineering Expert Witness Consultant shall not perform any services for any property-owners from whom property has been, will be, or is contemplated to be acquired or condemned by the Central Florida Expressway Authority for the projects collectively known as the State Road 429 Wekiva Parkway Project, which for the purpose of this Agreement shall be defined by the Client at a later date and as such roadway is modified from time to time. Client reserves the right to raise such conflict unless that right is specifically waived by the Central Florida Expressway Authority.

8.8 Entire Agreement

This Agreement, including the exhibits hereto, constitutes the entire agreement between the parties and shall supersede and replace all prior agreements or understandings, written or oral, relating to the matters set forth herein.

8.9 Amendment

This Agreement and its exhibits shall not be amended, supplemented or modified other than in writing signed by the parties hereto. Neither electronic mail nor instant messaging shall be considered a "writing" for purposes of amending, supplementing or modifying this Agreement. No services shall be performed until such services are provided for in an Amendment or Addenda and executed by both parties.

8.10 No Third-Party Beneficiaries

No person, except for the Central Florida Expressway Authority, shall be deemed to possess any third-party beneficiary rights pursuant to this Agreement. It is the intent of the parties hereto that no direct benefit to any third party, other than the Central Florida Expressway Authority, is intended or implied by the execution of this Agreement. It is agreed and understood between the parties that the services rendered hereunder shall be for the benefit of the Central Florida Expressway Authority and the Central Florida Expressway Authority is entitled to rely upon the engineering report(s) prepared hereunder.

8.11 Engineering Expert Witness Consultant Contractual Authorization

The Engineering Expert Witness Consultant represents and warrants that the execution and delivery of the Agreement and the performance of the acts and obligations to be performed have been duly authorized by all necessary corporate (or if appropriate, partnership) resolutions or actions and the Agreement does not conflict with or violate any agreements to which the Engineering Expert Witness Consultant is bound, or any judgment, decree or order of any court.

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

Printed Name

Witness Signature

Printed Name

By: _____

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

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

Witness Signature

Printed Name

Witness Signature

Printed Name

By: _____

Donald W. McIntosh

EXHIBIT A

Client's Representative

Shutts & Bowen LLP
David A. Shontz, Esquire
300 South Orange Avenue, Suite 1000
Orlando, Florida 32801

**Engineering Expert Witness
Consultant's Representative**

Donald W. McIntosh Associates, Inc.
Donald W. McIntosh
2200 Park Avenue North
Winter Park, Florida 32789

This **Exhibit A** includes the following which shall be attached hereto and made a part hereof;

Engineering Expert Witness Consultant's Compensation Schedule including all Billable Rates. (The rates shall include allowance for salaries, overhead, operating margin and direct expenses.)

Please see attached Hourly Rate Schedule, Effective June 1, 2007

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