


MEMORANDUM

TO: Central Florida Expressway Authority Board

FROM:  Joseph L. Passiatore, General Counsel

DATE: February 25, 2016

SUBJECT: Donald W. McIntosh Associates, Inc. - Contract No. 000916
Addendum No. 4

Recommendation for approval is sought from the Central Florida Expressway Authority (CFX) Board for the attached 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 Parcels 197, 897, 230, 257 and 267.

BACKGROUND/DESCRIPTION

The Authority is currently engaged in pre-trial discovery with Project Orlando concerning the above referenced parcels. Special counsel estimates that a budget of \$100,000 is necessary for engineering and expert witness services for all parcels.

The CFX Right of Way Committee has approved the funding amount.

REQUESTED ACTION

Approval of the terms of the Addendum No. 4 for Engineering Expert Witness Consulting Services in the amount of \$100,000 to allow continuation of services by McIntosh Associates related to anticipated litigation costs for the Wekiva Parkway Project is respectfully requested.

ATTACHMENT

Addendum No. 4 for Engineering Expert Witness Consulting Services for Wekiva Parkway Parcels 197, 897, 230, 257 and 267.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
ADDENDUM NO. 4

Contract Name: Expert Witness Services

Contract No: 000916 Project No.: 429-203

This Addendum No. 4 entered into this ____ day of _____, 2016, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and DONALD W. McINTOSH ASSOCIATES, INC., (the "Engineer"), the same being an addendum to the Agreement between the aforesaid, dated October 16, 2012, for expert witness services pertaining to Wekiva Parkway Project No. 429-203, (the Contract").

1. CFX wishes to increase the Contract amount by \$100,000.00 and extend the Contract term to April 14, 2017, to complete the required services.
2. The Engineer hereby agrees to the increase in the Contract amount and the extension of the Contract term.
3. CFX and Engineer agree that this Addendum No. 4 shall not alter or change in any manner the force and effect of the Contract including any previous addenda thereto, except insofar as the same is altered and amended by this Addendum No. 4; that acceptance of this Addendum No. 4 signifies the Engineer's complete and total claim for the terms and conditions of the same and that the Engineer waives all future right for additional compensation which is not already defined herein.
4. This Addendum No. 4 is necessary to increase the compensation to the Engineer and extend the Contract term to complete the required services.

ADDENDUM NO. 4

Contract Name: Expert Witness Services

Contract No.: 000916 Project No.: 429-203

Amount of Changes to this document: \$100,000.00

This Addendum No. 4 entered into as of the day and year first written above.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: _____
Director of Procurement

DONALD W. McINTOSH ASSOCIATES, INC.

By: _____

Print Name: _____

Title: _____

Attest: _____ (Seal)
(Secretary or Notary)

Approved as to form and execution, only.

General Counsel for CFX

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
ADDENDUM NO. 3

Contract Name: Expert Witness Services

Contract No: 000916 Project No.: 429-203

This Addendum No. 3 entered into this 21st day of September, 2015, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY (the "Authority"), and DONALD W. McINTOSH ASSOCIATES, INC., (the "Engineer"), the same being an addendum to the Agreement between the aforesaid, dated October 16, 2012, for expert witness services pertaining to Wekiva Parkway Project No. 429-203, (the Contract").

1. The Authority wishes to extend the term of the Agreement to October 14, 2016, with no increase to the Contract amount.
2. The Engineer hereby agrees to the extension of the term of the Agreement with no increase in the Contract amount.
3. The Authority and Engineer agree that this Addendum No. 3 shall not alter or change in any manner the force and effect of the Agreement including any previous addenda thereto, except insofar as the same is altered and amended by this Addendum No. 3; that acceptance of this Addendum No. 3 signifies the Engineer's complete and total claim for the terms and conditions of the same and that the Engineer waives all future right for additional compensation which is not already defined herein.
4. This Addendum No. 3 is necessary to extend the term of the Agreement.

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CONTRACTS DEPT

Ces 9/21/15
SIGNATURE / DATE

ADDENDUM NO. 3

Contract Name: Expert Witness Services

Contract No.: 000916 Project No.: 429-203

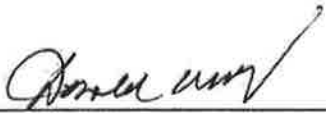
Amount of Changes to this document: \$0.00

This Addendum No. 3 entered into as of the day and year first written above.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

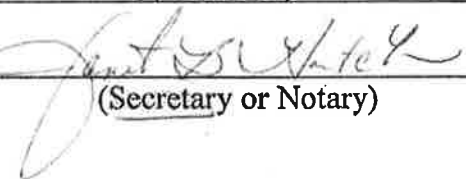
By: 
Director of Procurement

DONALD W. McINTOSH ASSOCIATES, INC.

By: 

Print Name: Donald W. McIntosh II

Title: President

Attest:  (Seal)
(Secretary or Notary)

Approved as to form and execution, only.


General Counsel for the Authority

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
ADDENDUM NO. 2

Contract Name: Expert Witness Services

Contract No: 000916 Project No.: 429-203

This Addendum No. 2 entered into this 9th day of October, 2014, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY (the "Authority"), and DONALD W. McINTOSH ASSOCIATES, INC., (the "Engineer"), the same being an addendum to the Agreement between the aforesaid, dated October 16, 2012, for expert witness services pertaining to Wekiva Parkway Project No. 429-203, (the Contract").

1. The Authority wishes to make the following changes to the Agreement:

Delete the language in Article 3.7, Total Payments Not to Exceed, in its entirety and insert the following new language in its place:

"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 Client. It shall be the responsibility of the Engineer 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."

2. The Authority further wishes to extend the term of the Agreement to October 14, 2015.
3. The Engineer hereby agrees to the changes in the Agreement and the extension of the term of the Agreement.
4. The Authority and Engineer agree that this Addendum No. 2 shall not alter or change in any manner the force and effect of the Agreement including any previous addenda thereto, except insofar as the same is altered and amended by this Addendum No. 2; that acceptance of this Addendum No. 2 signifies the Engineer's complete and total claim for the terms and conditions of the same and that the Engineer waives all future right for additional compensation which is not already defined herein.
5. This Addendum No. 2 is necessary to compensate the Engineer for the continuing services and to extend the term of the Agreement.

ADDENDUM NO. 2

Contract Name: Expert Witness Services

Contract No.: 000916 Project No.: 429-203

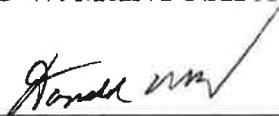
Amount of Changes to this document: \$50,000.00

This Addendum No. 2 entered into as of the day and year first written above.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

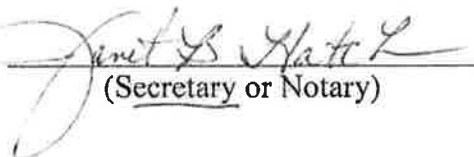
By: 
Director of Procurement

DONALD W. McINTOSH ASSOCIATES, INC.

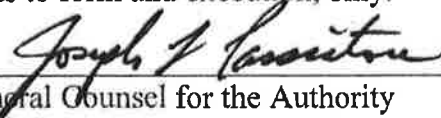
By: 

Print Name: Donald W McIntosh Jr

Title: Pres.

Attest:  (Seal)
(Secretary or Notary)

Approved as to form and execution, only.


General Counsel for the Authority

ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY
ADDENDUM NO. 1

Contract Name: Expert Witness Services

Contract No: 000916 Project No.: 429-203

This Addendum No. 1 entered into this 3rd day of October, 2013, by and between the ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY (the "Authority"), and DONALD W. McINTOSH ASSOCIATES, INC., (the "Engineer"), the same being an addendum to the Agreement between the aforesaid, dated October 16, 2012, for expert witness services pertaining to Wekiva Parkway Project No. 429-203, (the Contract").

1. The Authority wishes to make the following changes to the Agreement:
 - A. In Article 1, Services To Be Provided By The Engineer, amend the language in the first sentence in subarticle 1.1, Engineering Expert Witness Services, to read as follows:

"The Engineer agrees to perform engineering expert witness services for Wekiva Parkway Project 429-203, Parcel Nos. 197, 230, 257 and 267."
 - B. Delete the language in Article 3.7, Total Payments Not to Exceed, in its entirety and insert the following new language in its place:

"All payments made pursuant to this Agreement shall not exceed a total of One Hundred Fifty Thousand Dollars (\$150,000.00), without an Addendum to this Agreement that shall be approved by the Client. It shall be the responsibility of the Engineer to monitor the total of all payments made pursuant to this Agreement and notify the Client prior to reaching the One Hundred Fifty Thousand Dollars (\$150,000.00) upset limit."
2. The Engineer hereby agrees to the changes.
3. The Authority and Engineer agree that this Addendum No. 1 shall not alter or change in any manner the force and effect of the Agreement including any previous addenda thereto, except insofar as the same is altered and amended by this Addendum No. 1; that acceptance of this Addendum No. 1 signifies the Engineer's complete and total claim for the terms and conditions of the same and that the Engineer waives all future right for additional compensation which is not already defined herein.
4. This Addendum No. 1 is necessary to add new parcels to the scope of services and compensate the Engineer for the additional services.

ADDENDUM NO. 1

Contract Name: Expert Witness Services

Contract No.: 000916 Project No.: 429-203

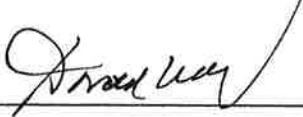
Amount of Changes to this document: \$100,000.00

This Addendum No. 1 entered into as of the day and year first written above.

ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY

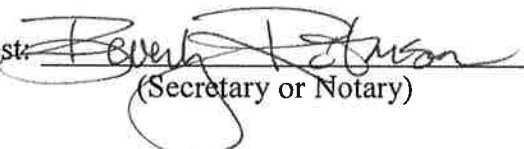
By: 
Director of Procurement

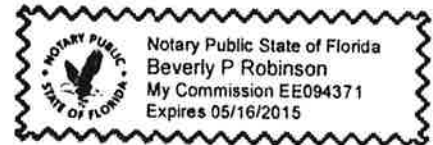
DONALD W. McINTOSH ASSOCIATES, INC.

By: 

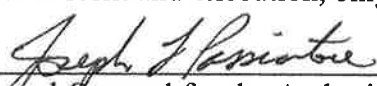
Print Name: Donald W McIntosh Jr

Title: Pres. Elect

Attest:  (Seal)
(Secretary or Notary)



Approved as to form and execution, only.


General Counsel for the Authority

RECEIVED
CONTRACTS DEPT

CS 10/16/13
SIGNATURE / DATE

**AGREEMENT FOR ENGINEERING EXPERT WITNESS SERVICES FOR
PARCEL 197 LOCATED IN WEKIVA PARKWAY PROJECT 429-203**

THIS AGREEMENT is effective this 16th day of October, 2012, by and between Orlando-Orange County Expressway Authority ("Client"), whose business address is 4974 ORL Tower Road, Orlando, Florida 32807 and Donald W. McIntosh Associates, Inc. ("Engineer"), whose business address is 2200 Park Avenue North, Winter Park, Florida 32789.

WITNESSETH:

WHEREAS, the Client desires to employ the Engineer to provide engineering expert witness services as described herein; and

WHEREAS, the Engineer is licensed, qualified, willing and able to perform the engineering expert witness services required on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Client and the Engineer do hereby agree as follows:

ARTICLE 1- SERVICES TO BE PROVIDED BY THE ENGINEER

1.1 Engineering Expert Witness Services

The Engineer agrees to perform engineering expert witness services for Wekiva Parkway Projects 429-203, Parcel 197. It is understood and agreed that the performance of the engineering expert witness 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 Engineer of Record leaves the Engineer'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 Engineer of Record so that the services shall be rendered without interruption or shall require the Engineer to appoint a different individual as the Engineer of Record. If the Agreement is assigned to another engineering firm, payment shall be made to the Engineer for all services rendered. Payment for engineering expert witness services shall be made in accordance with the compensation schedule set forth in **Exhibit A**.

The Engineer of Record shall prepare and deliver six (6) color copies of the engineering report(s) to Dyana L. Petro, Assistant General Counsel at Orlando-Orange County Expressway Authority, whose business address is 4974 ORL Tower Road, Orlando, Florida 32807, within the timeframe set forth in the Addendum.

The Engineer 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 Engineer acknowledges is reasonable. Upon the request from the Client, the Engineer shall provide a progress report which shall advise as to the status of the services to be performed by the Engineer.

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 Engineer shall consult with the Client regarding services to be performed by the Engineer at such time(s) as may be mutually convenient for the parties to this agreement. The Engineer shall initiate such consultations whenever the Engineer 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 Engineer of Record shall personally testify under oath as an expert witness on behalf of the Orlando-Orange County Expressway Authority in any judicial proceeding involving any engineering expert witness 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 Subconsultants

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

The Client shall have no liability or obligation to the subconsultants hereunder. Client shall have the right, but not the obligation, based upon sworn statements of accounts from the subconsultants, to pay a specific amount directly to a subconsultant. In such event, the Engineer agrees any such payments shall be treated as a direct payment to the Engineer's account. Subconsultant fees shall be invoiced at cost with no additional markup applied by the Engineer.

1.4 Engineer's Standards of Performance

The Engineer 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 Engineer 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 Engineer agrees that the Engineer will exercise that degree of care, knowledge, skill and ability and agrees to perform the services in an efficient and economical manner.

1.5 Engineer's Obligation to Correct Errors or Omissions

The Engineer 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 Engineer. The Engineer shall, without additional cost or expense to the Client, correct or revise any errors, omissions, or other deficiencies in the services performed by the Engineer.

1.6 Non-Exclusive Rights

The rights granted to the Engineer hereunder are nonexclusive, and the Client reserves the right to enter into agreements with other Engineers to perform engineering expert witness services, including without limitation, any of the services provided for herein.

1.7 Engineer's Compliance with Laws and Regulations

The Engineer and its employees and subconsultants 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 Engineer 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 Engineer to render its services hereunder.

1.8 Engineer is not Client's Agent

The Engineer 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 Engineer is not authorized to act as the agent of the Orlando-Orange County Expressway Authority and shall have no authority, expressed or implied, to act for or bind the Orlando-Orange County Expressway Authority.

1.9 Reduced Scope of Services

The Client shall have the right, by written notice to the Engineer, to reduce the scope of services to be rendered hereunder. If the Client reduces the services to be rendered, the Engineer 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 Engineer 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 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 Engineer 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 Engineer determines that the services are not progressing sufficiently to meet the Due Date, the Engineer shall immediately notify the Client 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. 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 Engineer by the Client. Payment for services rendered by any subconsultants shall be paid to the Engineer and the Engineer shall be fully responsible for making payment to any subconsultant retained by the Engineer.

3.2 Compensation for Consultation Services

It is expressly agreed and understood that the Engineer 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.

3.3 Compensation For Engineering Expert Witness Services

It is expressly agreed and understood that the Engineer shall be paid for satisfactorily performed engineering expert witness services in accordance with the compensation schedule set forth on **Exhibit A**. No payment shall be made for engineering expert witness 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, all invoices for engineering expert witness services will be paid within forty-five (45) days after receipt of the invoice.

The Engineer 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 Engineer.

The Engineer 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 Engineer receives or becomes aware of relevant additional information in existence prior to the date the Engineer signed the report.

3.4 Compensation for Litigation/Consultation Services

It is expressly agreed and understood that the Engineer 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.

3.5 Invoices

The Engineer shall submit detailed invoices to the Client for all services rendered. The Engineer represents and warrants that all billable hours and rates furnished by the Engineer to the Client shall be accurate, complete and current as of the date of this Agreement or the Addendum.

The Client shall notify the Engineer 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 Client shall promptly pay the Engineer the amount so determined, less any amounts previously paid with respect to such monthly invoice.

3.6 Right to Withhold Payment

The Client shall have the right to withhold payment on any invoice in the event that the Engineer is in default under any provision of this Agreement (including any Addenda) or if liquidated damages are assessed against the Engineer.

3.7 Total Payments not to Exceed

All payments made pursuant to this Agreement shall not exceed a total of Fifty Thousand Dollars (\$50,000.00), without an Addendum to this Agreement that shall be approved by the Client. It shall be the responsibility of the Engineer to monitor the total of all payments made pursuant to this Agreement and notify the Client prior to reaching the Fifty Thousand Dollars (\$50,000.00) upset limit.

ARTICLE 4- LIQUIDATED DAMAGES

4.1 Engineering Reports

If the Engineer fails to submit any engineering report by the Due Date the Engineer 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 Engineer submits the draft or final engineering report more than seven (7) calendar days after the Due Date the Engineer 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 Engineer 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 Engineer completes the requested modifications, corrections or additional services, the Engineer 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 Engineer shall maintain complete and accurate records relating to all services rendered by Engineer and any subconsultants 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 Engineer'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 Engineer'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 Engineer's records. Production of such records by the Engineer shall not constitute promulgation and shall retain in the Engineer all rights and privileges of workmanship, confidentiality and any other vested interests. If, as a result of an audit, it is established that the Engineer 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 Engineer to the Client 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 Engineer of the overstatement. If the amount of an overstatement in any month exceeds five percent (5%) of the amount of the Engineer's statement for that month, the entire reasonable expense of the audit shall be borne by the Engineer. The Engineer 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. No addenda shall be issued after two (2) years from the effective date of this Agreement. 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 addenda hereto may be terminated in whole or in part by either party by written notification at any time. Upon notification, Engineer will immediately discontinue all services and submit a final invoice to the Client within thirty (30) days of Client's notice of termination to Engineer. The Engineer shall be paid for the services satisfactorily performed by the Engineer if the engineering report(s) has been provided to the Client. If the engineering report(s) has not been provided to the Client, the Engineer shall receive no compensation for any services rendered under this agreement or any Addenda hereto.

Upon termination, the Engineer 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 Engineer or its subconsultants in performing services under this Agreement, whether completed or in process. The Engineer shall have no entitlement to recover anticipated profit for services or other work not performed.

ARTICLE 7- CONFIDENTIALITY

Unless otherwise required by law, the Engineer 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 Engineer or received from the Client, concerning the services rendered by the Engineer or any subconsultant 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**. Neither electronic mail, instant messaging, nor facsimile shall 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 Engineer. 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 Engineer'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 Engineer shall not transfer or assign any of its rights hereunder (except for transfers that result from the merger or consolidation of the Engineer 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 Engineer, 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, 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 Orlando-Orange County 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 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 Engineer and Subconsultants shall not undertake services when it would reasonably appear that such services could compromise the Engineer's judgment or prevent the Engineer from serving the best interests of the Client. Except with the Client's knowledge and written consent, the Engineer 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 Orlando-Orange County Expressway Authority for the projects collectively known as the S.R. 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.

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

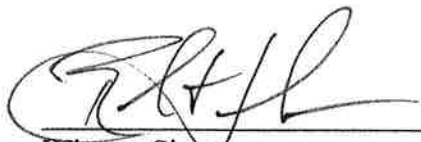
No person shall be deemed to possess any third-party beneficiary rights pursuant to this Agreement. It is the intent of the parties hereto that no direct benefit to any third party is intended or implied by the execution of this Agreement. It is agreed and understood between the services rendered hereunder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

8.11 Engineer Contractual Authorization

Engineer 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 Engineer 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:




Witness Signature
Robert Johnson

Printed Name



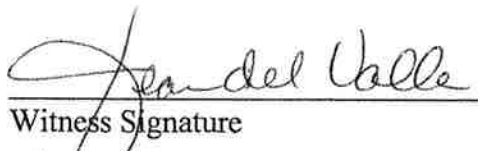
Witness Signature
Vicki McElroy

Printed Name



Witness Signature
Janet B. Hatch


Printed Name



Witness Signature
Jean del Valle

Printed Name

**ORLANDO-ORANGE COUNTY
EXPRESSWAY AUTHORITY**

By: 

Claude Miller
Director of Procurement
Orlando-Orange County Expressway
Authority

**REVIEWED AND APPROVED
BY LEGAL** 

**DONALD W. MCINTOSH ASSOCIATES,
INC.**

By: 

Donald W. McIntosh, President

EXHIBIT A

Client's Representative

Orlando-Orange County Expressway Authority
Mrs. Dyana L. Petro
4974 ORL Tower Road
Orlando, Florida 32807

Engineer'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:

- ☐ Engineer's Compensation Schedule including all Billable Rates. (The rates shall include allowance for salaries, overhead, operating margin and direct expenses.)



HOURLY RATE SCHEDULE

<u>PERSONNEL CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal	\$300.00
Engineering Department Director	\$265.00
Survey Department Director	\$240.00
Planning Department/Entitlements Director	\$250.00
Associate	\$210.00
Senior Engineering Project Manager	\$210.00
Senior Survey Project Manager	\$195.00
Sr. Reg. Engineer; Eng. Project Manager	\$190.00
Survey Project Manager	\$175.00
Registered Engineer	\$170.00
Registered Surveyor	\$170.00
GIS Administrator	\$150.00
Computer System/GIS Manager	\$150.00
Engineer III	\$150.00
Engineer II	\$140.00
Engineer I	\$130.00
Senior Planner	\$120.00
Senior Design Technician	\$115.00
Design Technician	\$100.00
Assistant Planner	\$100.00
Survey Technician	\$100.00
Construction Services Director	\$135.00
Construction Observer	\$100.00
Researcher	\$105.00
Draftsman	\$80.00
Project Manager Assistant	\$85.00
Clerical/Runner	\$60.00
Survey Crew	\$155.00
GPS Survey Crew	\$275.00
Pickup/Delivery	\$40.00

In addition to the hourly rates listed, charges will include identifiable out of pocket expenses and other reimbursables billed at a multiplier of 1.00.

The above hourly rates do not apply to expert witness preparation, depositions and testimony. Hourly rates for these services will be provided upon request.