


## MEMORANDUM

**TO:** Central Florida Expressway Authority Board

**FROM:**  Joseph L. Passiatore, General Counsel

**DATE:** January 25, 2016

**SUBJECT:** Winderweedle Haines Ward & Woodman, P.A. Contract Renewal (Contract No. 000427), and **Shutts & Bowen Contract Renewal** (Contract No. 000930)

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Both the Winderweedle Haines Ward & Woodman, P.A. ("WHWW") and Shutts & Bowen ("Shutts") right of way legal counsel contracts are expiring on March 31, 2016.

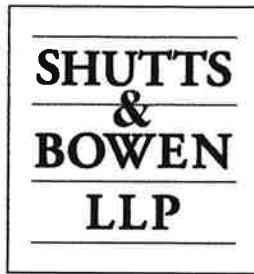
At this time our office is recommending a one year extension to each contract with additional funding of one million dollars (\$1,000,000) to the WHWW contract and four million dollars (\$4,000,000) to the Shutts contract. The latter amount is based upon the August 28, 2015 estimate (copy attached) which was later funded in the reduced amount of two million dollars (\$2,000,000).

This will carry each contract forward until February 27, 2017 by which time we would expect that significant progress will have been achieved in closing out the assigned parcels for the Wekiva Parkway project.

The CFX Right of Way Committee has approved both the one year extension and funding amounts.

JLP/ml  
Attachments

cc: Robert Johnson, Procurement



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## MEMORANDUM

TO: Laura Kelley, Executive Director      CLIENT-MATTER NO.: 19125  
Joseph L. Passiatore, General Counsel

FROM: Kenneth W. Wright, Esq.  
David A. Shontz, Esq.

DATE: August 28, 2015

RE: Request for Supplemental Agreement No. 2 to Shutts & Bowen LLP  
General Right-of-Way Counsel Services - Contract No. 000930

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As you are aware, on February 27, 2013, CFX (in its former structure as OOCEA) entered into a contract with Shutts & Bowen LLP for General Right-of-Way Counsel Services for a three-year period for a not-to-exceed amount of \$2,535,000 based on the hourly rates attached to the price proposal, with the possibility of two one-year renewals.

On or about November 19, 2014, CFX entered into supplemental agreement no. 1 with Shutts & Bowen increasing the not-to-exceed amount of the contract by \$2,500,000, to a total of \$5,035,000. As part of supplemental agreement no. 1, Shutts & Bowen voluntarily agreed to lower its hourly rates from those previously agreed to under the original price proposal.

Please keep in mind that included in the not-to-exceed amount are the all of the fees and costs of experts retained by Shutts & Bowen, on behalf of the CFX, directly related to the right-of-way acquisitions for the Wekiva Parkway parcels.

Additionally, the Shutts & Bowen invoices to date have also included nearly \$580,000 in fees and costs arising out legal services requested by CFX on the All Aboard Florida matter and the Innovation Way/Beachline Interchange project, neither of which was anticipated to be included in the General Right-of-Way Counsel Services at the time of the initial contract.

Below is a summary of the work completed and significant accomplishments since February 27, 2013:

- **89 parcels handled by Shutts & Bowen for Wekiva Parkway (429-203, 204, 205 and 206), consisting of 648 property interests as follows:**

- **423-203: 261 property interests acquired**
- **429-204: 142 property interests acquired**
- **429-205: 55 property interests acquired/set for OT to be acquired**
- **429-206 190 property interests acquired/set for OT to be acquired**
- **24 suits filed in Orange and Lake Counties, which also consists of the 67 separate Parcels currently in litigation as follows:**
  - **11 parcels are currently set for trial through the end of 2016**
  - **56 parcels are being litigated, but not yet set for trial**
- **Approximately 440 expert reports completed for the 89 parcels (first offer appraisal report, order of taking appraisal, date of value appraisal, engineering reports, land planning reports, business damage reports, etc.):**
  - **All expert reports are complete except approximately 20 updated appraisal reports through the date of value. Most, if not all expert fees going forward will be for litigation support and trial testimony.**

Please find set forth below an outline of the typical work necessary post-order of taking through a jury trial conclusion, including post judgment work and expert fees for litigation support:

- I. **Discovery** (written discovery, depositions of fact witnesses and experts, rebuttal, review of documents after production)
- II. **Motions** (dispositive and non-dispositive, attend hearings, etc.)
- III. **Mediation** (Prepare for and attend)
- III. **Pre-Trial Conference** (Witness and exhibit lists, motions in limine)
- IV. **Trial Preparation**
- V. **Trial Attendance** (5-7 day trials, after hour witness and client conferences, research, jury instructions, trial order compliance)
- VI. **Experts** (Preparation, reports)
- VII. **Post Trial/Judgment** (Motions to tax fees and costs, apportionment hearings, etc.)

Over the next 60 days, we will be completing the remaining Order of Takings for the final parcels in 205 and 206 which will result in additional fees and costs being incurred. Additionally, although taking a case through trial including expert's fees and post judgment work could be as much as \$300,000, it is likely that we will be successful in resolving many of the

remaining 67 parcels presently being litigated without the need for a trial (though 11 parcels are currently set for trial through the end of 2016). In providing you with the requested range of legal and expert fees and costs going forward, we would estimate the minimum incurred for the remaining 67 parcels to be \$5,000,000; however, in the unlikely event that all of the cases in connection with the 67 parcels were to go to trial, these fees and costs could be as much as \$20,000,000.

As of July 13, 2015, the amount of legal fees and costs incurred by Shutts & Bowen is \$2,714,988.90. The amount of expert's fees and costs incurred and booked against the Shutts & Bowen contract for the same time period is \$2,222,830.30. Together they total \$4,937,819.20, leaving a balance of only \$97,180.80 in relation to the not-to-exceed contract amount.

Accordingly, Shutts & Bowen is requesting a supplemental agreement no. 2 to increase the not-to-exceed amount of the contract by another \$6,500,000.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 4

Contract Name: Right of Way Counsel Services

Contract No: 000930

This Supplemental Agreement No. 4 entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and SHUTTS & BOWEN, LLP (the "Counsel"), the same being supplementary to the contract between the aforesaid, dated February 27, 2013, for Right of Way Counsel Services, (the "Agreement").

1. CFX has determined it necessary to extend the term of the Contract to February 27, 2017, and to increase the Contract amount by \$4,000,000.00 in order to continue the required services to completion. Rates currently being paid to Counsel shall remain unchanged during the extension.
2. Counsel hereby agrees to the extension of the Contract term and the increase in the Contract amount.
3. CFX and Counsel agree that this Supplemental Agreement No. 4 shall not alter or change in any manner the force and effect of the Contract except insofar as the same is altered and amended by this Supplemental Agreement No. 4; that acceptance of this Supplemental Agreement No. 4 signifies Counsel's waiver of all future rights for additional compensation which is not already defined herein or in the fee proposal.
4. This Supplemental Agreement No. 4 is necessary to extend the term of the Contract and to provide additional compensation to completion of the required services.

**SUPPLEMENTAL AGREEMENT NO. 4**

Contract Name: Right of Way Counsel Services

Contract No.: 000930

Cost: \$4,000,000.00

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

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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

**SHUTTS & BOWEN, LLP**

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

Title: \_\_\_\_\_

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

Date: \_\_\_\_\_

Approved as to form and execution, only.

\_\_\_\_\_  
General Counsel for CFX