


# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: September 23, 2016

RE: Approval of Contract Award for Bond Counsel to  
Broad and Cassel  
Contract No. 001195

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Request for Proposals (RFP) from qualified law firms to serve as CFX's Bond Counsel was advertised on July 25, 2016. Responses were received from three (3) firms by the August 24, 2016, deadline for submittal of Technical Proposals. Those firms were Broad and Cassel Attorneys at Law; Bryant Miller Olive, and Foley & Lardner LLP/D. Seaton and Associates.

The Evaluation Committee met on August 31, 2016, and after reviewing the Technical Proposals decided to shortlist all three firms and schedule interviews.

Interviews with the firms were held on September 15, 2016. At the conclusion of the interviews the Fee Proposals were opened and scored. The combined scores for the Technical Proposals and Fee Proposals as submitted by each firm were calculated and resulted in a tie for the first rank firm as shown below:

<u>Firm</u>	<u>Ranking</u>
Broad and Cassel	1
Bryant Miller Olive	1
Foley & Lardner LLP/ D. Seaton and Associates, P.A.	3

The Finance Committee at its September 19, 2016 meeting recommended Broad and Cassel based on the statement in their price proposal that they would match the lowest reasonable rates and fees proposed by a competing law firm with similar experience. The CFX Procurement Department reached out to Broad and Cassel who agreed to accept the fee proposal provided by Bryant Miller Olive.

Board award of the contract to Broad and Cassel with a not to exceed amount of \$375,000.00 is requested.

Reviewed by: 

Lisa Lumbard  
Chief Financial Officer

**RFP-001195 Committee Meeting September 15, 2016 Minutes**

The Evaluation Committee for **Bond Counsel, RFP-001195**, held a duly noticed meeting on Thursday, September 15, 2016, commencing at 9:03 a.m. in the Pelican Conference Room at the CFX Administrative Bldg., Orlando, Florida.

**Committee Members Present:**

Joe Passiatore, General Counsel, CFX  
Lisa Lombard, Chief Financial Officer, CFX  
Michael Carlisle, Director of Finance and Accounting, CFX  
Michael Kurek, Chairman of CFX Finance Committee

**Other Attendees:**

Aneth Williams, Director of Procurement, CFX  
Robert Johnson, Manager of Procurement, CFX

**Discussion and Motions:**

Robert stated the purpose of this meeting was to interview the shortlisted firms and then finish the evaluation process so that the Evaluation Committee could make a recommendation for award.

Robert commenced each interview by explaining that the interview portion of the meeting was closed to the public and that it was being recorded in accordance with statutory requirements. Robert explained that the interview was for a thirty minute period that would commence upon the completion of the Committee member introductions and the Proposer introductions. Robert stated that he would raise his arm at the twenty five minute mark to signal that the interview had five minutes remaining.

<b><u>Interviewees</u></b>	<b><u>Time</u></b>
Broad and Cassel, P.A.	09:05 – 09:28 a.m.
Bryant Miller Olive P.A.	09:38 – 10:15 a.m.
Foley & Lardner LLP/ D. Seaton and Associates, P.A.	10:30 – 10:53 a.m.

During breaks between interviews the recorder was paused.

Upon completion of the final interview the recorder was shut off.

The evaluation portion of the meeting commenced after the final interview whereby general discussion ensued and each Committee member completed their evaluation packages and submitted them to Robert for tallying. A summary score sheet of the technical proposal and interview scores was created and provided to the committee members for review and signature. The technical proposal and individual interview scoring summary is attached.

Upon completion of the evaluation package scoring and the determination on how the price proposals would be scored, the Committee members agreed that the highest ranked firm would be recommended to the Board for award contingent upon concurrence of the Finance Committee.

To insure points were given objectively to each Proposer for their fee schedule it was decided that the fee for (one) \$250 million dollar transaction in year one, (one) \$100 million dollar transaction in year two (2), (one) \$100 million dollar transaction in year three (3), and the cost at the hourly rate of the partner only for 200 hours per year for three (3) year period combined would determine the total amount of the price proposal to be evaluated. Price Proposal Calculation Sheet attached.

The price proposal points were determined by dividing the lowest derived price proposal amount (\$352,500) by each of the other Proposer's derived price proposal amount multiplied by the number of points available (20) to determine the points for each price proposal. Technical / Price Proposal Scoring Summary attached

Committee members adjourned for lunch at 12:15p.m. and reconvened at 2:00p.m. to complete the evaluation process.

The individual committee member rankings of each proposer were put on a summary scoring sheet then tallied. Below are the results:

<u>Proposer</u>	<u>Points</u>	<u>Ranking</u>
Broad & Cassel	06	1
Bryant Miller Olive	06	1
Foley & Lardner LLP/ D. Seaton and Associates, P.A.	12	3

Due to the first rank position tie, the Evaluation Committee agreed to present the rankings to the Finance Committee and request the Finance Committee to determine the award recommendation.

The Evaluation Committee recommends Lisa Lumbard, Chief Financial Officer, or her designee; present the ranking of Proposers to the Finance Committee for review and determination of the recommendation for award to the CFX Board; for approval of the ranking and authorization of award based on the Finance Committee recommendation and successful negotiations.

There being no other business to come before the Committee; the meeting was adjourned at 2:15 p.m.

Submitted by:



Robert Johnson, Manager of Procurement, CFX

Approved by:



Lisa Lumbard, Chief Financial Officer, CFX

RFP-001195 Bond Counsel Services  
Price Proposal Calculation Sheet

TRANSACTION FEES

Proposer	Bond Amount	Fee per \$1K Bond Issued	Total (1) \$250M YR 1 Transaction Fee	Bond Amount	Fee per \$1K Bond Issued	Total \$100M YR 2 Transaction Fee	Bond Amount	Fee per \$1K Bond Issued	Total \$100M YR 3 Transaction Fee	Grand Total
Broad & Cassel	\$250,000,000.00		\$211,500.00	\$100,000,000.00		\$100,000.00	\$100,000,000.00		\$100,000.00	\$411,500.00
Bryant Miller Olive Foley & Larrner LLP/D. Seaton and Associates, P.A.	\$250,000,000.00		\$92,500.00	\$100,000,000.00		\$70,000.00	\$100,000,000.00		\$70,000.00	\$232,500.00
	\$250,000,000.00		\$193,750.00	\$100,000,000.00		\$137,500.00	\$100,000,000.00		\$137,500.00	\$468,750.00

HOURLY RATE FEE

Proposer	Partner Rate	200 hrs * 3 yr Hours	Total Partner Rate	Bond Amount	Fee per \$1K Bond Issued	Combined Grand Total
Broad & Cassel	\$235.00	600	\$141,000.00	\$100,000,000.00		552,500.00
Bryant Miller Olive Foley & Larrner LLP/D. Seaton and Associates, P.A.	\$200.00	600	\$120,000.00	\$100,000,000.00		352,500.00
	\$518.75	600	\$311,250.00	\$100,000,000.00		780,000.00

Foley & Lardner LLP/D. Seaton and Associates, P.A. Blend Rate utilized for hourly rate

Broad & Cassel Blend Rate utilized for hourly rate

Note: Transaction fee Calculated for all Proposer's and amounts requested

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

**TECHNICAL AND PRICE PROPOSAL SCORING SUMMARY**

**BOND COUNSEL SERVICES REP-001195**

EVALUATOR	Broad and Cassel Attorneys at Law				Bryant Miller Olive				Foley & Lardner LLP   D. Seaton and Associates					
	TECHNICAL	PRICE	Total	Ranking	TECHNICAL	PRICE	Total	Ranking	TECHNICAL	PRICE	Total	Ranking		
Joe Passiadore	78	12.76	90.76	1	70	20	90	2	69	9.04	78.04	3		
Lisa Lumbard	80	12.76	92.76	1	70	20	90	2	72	9.04	81.04	3		
Michael Carlisle	74	12.76	86.76	2	76	20	96	1	67	9.04	76.04	3		
Michael Kurek	80	12.76	92.76	2	76	20	96	1	74	9.04	83.04	3		
Total Ranking				6	Total Ranking				6	Total Ranking				12


**PRICE PROPOSAL SUMMARY**

PROPOSER	PROPOSAL AMOUNT	POINT VALUE
Broad and Cassel Attorneys at Law	\$552,500.00	12.76
Bryant Miller Olive	\$352,500.00	20.00
Foley	\$780,000.00	9.04

**POINT TOTALS AND FINAL RANKING**

PROPOSER	TOTAL POINTS	FINAL RANKING
Broad and Cassel Attorneys at Law	6	1
Bryant Miller Olive	6	1
Foley	12	3

Committee Members:


Thursday, September 15, 2016

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CENTRAL FLORIDA EXPRESSWAY AUTHORITY

TECHNICAL PROPOSAL / INTERVIEW INDIVIDUAL SCORING SUMMARY

BOND COUNSEL SERVICES RFP-001195

	Joe Passiatore	Lisa Lumbard	Michael Carlisle	Michael Kurek
<b>Broad and Cassel Attorneys at Law</b>				
Experience of the Firm (10 points max.)	10	10	10	9
Experience of the Attorneys Assigned and Availability (20 points max.)	20	20	20	17
Approach to Assignment (20 points max.)	18	20	20	19
Interview (30 Points)	30	30	30	29
Total (Not to exceed 80)	78	80	80	74

	Joe Passiatore	Lisa Lumbard	Michael Carlisle	Michael Kurek
<b>Bryant Miller Olive</b>				
Experience of the Firm (10 points max.)	8	10	10	9
Experience of the Attorneys Assigned and Availability (20 points max.)	18	15	15	20
Approach to Assignment (20 points max.)	17	20	20	18
Interview (30 Points)	27	25	25	29
Total (Not to exceed 80)	70	70	70	76

	Joe Passiatore	Lisa Lumbard	Michael Carlisle	Michael Kurek
<b>Foley &amp; Lardner LLP   D. Seaton and Associates</b>				
Experience of the Firm (10 points max.)	8	10	10	7
Experience of the Attorneys Assigned and Availability (20 points max.)	19	20	20	15
Approach to Assignment (20 points max.)	19	17	17	16
Interview (30 Points)	23	25	25	29
Total (Not to exceed 80)	69	72	72	67

Committee Members:



Thursday, September 15, 2016

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## MEMORANDUM

**TO:** Mr. Robert Johnson  
Manager of Procurement  
Central Florida Expressway Authority

**FROM:** Joseph B. Stanton 

**DATE:** September 21, 2016

**RE:** Acceptance of Award for Bond Counsel Services, Contract No. 001195

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Mr. Johnson:

On behalf of Broad and Cassel and Marchena & Graham, P.A., I am authorized to write to you to accept and confirm the award of the above referenced contract based upon the fee proposal provided by Bryant Miller Olive.

We appreciate the opportunity to serve CFX and look forward to working with CFX during this contract period.

Thank you.

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
AGREEMENT FOR BOND COUNSEL SERVICES  
CONTRACT NO. 001195**

This Contract No. 001195 (the "Contract" as defined herein below), is made this 13th day of October, 2016, between the CENTRAL FLORIDA EXPRESSWAY, a body politic and agency of the State of Florida, hereinafter called ("CFX") and Broad and Cassel, hereinafter the ("COUNSEL").

**WITNESSETH:**

**WHEREAS**, CFX was created by statute and is charged with acquiring, constructing, operating and maintaining a system of limited access roadways known as the Central Florida Expressway Authority System; and,

**WHEREAS**, CFX has been granted the power under Section 348.754(2)(m) of Florida Statutes, to do everything necessary or convenient for the conduct of its business and the general welfare of CFX, in order to comply with the law; and,

**WHEREAS**, CFX desires to retain the services of competent and qualified legal counsel to serve as CFX's bond counsel for the issuance of revenue bonds and other debt instruments which may be required from time to time to finance additions and improvements to the Expressway System and to refund outstanding indebtedness;

**WHEREAS**, on or about July 25, 2016, CFX issued a Request for Proposals seeking qualified firms to perform such tasks; and,

**WHEREAS**, based upon the recommendation of the Evaluation Committee at its meeting held on September 15, 2016 and the recommendation of the Finance Committee at its meeting held on September 19, 2016, the Governing Board of CFX at its meeting held on October 13, 2016 selected Board and Cassel to serve as Bond Counsel;

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

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

**SECTION 1. SERVICES.** CFX does hereby retain COUNSEL to furnish professional services and perform those tasks generally described as legal services related to CFX financial matters, including, but not limited to, bond financing and re-financing and 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 CFX currently anticipates using the services of COUNSEL, CFX provides no assurance to COUNSEL regarding the amount or quantity of legal services that COUNSEL will provide CFX 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. CFX designates CFX's General Counsel or Chief Financial Officer as CFX 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 CFX's policy and decisions pertinent to the work covered by this Agreement. CFX 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. TERM.** Unless earlier terminated as provided for herein, this Agreement shall become effective November 1, 2016, and shall run for a term of three (3) years, with two one-year renewals at CFX's option. The options to renew are at the sole discretion and election of CFX. Renewals will be based, in part, on a determination by CFX that the value and level of service provided by COUNSEL are satisfactory and adequate for CFX's needs. If a renewal option is exercised, CFX 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 4. RESPONSIBILITIES OF COUNSEL.**

(a) COUNSEL agrees to timely provide the professional services and facilities required to assist CFX in the field of finance, bond financing and re-financing and other areas of responsibility as deemed necessary by CFX.

(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 Joseph Stanton, as the primary attorney to provide services to CFX and will be assisted from time to time by other members of the firm, as he deems appropriate to the needs of the particular transaction.

(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.

## **SECTION 5. PAYMENT FOR SERVICES AND BILLING.**

(a) In consideration of the promises and the faithful performance by COUNSEL of its obligations, CFX agrees to pay COUNSEL a fee based on a "fixed-fee" per transaction basis, said fee shall be based on the fee schedule attached hereto as Exhibit "B." Any services not directly related to a specific transaction will be billed by COUNSEL on a "Time Basis Method". Total compensation to COUNSEL during the three-year term of the Agreement is estimated to a not to exceed amount of \$375,000.00.

(b) On transactions where COUNSEL is being compensated on the "Time Basis Method", CFX shall compensate COUNSEL for the actual work hours required to perform the services authorized. Payment for services billed on a Time Basis Method shall be made to COUNSEL each month for the immediately preceding month's services. COUNSEL shall provide an itemized invoice based on actual services rendered. COUNSEL shall be compensated based on the fee schedule attached hereto as Exhibit "B".

(c) Reimbursable expenses shall be paid in addition to the payment due under subsection (b) 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 CFX's policies and procedures, including those for travel expenses:

(1) Reasonable expenses of transportation, when traveling outside of Orland, (all travel, lodging and meals shall be at rates allowed to public employees under Florida Statute 112.061), long distance calls and facsimile transmissions.

(2) COUNSEL will not be reimburse for expenses such as telecopy, local telephone, internal word processing, data processing, courier or other service that would be deemed to be part of your firm's overhead expenses. However, COUNSEL will notify CFX 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) If authorized in writing in advance by CFX, the reasonable cost of other expenditures made by COUNSEL in the interest of the services provided under this Agreement.

(d) The parties hereto do hereby acknowledge that the fees described in this Agreement are based on the proposed fees to be paid to COUNSEL, including any third party tax consultants hired by COUNSEL. COUNSEL has elected to subcontract with Marchena and Graham, P.A.as CO-COUNSEL. All fees outlined in Exhibit B are inclusive of CO-COUNSEL fees. CFX shall have the right to approve assignments given to CO-COUNSEL and fees shall be based on tasks performed.

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

(a) COUNSEL shall have a documented invoice procedure and shall invoice CFX as designated by CFX, by the 20th calendar day of each month for services performed during the preceding month, when being compensated on the "Time Basis Method," and within

twenty (20) days of the closing of a bond transaction when being compensated on the "Fixed Fee Method." CFX shall pay COUNSEL within thirty (30) days of receipt of such valid invoice.

(b) 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. CO-COUNSEL SERVICES.** COUNSEL has agreed to separately engage the Co-Bond Counsel services of Marchena and Graham. P.A. for 30% of fees or such amount as shall be deemed appropriate, as directed by and in the sole discretion of CFX's General Counsel or Chief Financial Officer. In such event, COUNSEL agrees to exercise its best efforts, in good faith, to negotiate with CO-COUNSEL a fair allocation of work responsibility. The fees paid to CO-COUNSEL shall be the responsibility of COUNSEL directly; however, the final terms of such arrangement shall be subject to the approval of CFX. The exact percentage paid to CO-COUNSEL on each transaction shall be at the sole discretion of COUNSEL based on the allocation of work responsibility and the quality of work product of CO-COUNSEL. COUNSEL shall incorporate into such separate arrangement with CO-COUNSEL the same terms and conditions as to which COUNSEL is subject hereunder.

**SECTION 8. 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 CFX 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 its separate arrangement with CO-COUNSEL granting ownership to CFX of such written instrument or document that may result from CO-COUNSEL's services.

## **SECTION 9. AUDIT AND EXAMINATION OF RECORDS**

### **1.1 Definition of Records:**

(i) "Contract Records" shall include, but not be limited to, all information, communications and data, whether in writing or stored on a computer, computer disks, microfilm, writings, working papers, drafts, computer printouts, field notes, charts or any other data compilations, books of account, photographs, videotapes and audiotapes supporting documents, any other papers or preserved data in whatever form, related to the Contract or the COUNSEL's performance of the Contract determined necessary or desirable by CFX for any purpose. Proposal Records shall include, but not be limited to, all information and data, whether in writing or stored on a computer, writings, working papers, computer printouts, charts or other data compilations that contain or reflect information, data or calculations used by COUNSEL in determining labor, unit price, or any other component of a bid submitted to CFX.

(ii) "Proposal Records" shall include, but not be limited to, any material relating to the determination or application of equipment rates, home and field overhead rates, related time schedules, labor rates, efficiency or productivity factors, arithmetic extensions,

quotations from subconsultants, or material suppliers, profit contingencies and any manuals standard in the industry that may be used by COUNSEL in determining a price.

CFX reserves and is granted the right (at any time and from time to time, for any reason whatsoever) to review, audit, copy, examine and investigate in any manner, any Contract Records (as herein defined) or Proposal Records (as hereinafter defined) of the COUNSEL or any subconsultant. By submitting a response to the Request for Proposal, COUNSEL or any subconsultant submits to and agree to comply with the provisions of this section.

If CFX requests access to or review of any Contract Documents or Proposal Records and COUNSEL refuses such access or review, COUNSEL shall be in default under its Contract with CFX, and such refusal shall, without any other or additional actions or omissions, constitute grounds for suspension or disqualification of COUNSEL. These provisions shall not be limited in any manner by the existence of any COUNSEL claims or pending litigation relating to the Contract. Disqualification or suspension of the COUNSEL for failure to comply with this section shall also preclude the COUNSEL from acting in the future as a subconsultant of another consultant doing work for CFX during the period of disqualification or suspension. Disqualification shall mean the COUNSEL is not eligible for and shall be precluded from doing future work for CFX until reinstated by CFX.

Final Audit for Project Closeout: COUNSEL shall permit CFX, at CFX's option, to perform or have performed, an audit of the records of the COUNSEL and any or all subconsultants to support the compensation paid the COUNSEL. The audit will be performed as soon as practical after completion and acceptance of the contracted services. In the event funds paid to the COUNSEL under the Contract are subsequently determined to have been inadvertently paid by CFX because of accounting errors or charges not in conformity with the Contract, the COUNSEL agrees that such amounts are due to CFX upon demand. Final payment to the COUNSEL shall be adjusted for audit results.

COUNSEL shall preserve all Proposal Records and Contract Records for the entire term of the Contract and for a period of five (5) years after the later of: (i) final acceptance of the project by CFX, (ii) until all claims (if any) regarding the Contract are resolved, or (iii) expiration of the Proposal Records and Contract Records' status as public records, as and if applicable, under Chapter 119, Florida Statutes.

## **SECTION 10: PUBLIC RECORDS**

**IF COUNSEL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COUNSEL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407-690-5000, publicrecords@CFXWay.com, and 4974 ORL Tower Road, Orlando, FL. 32807).**

COUNSEL acknowledges that CFX is a body politic and corporate, an agency of the

State of Florida, and is subject to the Public Records Act codified in Chapter 119, Florida Statutes. To the extent that the COUNSEL is in the possession of documents fall within the definition of public records subject to the Public Records Act, which public records have not yet been delivered to CFX, COUNSEL agrees to comply with Section 119.0701, Florida Statutes, and to:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the COUNSEL does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the COUNSEL or keep and maintain public records required by the public agency to perform the service. If the COUNSEL transfers all public records to the public agency upon completion of the contract, the COUNSEL shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the COUNSEL keeps and maintains public records upon completion of the contract, the COUNSEL shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

Upon receipt of any request by a member of the public for any documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by COUNSEL in conjunction with this Contract (including without limitation COUNSEL Records and Proposal Records, if and as applicable), COUNSEL shall immediately notify the CFX. In the event the COUNSEL has public records in its possession, COUNSEL shall comply with the Public Records Act.

#### **SECTION 11: CONFLICT OF INTEREST AND STANDARDS OF CONDUCT**

COUNSEL warrants that it has not employed or retained any entity or person, other than a bona fide employee working solely for the COUNSEL, to solicit or secure this Contract, and that COUNSEL has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Contract. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

COUNSEL acknowledges that CFX officials and employees are prohibited from soliciting and accepting funds or gifts from any person who has, maintains, or seeks business relations with CFX in accordance with CFX's Ethics Policy. COUNSEL acknowledges that it has read the Ethics Policy and, to the extent applicable, COUNSEL will comply with the aforesaid Ethics Policy in connection with performance of the Contract.

In the performance of the Contract, COUNSEL shall comply with all applicable local, state, and federal laws and regulations and obtain all permits necessary to provide the Contract services.

COUNSEL covenants and agrees that it and its employees, officers, agents, and subconsultants shall be bound by the standards of conduct provided in Florida Statutes 112.313 as it relates to work performed under this Contract, which standards will be reference be made a part of this Contract as though set forth in full.

COUNSEL hereby certifies that no officer, agent or employee of CFX 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.

**SECTION 12. NO ASSIGNMENT.** The parties fully understand and agree that the professionalism and specialization involved in serving as Bond Counsel is of paramount importance and that this Agreement would not be entered into by CFX 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 CFX. The delegation by COUNSEL of certain assignments or tasks under the scope of services to CO-COUNSEL shall not be deemed an assignment of this Agreement for purposes of this Section.

**SECTION 13. 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 14. 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 CFX the right to terminate this Agreement immediately upon written notice to COUNSEL. It shall be solely within the discretion of CFX 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 15. 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 the Request for Proposals or this Agreement be construed

to create a joint venture, association, or partnership by or among CFX and COUNSEL (including its officers, employees, and agents), nor shall COUNSEL hold itself out as or be considered an agent, representative or employee of CFX for any purpose, or in any manner, whatsoever. COUNSEL shall not create any obligation or responsibility, contractual or otherwise, on behalf of CFX nor bind CFX in any manner.

**SECTION 16. 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 CFX may immediately terminate this Agreement with respect to the party in bankruptcy or receivership.

**SECTION 17. 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 CFX with properly executed Certificate(s) of Insurance forms on all the policies of insurance and renewals thereof in a form(s) acceptable to CFX. CFX 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.

CFX agrees that, if more than one entity is providing Bond Counsel services, each firm shall independently be liable to CFX for any negligence or professional malpractice committed by the respective entity's employees and that no law firm shall have any cross-liability or responsibility for any negligence or professional malpractice committed by another acting separately or in a co-counsel relationship.

**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 CFX to insist upon strict and prompt performance of any of the terms and conditions of this Agreement shall not constitute a waiver of CFX'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 CFX:

Mr. Joseph Passiatore, General Counsel  
Ms. Lisa Lumbard, Chief Financial Officer  
Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, Florida 32807

For COUNSEL:

Mr. Joseph B. Stanton, P.A.  
Broad and Cassel  
390 North Orange Avenue, Suite 1400  
Orlando, Florida 32801

**SECTION 21. TERMINATION.** CFX 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 CFX all data, drawings, specifications, 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 CFX, 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.

**SECTION 28: INSPECTOR GENERAL.** COUNSEL understands and shall comply with subsection 20.055(5), Florida Statutes, and to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing pursuant to this section. The undersigned further agrees that any subconsultants / subcontractors to the undersigned participating in the performance of this contract shall also be bound contractually to this and all applicable Florida statutory requirements.

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 CFX's Board of Directors at its meeting on October 13, 2016.

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

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

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

**COUNSEL**

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

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

Approved as to form and execution, only.

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