



MEMORANDUM

TO: Central Florida Expressway Authority Board Members
Laura Kelley, Executive Director

FROM:  Joseph L. Passiatore, General Counsel

DATE:  October 3, 2016

SUBJECT: Parcels 197/897, 230, 257 and 267

Contract 000929 for right of way legal counsel services with Lowndes, Drosdick, Doster, Kantor & Reed, P.A. (“LDDKR”) for condemnation representation for the above parcels is set to expire on December 31, 2016 and there is currently a balance of \$5,015.79 left in the contract.

All of the above parcels have been acquired through orders of taking, but valuation trials remain outstanding. Parcels 197/897 are scheduled for trial during the March 27, 2017 period. Parcels 230, 257 and 267 are not currently set for trial.

LDDKR submitted a cost proposal with a not to exceed budget of \$890,000 for the trial and appeals of parcels 197/897.

In order to provide a basis of comparison, our office solicited a proposal from Mateer Harbert, P.A. for a cost estimate for trial and appeal of these parcels. That estimate of \$325,750.00 is included in your meeting materials. At the September 28, 2016 CFX Right of Way Committee meeting the firm agreed to a not to exceed guarantee of Five Hundred Thousand Dollars (\$500,000). Mateer Harbert is currently under contract with CFX for legal work on the super corridor and “such other assignments as are authorized.”

RECOMMENDATION:

Our office recommends assigning the trial of these parcels to Mateer Harbert, P.A. and issuance of a task authorization for the \$325,750.00 amount with a not to exceed cap of \$500,000 as stated in their September 23, 2016 cost estimate. Further, we request approval of a supplemental amendment to Contract 000929 in the amount of \$50,000 for LDDKR to provide transition legal services through the end of the 2016 calendar year.

The Right of Way Committee approved these recommendations at its September 28, 2016 meeting.

JLP/ml
Attachment

4974 ORL TOWER RD. ORLANDO, FL 32807 | PHONE: (407) 690-5000 | FAX: (407) 690-5011

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
SUPPLEMENTAL AGREEMENT NO. 1

Contract Name: Right Of Way Counsel Services

Contract No.: 001116

THIS SUPPLEMENTAL AGREEMENT NUMBER 1 is made and entered into this _____ day of _____, 2016, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY (“CFX”) and Mateer & Harbert, P.A., (“COUNSEL”), the same being supplementary to the contract between the aforesaid, dated June 11, 2015, for Right of Way Counsel Services (the “Agreement”)

1. CFX has determined that it is in the best interest of CFX to assign to COUNSEL the eminent domain case styled, *Central Florida Expressway Authority v. Project Orlando, LLC*, Case No. 2014-CA-005589-O, Parcels 197, 897, 230, 257, and 267.
2. With respect to the resolution, trial and appeal of Parcels 197 and 897, COUNSEL shall represent CFX in the above-referenced matter for Three Hundred Twenty Five Thousand Seven Hundred and Fifty Dollars (325,750.00) with a guaranteed not to exceed total cost of Five Hundred Thousand Dollars (\$500,000) pursuant to the September 23, 2016 proposed litigation cost estimate described in **Exhibit A** attached hereto.
3. COUNSEL shall also represent CFX with respect to Parcels 230, 257 and 267 and a separate Task Authorization shall be processed for that assignment. COUNSEL agrees to provide a proposed litigation cost estimate to CFX’s General Counsel after COUNSEL has had an opportunity to more thoroughly review the files.
4. Jay Small shall serve as COUNSEL’s lead trial counsel and Kurt Garber, Esq., and Jennifer De La Garza, are authorized to render services on this matter at the rates of

partner and paralegal, which is set at \$250 and \$85 per hour. Their qualifications are described in **Exhibit B**.

5. CFX and COUNSEL agree that this Supplemental Agreement No. 1 shall not alter or change in any manner the force and effect of the Agreement including any previous amendments or supplements thereto, except insofar as the same is altered and amended by this Supplemental Agreement No. 1; and that acceptance of this Supplemental Agreement No. 1 signifies COUNSEL's complete and total claim for the terms and conditions of the same as to Parcels 197 and 897.
6. This Supplemental Agreement No. 1 is necessary to authorize the representation of CFX by COUNSEL for the assigned parcels.

SUPPLEMENTAL AGREEMENT NO. 1

Contract Name: Right of Way Counsel Services

Contract No.: 001116

Project No.: 429-203, Parcels 197/897

Amount of Changes to this document: \$ 0

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

MATEER & HARBERT, P.A.

By: _____

Title: _____

Attest: _____ (Seal)

Date: _____

**CENTRAL FLORIDA EXPRESSWAY
AUTHORITY**

By: _____
Director of Procurement

Date: _____

MATEER HARBERT, P.A.
225 East Robinson Street, Ste. 600
Orlando, Florida 32801
Telephone (407) 425-9044
Facsimile (407) 423-2016

MEMORANDUM

TO: Central Florida Expressway Authority Right of Way Committee

FROM: Jay W. Small, Right of Way Counsel
Mateer Harbert, P.A.



DATE: September 23, 2016

RE: Project Orlando, LLC; Litigation Cost Estimate

This memorandum provides a litigation cost estimate for Mateer & Harbert, P.A. (the "Firm") taking over as trial counsel for the Central Florida Expressway Authority ("CFX") through trial and an appeal of the condemnation case involving Project Orlando, LLC. The parcels condemned by CFX include Parcels 197 (A, B, C and D) and Parcel 897 which I understand are set for trial in March, 2017. This estimate focuses primarily on those parcels set for trial in March, 2017.

In preparing this estimate, the fees and costs would be paid to the firm under the terms of the Firm's response to the Request for Professional Services ("Response") and CFX and the Firm's Agreement for Right of Way Counsel Services, Contract No.: 001116, dated June 11, 2015 ("Contract"). Under the Response and Contract, the Firm has billed CFX approximately \$145,000.00, for work related to the acquisition of right of way for the multimodal supercorridor adjacent to the Beachline Expressway. There remains approximately \$780,000.00 under the Contract.

After preliminarily reviewing the appraisals for the remaining parcels included in this suit, it would be the Firm's expectation that those parcels could be litigated for the balance remaining on the Firm's Contract. After conducting a more detailed review of the remaining parcels, the Firm will supplement this cost estimate.

The property consists of approximately 102± acres and is an abbreviated parent tract from the larger Kelly Park Crossing DRI. The area of the taking of Parcels 197 (A, B, C and D) is 43.746 acres. The area of the taking of Parcel 897, a perpetual easement, is 15,446 sq.ft. CFX's appraiser estimated the value of the taking of Parcels 197 and 897 as follows:

Total Land Taking	\$9,568,600.00
Damages	\$2,161,400.00
Total	\$11,730,000.00

EXHIBIT A

Project Orlando, LLC's appraiser estimated the value of the taking as follows:

Total Land Taking	\$15,590,027.00
Damages	\$15,756,254.00
Total	\$31,346,281.00

Attached is a cost estimate. In preparing this estimate, we have not had an opportunity to consult with CFX's current eminent domain counsel. The parties' appraisal and expert witness reports are voluminous and require a comprehensive knowledge of the terms of the Kelly Park Crossing December 21, 2011 Development Order, and various land use planning documents and ordinances promulgated by the City of Apopka. We have not had an opportunity to review these materials since requested to prepare this estimate last week. Nor have we reviewed any of the discovery materials, including deposition transcripts, obtained by the parties to date, or CFX's construction plans or right of way maps. The estimate will likely be subject to revisions as additional information becomes available from sources like these.

Given the limited documents and information available to me at the time of making this estimate, we have tried therefore to provide a "worst case" scenario estimate. Based on our general knowledge of the case, the dollar amount involved, and the experience of opposing counsel, the trial will require the involvement of at least two (2) partner level lawyers. Pursuant to the Court's order, a seven (7) day jury trial has been set for March 27, 2017. Billing rates of \$250/hour per the Firm's Contract were used to prepare this estimate. To the extent necessary and when feasible, research assignments will be delegated to associate level attorneys with hourly rates lower than \$250/hour. Paralegal time is also factored into the estimate.

The Firm is committed to delivering efficient and cost effective legal services to CFX and containing litigation costs. The Firm's practice has been, and will continue to be, to staff cases appropriately. Without prior CFX approval, the Firm will not bill CFX for more than one attorney to prepare for and attend depositions. It will not bill CFX for multiple attorneys to attend hearings or mediation. It will not bill for joint attorney conferences or meetings. The Firm has implemented these practices as part of its Contract with CFX.

The following attorneys and paralegals will be assigned to this project:

Jay W. Small, Esq., Shareholder;
James R. Lussier, Esq., Shareholder;
Kurt H. Garber, Esq., Partner;
Leslie A. Evans, Esq., Associate;
Matthew J. Brown, Esq., Associate;
Jennifer De La Garza, Paralegal; and
Deanna Malinowski, Paralegal.

Jay W. Small and James R. Lussier will be the attorneys primarily responsible for the representation.

The Firm understands that CFX will consider whether its best interests would be best served by having its current eminent domain counsel continue the representation. Strategic decisions regarding the size of the abbreviated parent tract and the terms of Parcel 897 have been made. Discovery, including depositions, has already occurred. CFX's current eminent domain counsel has undoubtedly taken depositions and framed questions to advance specific trial strategies. The Ninth Judicial Circuit's Administrative Guidelines and Rules anticipate that witnesses be deposed only once, so there may not be an opportunity to re-depose witnesses. Given the foregoing, the Firm certainly understands if CFX concludes that its existing counsel is in a better position to achieve a positive outcome at trial given their familiarity with the legal issues, the discovery, and factual considerations.

Attachment

1. Cost Estimate.

CFX v. Project Orlando, LLC
Case No: 2014-CA-005589-O
Parcel 197/897
Litigation Cost Estimate

	Task	Hours	Fees
1	File Review and Factual Investigation	200	
2	Discovery and Preparation for Discovery	100 - 150	
3	Pre-Trial Hearings and Preparation	50 - 75	
4	Witness Meetings	25 - 50	
5	Trial Preparation and Trial	250	
6	Post-Trial - Apportionment	50 - 75	
7	Subtotal Hours (\$250/Hour)	675 - 800	\$168,750.00 - \$200,000.00
8	Paralegal Trial Support	150-175	\$13,500.00 - \$15,750.00
9	Appellate Fees		\$30,000.00 - \$45,000.00
10	Sum of Items 7, 8, and 9		\$212,250.00- \$260,750.00
11	25% Contingency (R)		\$53,000.00 - \$65,000.00
12	Total Fees; Sum of Items 10 and 11		\$265,250.00 - \$325,750.00

Kurt H. Garber is a partner with Mateer Harbert, P.A. and concentrates his practice in the areas of eminent domain/condemnation law, property rights litigation, zoning and land use law, and administrative law. Mr. Garber is licensed to practice law in Florida and Tennessee. Mr. Garber has represented land owners, developers, and governmental agencies in eminent domain/condemnation law cases for over twenty (20) years. Mr. Garber has an AV Preeminent Review rating from Martindale-Hubbell, has been recognized by Woodward White's *Best Lawyers in America* since 2007, Selected Orlando Best Lawyers by Orlando Magazine since 2007, and selected for inclusion in the Florida publication *Super Lawyer*, Eminent Domain since 2011. Mr. Garber received his B.A. degree from the University of Tennessee, Knoxville, and his J.D. degree from the University of Memphis. Mr. Garber has extensive experience representing property and business owners in all phases of eminent domain/condemnation cases. A list of his significant cases will be provided upon written request.

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EXHIBIT **B**

ADVERTISEMENT

RESUMÉ

Jennifer De La Garza

225 E. Robinson Street, Suite 600

Orlando, Florida 32801

(407) 425-9044

E-mail: jdelagarza@mateerharbert.com

EMPLOYMENT

Mateer Harbert (2015 – Present)

Litigation Paralegal

Provide support to attorneys in firm with all aspects of civil litigation. Work involves indexing depositions, organizing discovery responses, case management, preparation of case law and documents for hearings, mediation and trial.

Shutts & Bowen (2014-2015)

Litigation Paralegal

Involved in providing assistance to attorneys in construction litigation. Work involves indexing depositions, organizing discovery responses, case management, preparation of case law and documents for hearings, mediation and trial.

Winderweedle, Haines, Ward & Woodman, P.A. (2004-2014)

Litigation Paralegal/Legal Assistant

Involved in providing assistance to attorneys in civil litigation. Work involves indexing depositions, organizing discovery responses, case management, preparation of case law and documents for hearings, mediation and trial.

RESUMÉ

JAY W. SMALL

225 E. Robinson Street, Suite 600

Orlando, Florida 32801

(407) 425-9044

E-mail: jsmall@mateerharbert.com

EMPLOYMENT

Mateer Harbert (2013-present)

Partner

Practice in eminent domain, administrative, and land use law.

Wilson, Garber & Small, P.A. (2002-2013)

Partner

Practice in eminent domain and administrative law.

Wilson, Leavitt & Small, P.A. (1993-2002)

Partner

Practice in eminent domain and administrative law.

Brigham, Moore, Gaylord, Wilson, Ulmer, Schuster & Sachs, P.A. (1990-1993)

Litigation Associate

Practice in eminent domain.

Foley & Lardner, van den Berg, Gay, Burke, Wilson & Arkin (1986-1990)

Litigation Associate

Practice in eminent domain; commercial foreclosure; and general commercial litigation.

Foley & Lardner, van den Berg, Gay, Burke, Wilson & Arkin (1985)

Law Clerk

Responsibilities included drafting research memoranda, filing court pleadings and general file investigation. Assignments involved litigation, real estate and corporate law.

John A. Barley & Associates, Tallahassee (1984)

Law Clerk

Responsibilities included legal research, drafting and filing pleadings and appellate briefs and general file investigation.

EDUCATION

J.D. (1985) University of Florida (Gainesville, FL) *(with Honors)*

B.A. (1982) University of Florida (Gainesville, FL) English, 3.74 GPA

PROFESSIONAL

Public Clients

School Board of Orange County and Orange County Public Schools regarding acquisition of approximately \$50,000,000.00 worth of property for expansion of school facilities including Apopka Relief High School, Edgewater High School, Evans High School, Gotha Middle School, Walker Middle School, Ocoee Elementary School.

Greater Orlando Aviation Authority acquisition of property for expansion, additional runways and clear-zone protection.

St. Johns River Water Management District acquisition of property for upper St. Johns River Water Management District.

City of Ocoee, City of Orlando, City of Deltona, City of Port Orange regarding expansion of municipal facilities, community redevelopment, and inverse condemnation claims.

Private Clients

Twenty-five (25) years of experience representing property owners and condemning authorities in condemnation cases throughout the state of Florida. Trial and appellate court experience representing private developers, landfill owners and operators, national convenience store owners, retail establishments and single family residential homeowners, outdoor advertising companies and cellular communication tower owners.

BAR ADMISSIONS, ASSOCIATIONS AND RECOGNITIONS

Florida Bar Member (1986)

Eminent Domain Committee (1989-present)

Environmental and Land Use Committee

U.S. District Court, Middle District of Florida (1988)

United States Circuit Court of Appeals, Eleventh Circuit (2000)

Member Orange County Bar Association

Chairman, Real Property Committee

American Bar Association

Litigation Section

AV rated by Martindale-Hubbell

Association of Eminent Domain Professionals

Best Lawyer's in America since 2007

Orlando's Best Lawyers since 2007

Foundation for Seminole County Public Schools (2013-present)

Florida Real Estate Appraisal Board (2003-2008)

Vice-Chairman (2004-2005)

Chairman (2006-2007)

PUBLICATIONS AND PRESENTATIONS

Author, "*Eminent Domain Case Law Update*," Association of Eminent Domain Professionals, Winter 2013.

Author, "*Severance Damages*," ALI-ABA CLE course, Fall 2013,

Author, "*Valuation of Property During Abnormal Market Conditions*," East Florida Chapter of the Appraisal Institute, July 2011.

Lecturer, Appraiser as an Expert Witness, The Appraisal Institute, June 2011.

Author and Speaker, "*The Role of Uniform Standards of Professional Appraisal Practice ("USPAP") in Litigation*," The Appraisal of Real Estate Seminar, May 10-11, CLE- International 2004.

Speaker, Current Issues Regarding Chapter 457, Part II, Fla. Stat. 6131 Florida Administrative Code and Condemnation Appraisals, ALI-ABA CLE course, Spring 2004.

Co-Author, "*Community Redevelopment Projects - Recent Case Law & Practical Guide*," Eminent Domain Seminar, ALI-ABA, January 2002.

Speaker, Ethics in Appraising, Association of Eminent Domain Professionals, June 22, 2001.

Speaker, Orange County Bar Association and Central Florida Association of Environmental Professionals, March 15, 2001.

Author, "*Florida Condemnation Valuation and Appraiser Liability*," Seminar for East Florida Chapter of the Appraisal Institute, April 1997; Seminar for Appraisal Institute, August 1997; Seminar for National Business Institute, October 1997.

Instructor, Florida Eminent Domain Valuation and Appraiser Liability, The Appraisal Institute, May 19, 1997.

Author, "*Special Benefits and Project Enhancement*," Seminar for Association of Eminent Domain Professionals, March, 1995.

COLLEGE HONORS AND ACTIVITIES

Law

Moot Court - Best Brief Award for Outstanding Written Argument, Fall, 1983

Intramural Cup Competition

Vice-chairman for Moot Court Board Administration, Spring Semester 1985

Semi-finalist ABA Law Student Division National Appellate Advocacy

Championship, Washington D.C., August, 1985

**Dean's List, four semesters
Honors in Appellate Advocacy, Spring Semester 1983**

Pre-Law

Dean's List 9 terms, President's List 2 terms

Phi Eta Sigma and Sigma Tau Sigma honor societies

English department representative on college student council

Director of College of Liberal Arts and Sciences composition tutor service

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