


CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams 
Director of Procurement

DATE: March 22, 2017


RE: Authorization to Renew Agreement with
Wells Fargo Bank, N.A.
Contract No. 001015

Board approval is requested for the first renewal of the referenced contract with Wells Fargo Bank, in the amount of \$1,373,300.00 for a one year period beginning June 1, 2017 and ending May 31, 2018, at the same rates currently being charged by Wells Fargo under the original contract.

The original contract is for three years with two one-year renewals.

Original Contract Amount	\$4,119,913.00
First Renewal	<u>\$1,373,300.00</u>
Total	\$5,493,213.00

The service to be performed by Wells Fargo Bank under this renewal is to provide commercial banking services.

Reviewed by: 
Michael Carlisle
Director of Accounting and Finance



CENTRAL FLORIDA EXPRESSWAY AUTHORITY
CONTRACT RENEWAL AGREEMENT
CONTRACT NO. 001015

THIS CONTRACT RENEWAL AGREEMENT (the "Renewal Agreement"), made and entered into this 13th day of April, 2017, by and between Central Florida Expressway Authority, hereinafter called "CFX" and Wells Fargo Bank, N.A., hereinafter called the "Bank".

WITNESSETH

WHEREAS, CFX and the Bank entered into a Contract Agreement (the "Original Agreement") dated June 1, 2014, whereby CFX retained the Bank to provide banking services; and

WHEREAS, pursuant to Section 8 of the Original Agreement, CFX and Bank wish to renew the Original Agreement for a period of one (1) year;

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, CFX and Bank agree to a first renewal of said Original Agreement beginning the 1st day of June, 2017 and ending the 31st day of May, 2018 at the cost of \$1,373,300.00, which amount restates the amount of the Original Agreement.

Bank states that, upon its receipt and acceptance of Final Payment for Services rendered under the Original Contract renewal ending May 31, 2017, the Bank shall execute a 'Certificate of Completion of the Original Contract and Acceptance of Final Payment' that waives all future right of claim for additional compensation for services rendered under the Original Contract ending May 31, 2017.

All terms and conditions of said Original Agreement and any supplements and amendments thereto shall remain in full force and effect during the full term of this Renewal Agreement.

IN WITNESS WHEREOF, the parties have executed this Renewal Agreement by their duly authorized officers on the day, month and year set forth above.

WELL FARGO BANK, N.A.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

BY: _____
Authorized Signature

BY: _____
Director of Procurement

Title: _____

ATTEST: _____ (SEAL)
Secretary or Notary

If Individual, furnish two witnesses:

Witness (1) _____

LEGAL APPROVAL: _____
AS TO FORM General Counsel for CFX

Witness (2) _____

CONTRACT DOCUMENTS

**ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY
AND
WELL FARGO BANK, NA**

**BANKING SERVICES
CONTRACT NO. 001015**

**CONTRACT DATE: APRIL 23, 2014
CONTRACT AMOUNT: \$4,119,913.00**



**ORLANDO-ORANGE COUNTY
EXPRESSWAY AUTHORITY**

CONTRACT DOCUMENTS

FOR

BANKING SERVICES

CONTRACT NO. 001015

APRIL 2014

Members of the Board

Walter A. Ketcham, Jr., Chairman
R. Scott Batterson, P.E., Vice Chairman
Teresa Jacobs, Secretary/Treasurer
Noranne B. Downs, P.E., Ex-Officio Member
Marco Peña, Member

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Attached compact disk contains the following and are incorporated herein

Technical Proposal	1 to 514
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MASTER BANKING SERVICE AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into by and between Orlando-Orange County Expressway Authority (Authority), and Wells Fargo Bank N.A., National Association a national banking association (the "Bank"), executed on the date (s) shown on the signature page hereof.

WITNESSETH:

WHEREAS, Authority issued its Requests for Proposals for Banking Services on March 3, 2014 (the "RFP"), to solicit proposals to serve as the Authority's primary relationship bank; and

WHEREAS, the Bank responded to the RFP by submitting its Technical and Price Proposal for Banking Services dated March 28, 2014 (the "Proposal"), which Proposal was duly accepted by the Authority as the most favorable proposal submitted; and

WHEREAS, the Bank shall be providing banking services to the Authority under the terms of this Agreement, the Scope of Services and the Proposal (hereinafter sometimes collectively called the "Contract").

WHEREAS, although the Scope of Services and the Proposal address in some detail the banking services to be provided, there are a number of operational issues not addressed by either the Scope of Services or the Proposal which the parties desired to address;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Authority and the Bank hereby covenant and agree as follows:

Section 1. Purpose and Effect of this Agreement: Delineation of Banking Services

The banking services to be provided to the Authority by the Bank shall consist of:

- (a) Each of the specific requirements, terms and conditions set forth in the Scope of Services and any addenda thereto, which are hereby incorporated by reference in its entirety; and
- (b) Each of the services, terms and conditions set forth in the Proposal, which is hereby incorporated by reference in its entirety; and
- (c) Unless the context requires otherwise, all references to "this Agreement," and use of the terms "herein," "hereby," "hereof," "hereto," "hereunder" and the like shall be deemed to include the Scope of Services, the Proposal, this Agreement and addenda.

Section 2. Controlling Provisions

Except as otherwise specifically provided in Section 6 hereof, in the event of any conflict between the specific provisions of this Agreement or any of the Exhibits hereto, and the requirements or provisions of the Scope of Services and/or Proposal, the requirements or provisions of the latter documents shall control. In circumstances of a conflict between the Proposal and Scope of Services, the Scope of Services shall prevail. Wherever possible, the provisions of all documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents. It is the intention of the parties that the Exhibits hereto set forth the day-to-day operational procedures to be complied with in connection with the Authority's ordering of and the Bank's provision of specific banking services covered by the Proposal. If the Authority elects to use any of the Bank's services not set forth in the Proposal, or the Bank, in the normal course of its business, develops specific service agreements in the future for banking services requested by the Authority (in addition to those covered by the Exhibits hereto), the parties will execute specific service agreements with respect thereto in form and substance reasonably acceptable to the parties. Such agreements shall be deemed to be part of and subject to this Master Banking Services Agreement, whether or not so stated in such service agreement.

Section 3. Services to be Rendered

(a) The Bank shall provide the Authority with the banking services set forth in the Proposal, as more fully defined herein. With respect to the Authority's depository demand deposit accounts, Authority funds collected daily shall be deposited in the accounts as described in the Scope of Services on the same day. Checks deposited shall be available as outlined in the Bank's Proposal if deposited in the Bank before it normally closes its transactions for the day, which is currently 2:00 p.m.

(b) The Authority will attempt to limit the number of bank accounts maintained with the Bank; however, where legal requirements dictate, separate bank accounts will be maintained with the Bank. If the Authority uses services not requested in the Scope of Services, the Bank reserves the right to charge for those services in accord with its current published charges for said services.

(c) In rendering the services requested in the Scope of Services, the Bank shall be responsible for compliance with all licensing agreements and the payment of all costs for licensing fees and royalties for all software, intellectual property and other protected or copyrighted materials or hardware used or provided in connection with its performance under this Agreement, and shall be further responsible for any costs, damages, claims or liabilities arising from the violation of any license agreement, copyright, trademark or other protection of property. The Bank shall not be responsible for any of the aforementioned costs, damages,

claims or liabilities to the extent they are caused by the negligence, breach or willful misconduct of the Authority.

(d) If, during the life of this Agreement and any renewals hereof, the Bank desires to subcontract any portion(s) of the services to a subcontractor that was not disclosed by the Bank to the Authority at the time that the contract was originally awarded, and such subcontract would, standing alone or aggregated with prior subcontracts awarded to the proposed subcontractor, equal or exceed twenty five thousand dollars (\$25,000.00), the Bank shall first submit a request to the Authority's Chief Financial Officer for authorization to enter into such subcontract. Except in the case of an emergency, as determined by the Authority's Executive Director or his/her designee, no such subcontract shall be executed by the Bank until it has been approved by the Authority Board. In the event of a designated emergency, the Bank may enter into such a subcontract with the prior written approval of the Authority's Executive Director or his/her designee, but such subcontract shall contain a provision that provides that it shall be automatically terminated if not approved by the Authority Board at its next regularly scheduled meeting. The parties acknowledge and agree that this subclause (d) is limited to subcontractors hired specifically by the Bank for services for the Authority.

Section 4. Compensation For Services

The not-to-exceed contract amount for the initial three-year term of this Agreement will be \$4,119,913.00. The Bank will prepare a monthly billing for services rendered in accordance with the Method of Compensation and Price Proposal. No other charges will be billed to the Authority without prior and specific written authorization from the Authority's Chief Financial Officer or Executive Director.

Section 5. Representations, Warranties and Covenants

(a) The Bank represents and warrants to the Authority it has full power and authority to enter into this Agreement and fully perform its obligations hereunder without the need for any further corporate or governmental consents or approvals, and that the persons executing this Agreement are authorized to execute and deliver it. Assuming the due authorization, execution, delivery, legality and enforceability hereof by or against the Authority when executed and delivered by the parties, this Agreement will constitute a valid and binding agreement of the Bank, enforceable against it in accordance with its terms, subject only to the application of general principles of equity and limitations arising from bankruptcy, insolvency, moratorium and other similar laws affecting the rights of creditors generally.

(b) The Bank has not employed or retained any person employed by the Authority to solicit or secure this Agreement and it has not offered to pay, paid, or agreed to pay any person employed by the Authority any fee, commission

percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

(c) The Bank is aware of the conflict of interest laws and policies of the Authority, and the State of Florida, and covenants the Bank will fully comply in all material respects with the terms thereof.

(d) The Authority represents and warrants to the Bank it has full power and authority to enter into and perform all of its obligations under this Agreement without the need for any further bids, notices or other actions by Board or any other governmental authority. When executed and delivered by the parties, this Agreement will constitute a valid and binding agreement of the Authority, enforceable against it in accordance with its terms, subject only to the application of general law and principles of equity and limitations arising from bankruptcy, insolvency, moratorium and other similar laws affecting the rights of creditors generally. The Authority further represents and warrants to the Bank it has authorized the Authority's Executive Director, Chief Financial Officer or persons designated by them in writing, to execute and deliver documents to the Bank as necessary hereunder or reasonably deemed appropriate by such officials to effect the transactions contemplated hereby. The Authority acknowledges and agrees the Bank is fully authorized and directed to accept orders, requests and authorizations from such officials on the Authority's behalf in connection with the implementation or provision of any of the banking services covered by the Proposal. Such authorization and direction shall not be deemed to prohibit or preclude the Bank from relying upon actions or requests of other Authority personnel so long as the Bank reasonably believes, in good faith, that such persons have been authorized in writing to act on behalf of the Authority or by any of such officials.

(e) At the request of the Bank, the Authority agrees to cause its designated officials or their designees to execute such signature cards and other signature and identification verification documents as the Bank deems reasonably necessary for purposes of establishing appropriate security measures in connection with the banking services to be provided hereunder.

Section 6. Indemnification

(a) During the term of the contract, the Bank will indemnify, defend and hold harmless the Authority and its officers, directors, employees, agents and assigns (the "Indemnified Parties") from and against all claims, losses, demands, liability, judgments, awards, interest, attorney's fees and costs (collectively, "Losses") arising out of, resulting from or relating to the performance of the services provided hereunder which are, in each case, directly caused in whole or in part by the negligent or intentional acts or omissions of the Bank or any of its officers, directors, employees, agents, subcontractors or assigns, except to the extent such Losses are caused by the negligence or intentional misconduct of any Indemnified Party. In no event will the Bank be liable for any indirect, special, consequential

or punitive damages, whether or not the likelihood of such damages was known to the Bank, and regardless of the form of the claim or action or the legal theory on which it is based. The Bank further agrees to indemnify and save harmless the Authority, its agents or employees against any claims or liability directly related to the services provided by the Bank and provided, that such claims/liability are not caused by the negligence or willful misconduct of the Authority, its agents or employees, arising from or based upon the violation of any federal, state, or county laws, by-laws, ordinances or regulations by the Bank, its agents, servants or employees.

(b) To the extent of the monetary limits allowed pursuant to Section 768.28(5), Florida Statutes, the Authority shall indemnify and save harmless the Bank, (its directors, officers, employees and agents) from or on account of any losses or damages resulting from any breach of this Agreement by the Authority, or arising from the negligent acts or omissions of the Authority or its employees acting within the scope of their employment.

(c) If the Authority desires to invoke the foregoing indemnity provisions (the "Indemnatee") against the Bank (the "Indemnitor"), the Indemnatee shall provide written notice to the Indemnitor within a reasonable time after discovery of the facts allegedly entitling it to indemnification hereunder, specifying in such notice the relevant facts and circumstances and requesting indemnification as provided herein. The Indemnitor shall pay for the defense of, any and all claims of liability in all suits and action of every kind and description that may be brought against the Indemnatee which may result from the negligent actions or omissions under this Agreement by the Indemnitor, its employees or agents, as described in subsection (a).

Section 7. Limitation of Liability

Notwithstanding any other term or provision of this Agreement, neither the Authority nor the Bank shall in any event be liable to the other for any amount in excess of the actual loss sustained by the injured party, and in no event shall either the Authority or the Bank ever be liable hereunder or in any action in tort arising out of the services or relationship to be provided or established hereunder for any indirect, special, incidental, punitive or consequential loss or damage of any kind, including lost profits or opportunities or damage to reputation (whether or not advised of the possibility thereof) arising or allegedly arising therefrom. Actual loss shall include associated lost interest earnings calculated at the then applicable Federal Funds Rate.

Section 8. Term and Termination

(a) This Agreement shall have a term of three (3) years, commencing as of June 1, 2014 and ending at 11:59 p.m., on May 31, 2017. The Authority shall have the right to exercise a maximum of two (2) additional one-year renewals to the term of this Agreement by providing written notice to the Bank. The

Authority may give written notice to the Bank prior to the expiration of the then current term of its election not to have this Agreement so renewed.

(b) The Bank agrees to maintain the banking relationship with the Authority in accord with the terms of the Agreement or any extension for a period of six months from the date of expirations of the Agreement or of any extension period or upon written notice by the Authority to close the Authority's remaining accounts, whichever comes first. During this six month period following the expiration of the Agreement or any extension period, the Authority shall pay a monthly service charge for banking services based upon the pricing for banking services contained in the Proposal or made applicable to any extension period.

(c) Either party may terminate this Agreement upon one hundred twenty (120) days advance written notice to the other, which notice must be signed by an authorized officer of the terminating party.

(d) If either party does not comply with terms of this Agreement, non-defaulting party may give written notice of default to the defaulting party of the specific default. If the default(s) is/are not corrected within thirty (30) days, this Agreement (including the Scope of Services and Proposal) may be terminated thirty (30) days from the written notice of default, by the non-defaulting party.

(e) In event of a termination under paragraphs (c) or (d) above, the Bank shall only be entitled to applicable fees and charges through the effective date of such termination. Termination of this Agreement, with or without cause, shall result in the simultaneous termination of all other banking services agreements referred to in Section 2 herein. However, any individual service agreement may be terminated separately and severally without affecting the continued enforceability of provisions of this Agreement or any non-terminated service agreements.

Section 9. Changes

(a) The Authority may, from time to time, request changes in the scope of services performed by the Bank hereunder. Such changes, which are mutually agreed upon by the Authority and the Bank, shall be incorporated in written amendments to this Agreement.

(b) The parties agree to undertake an annual review of the armored car component of the Scope of Services to determine if services can be provided more economically. The parties specifically agree that no later than thirty (30) days prior to the expiration of each one year anniversary of the term of this Agreement, the Authority shall have the option to amend, delete or replace the provider armored car component of the Scope of Services. The Bank shall include this provision in any subcontract for armored car services.

(c) The fees and charges set forth for the services to be provided to the Authority will begin on the date the Agreement is signed, shall not be increased for a period of three (3) years after commencement of the term of this Agreement. After the three-year period, the Bank will give the Authority four (4) months prior written notice before increasing or adding any fees; provided, however, fees in years four and five may not be increased by an amount greater than the Consumer Price Index (CPI) for all urban consumers over the last year of the initial three-year period.

Section 10. Equal Employment Opportunity; Non-discrimination

The Bank will not discriminate against any employee or an applicant for employment because of race, color, religion, sex, national origin or handicap. The Bank shall take affirmative action to ensure that applicants are employed (and that employees are treated fairly during employment) without regard to race, color, religion, sex, national origin or handicap.

Such action shall include, but not be limited, to the following: employment, upgrading, demotions or transfers, recruitment or recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training including apprenticeship; and participation in recreational and educational activities.

The Bank shall keep such records and submit such reports concerning racial and ethnic origin of applicants for employment and employees as the Secretary of Labor of the United States requires. The Bank agrees to comply with such rules, regulations and guidelines as the Secretary may issue to implement these requirements. Both Parties shall comply with all applicable laws, ordinances and codes of Federal, State and local governments applicable to that Party.

Section 11. Waiver

No waiver of a breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

Section 12. Severability

If any provisions, paragraphs, sentences, words or phrases contained in this Agreement are determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary to conform with such laws, and to the extent they cannot be so modified, then same shall be deemed severable. In either event, the remaining terms and provisions in the Agreement shall remain unmodified and in full force and effect.

Section 13. Governing Law

This Agreement shall be construed and enforced according to the Laws of the State of Florida.

Section 14. Attachments

The following documents are attached hereto and incorporated by reference herein:

- A. Scope of Services
- B. Method of Compensation
- C. Technical Proposal
- D. Price Proposal

Additional service agreements may be added from time to time as mutually agreed upon by the parties.

Section 15. Notices

All written notices, demands and other communications required or provided for under this Agreement shall be sent by certified mail, return receipt requested, postage prepaid, in the case of mailing, or by overnight or same day courier, or by electronic transmission producing a written record, or hand delivered to the following address and person bearing the following title for each party hereto or such other addressee or person as shall be designated by a party in a written notice given in the manner required hereby:

Orlando-Orange County Expressway Authority
Chief Financial Officer
4974 ORL Tower Road
Orlando, FL 32807

Wells Fargo Bank, N.A. (Bank)
800 North Magnolia Avenue, 7th Floor
MAC Z0244-084
Orlando, FL 32803

All notices shall be deemed delivered when received.

Section 16. Force Majeure

The Authority agrees the Bank shall have no responsibility or liability for delay in its performance under this Agreement or any losses arising out of delays and/or interruptions of business due to acts of God, acts of government authority, acts of public enemy of war, riots, civil disturbances, power failure, telecommunications failure, severe adverse weather conditions or other causes beyond the Bank's reasonable control. This time, if

any, required for such performance under this Master Agreement shall be automatically extended during the period of such delay or interruption.

Section 17. Assignment


Neither party shall assign this Agreement or any interest herein, or delegate any of its duties hereunder, without the other party's prior written consent. It is agreed by the Authority, with the consent of the Authority, that the Bank may delegate certain services to be provided through independent contractors.

Section 18. Jurisdiction

The parties hereto agree that the state or federal courts located in the State of Florida shall have the exclusive jurisdiction over the parties and the subject matter of any litigation between the parties arising hereunder. Venue shall lie solely in Orange County, Florida.

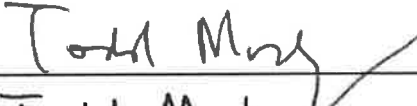
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below.

ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY

By: 
Director of Procurement

Date: 5/28/14

BANK

By: 


Print Name: Todd Morley

Title: Senior Vice President

Attest: 

Date: MAY 23, 2014

Approved as to form and execution, only.


General Counsel for the Authority