

**CONSENT AGENDA ITEM**


**#12**



# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: December 14, 2016


RE: Approval of Contract Renewal with Shutts & Bowen LLP for  
Right of Way Counsel Services  
Contract No. 000930

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Board approval is requested for the first renewal of the referenced Contract with Shutts & Bowen LLP, for one a one year period, beginning February 28, 2017, and ending on February 27, 2018 with no additional funding. The terms and conditions of this renewal, including hourly rates, will remain unchanged from the original contract executed in 2013.

Original Contract Amount	\$ 2,535,000.00
Supplemental Agreement No. 1	\$ 2,500,000.00
Supplemental Agreement No. 2	0
Supplemental Agreement No. 3	\$ 2,000,000.00
Supplemental Agreement No. 4	\$ 4,000,000.00
Contract Renewal No. 1	\$ <u>0</u>
Total	\$11,035,000.00

This renewal was approved by the Right of Way Committee at their meeting on December 1, 2016.

Reviewed by:   
Joseph L. Passiatore  
General Counsel

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
CONTRACT RENEWAL AGREEMENT  
CONTRACT NO. 000930**

THIS CONTRACT RENEWAL AGREEMENT (the "Renewal Agreement"), made and entered into this 12<sup>th</sup> day of January, 2017, by and between the Central Florida Expressway Authority, hereinafter called "CFX" and Shutts & Bowen LLP, herein after called the "Counsel."

**WITNESSETH**

WHEREAS, CFX and the Counsel entered into a Contract Agreement (the "Original Agreement") dated February 27, 2013, whereby CFX retained the Counsel to perform services related to Right of Way Counsel Services; and

WHEREAS, pursuant to Article 7 of the Original Agreement, CFX and Counsel 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 Counsel agree to a first renewal of said Original Agreement beginning the 28<sup>th</sup> day of February, 2017 and ending the 27<sup>th</sup> day of February, 2018 with no additional funding.

Counsel states that, upon its receipt and acceptance of Final Payment for Services renders under the first Contract renewal ending February 27, 2017, the Counsel 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 February 27, 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.

SHUTTS & BOWEN LLP

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

BY: \_\_\_\_\_  
Authorized Signature

BY: \_\_\_\_\_  
Director of Procurement

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

ATTEST: \_\_\_\_\_ (SEAL)  
Secretary or Notary

If Individual, furnish two witness:

Witness (1) \_\_\_\_\_  
Witness (2) \_\_\_\_\_

Legal Approval as to Form

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

**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 10<sup>th</sup> day of March, 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

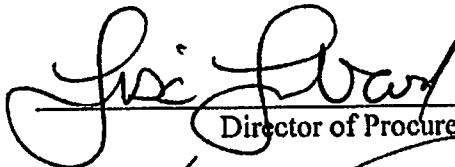
Contract Name: Right of Way Counsel Services

Contract No.: 000930

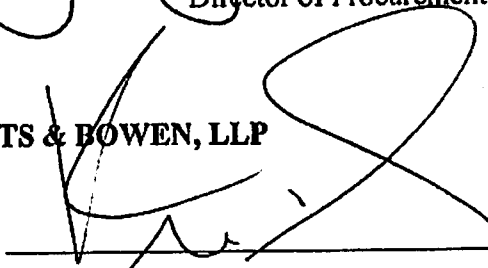
Cost: \$4,000,000.00

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**

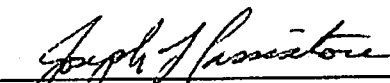
By:   
KENNETH WRIGHT  
Print Name

Title: PARTNER

Witness: 

Date: 4-18-16

Approved as to form and execution, only.

  
General Counsel for CFX

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 3**

**Contract Name: Right of Way Counsel Services**

1603 15-02-01

**Contract No: 000930**

This Supplemental Agreement No. 3 entered into this 8<sup>th</sup> day of October, 2015, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY (the "Authority"), 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. The Authority has determined it necessary to increase the Agreement amount by \$2,000,000.00 in order to continue the required services to completion, and
2. The Counsel hereby agrees to the increase in the Agreement amount, and
3. The Authority and Counsel agree that this Supplemental Agreement No.3 shall not alter or change in any manner the force and effect of the Agreement except insofar as the same is altered and amended by this Supplemental Agreement No. 3; that acceptance of this Supplemental Agreement No. 3 signifies the 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. 3 is necessary to fund the continuation of the required services to completion.

**SUPPLEMENTAL AGREEMENT NO. 3**

Contract Name: Right of Way Counsel Services

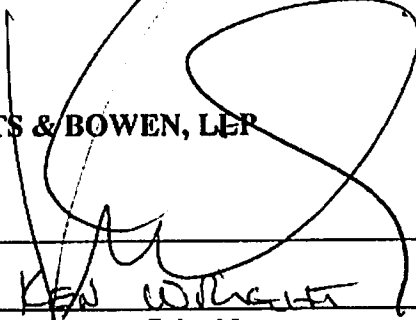
Contract No.: 000930

Cost: \$2,000,000.00


This Supplemental Agreement No. 3 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: Partner

Witness:   
Debra A Gilley

Date: 10-13-15

Approved as to form and execution, only.

  
General Counsel for the AUTHORITY



**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 2**

**Contract Name: Right of Way Counsel Services**

5/12/2015 10:00 AM

**Contract No: 000930**

**This Supplemental Agreement No. 2 entered into this 31<sup>st</sup> day of December, 2014, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY (the "Authority"), 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. The Authority desires a reduction in Counsel's hourly rates for Senior Partner and Senior Associate, and**
- 2. Counsel hereby agrees to a reduction in the hourly rate for Senior Partner from \$300.00 per hour to \$250.00 per hour, and for Senior Associate from \$250.00 per hour to \$200.00 per hour effective January 1, 2015, and**
- 3. The Authority and Counsel agree that this Supplemental Agreement No.2 shall not alter or change in any manner the force and effect of the Agreement except insofar as the same is altered and amended by this Supplemental Agreement No. 2; that acceptance of this Supplemental Agreement No. 2 signifies the 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. 2 is necessary to reduce the hourly rates for Senior Partner and Senior Associate.**

**SUPPLEMENTAL AGREEMENT NO. 2**

**Contract Name: Right of Way Counsel Services**

**Contract No.: 000930**

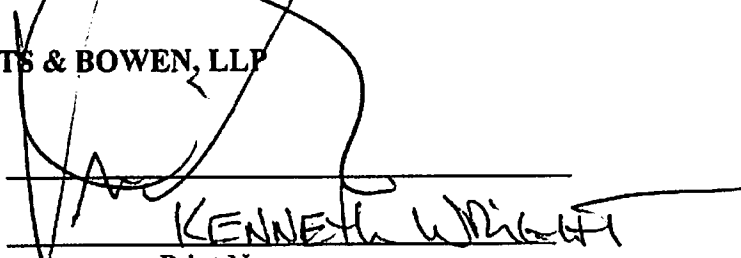
**Cost: \$0.00**

**This Supplemental Agreement No. 2 entered into as of the day and year first written above.**

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

By:   
Director of Procurement

**SHUTTS & BOWEN, LLP**

By:   
KENNETH W. WRIGHT  
Print Name

Title: PARALEL

Witness: 

Date: 1-7-15

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 1**

**Contract Name: Right of Way Counsel Services**

19 NOV 14 PM 12:58

**Contract No: 000930**

This Supplemental Agreement No. 1 entered into this 13<sup>th</sup> day of November, 2014, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY (the "Authority"), 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. The Authority has determined it necessary to increase the Agreement amount by \$2,500,000.00 in order to continue the required services to completion, and
2. The Counsel hereby agrees to the increase in the Agreement amount, and
3. The Authority and Counsel agree that this Supplemental Agreement No.1 shall not alter or change in any manner the force and effect of the Agreement except insofar as the same is altered and amended by this Supplemental Agreement No. 1; that acceptance of this Supplemental Agreement No. 1 signifies the 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. 1 is necessary to fund the continuation of the required services to completion.

SUPPLEMENTAL AGREEMENT NO. 1

Contract Name: Right of Way Counsel Services

Contract No.: 000930

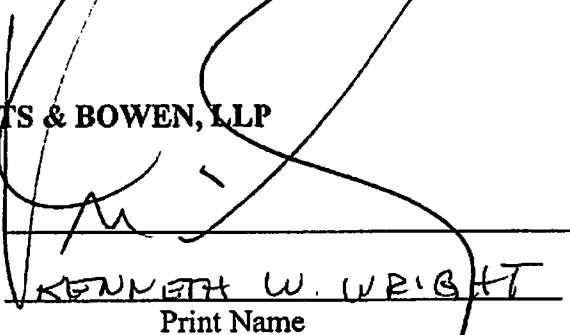
Cost: \$2,500,000.00

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

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

By:   
Director of Procurement

**SHUTTS & BOWEN, LLP**

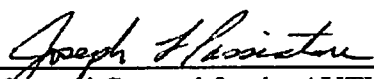
By:   
KENNETH W. WRIGHT  
Print Name

Title: PARTNER

Witness: Diana Hochstetler

Date: NOV 19, 2014

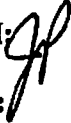
Approved as to form and execution, only.

  
General Counsel for the AUTHORITY

RECEIVED  
CONTRACTS DEPT  
CS 11/21/14  
SIGNATURE / DATE

== CENTRAL FLORIDA EXPRESSWAY AUTHORITY ==

**MEMORANDUM**

**TO:** Central Florida Expressway Authority Board  
**FROM:**  Joseph L. Passiatore, General Counsel  
**DATE:** October 29, 2014  
**SUBJECT:** First Supplemental Agreement to Shutts & Bowen Contract

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On February 27, 2013 CFX entered into a contract with Shutts & Bowen wherein the firm agreed to provide right of way services to the Authority for a three year period with the option for two one year renewals.

The upset limit in the contract was for an amount of \$2,535,000 which amount was based on the attached Scope of Services and Price Proposal submitted as part of the request for proposal process. As of this time the contract's initial cap has been almost fully utilized.

There are several reasons why the contract balance has been depleted. To begin with, as is shown on the spreadsheet, the original budget was for legal services only. The bulk of the work performed by Shutts has been acquiring right of way through condemnation for the Wekiva Parkway. The firm has acquired 35 parcels in Section 203 and has initiated the process for acquisition of another 44 parcels in Sections 204, 205 & 206.

The condemnation process requires the services of land appraisers who in turn require the services of engineers and land planners. Shutts has utilized the services of five different appraisal firms and one review appraiser firm on this project. These services are provided pursuant to contracts between the firm and the appraisers in order to preserve the work product privilege. The Authority approves the contracts and authorizes the original caps and any supplemental amounts, but the privity is between the firm and the expert. Accordingly, billings for these services are run through the right of way counsel contract and booked against the cap for the firm's legal services.

To date, the amount of appraisal/expert invoices for Wekiva booked against and paid from the Shutts' contract is \$1,182,407.07.

To date, the amount billed and paid for legal services and costs on the Wekiva project is \$1,318,871.10. Thus, if one evaluates the amount expended strictly for Wekiva legal services versus the initial cap the contract is actually slightly under budget. Roughly speaking, contract duration is at 55% and legal service/costs for Wekiva are at 52%.

However, in addition to the appraisal billings, there are three other reasons why the contract now requires additional funding:

- (1) in addition to the Wekiva project, there have been significant legal expenses arising out of the All Aboard Florida and Innovation Way Interchange projects which could not have been anticipated at the time the contract was entered into back in February of 2013;
- (2) the Authority agreed in the Wekiva Interlocal Agreement with FDOT that the project would be federalized resulting in additional legal services on the project; and
- (3) subsequent to entry of the Shutts' contract, the Authority decided to apply for a TIFIA loan which funding requires accelerated acquisition in order to meet the loan's deadline for the road to be in operation and open to the public. This last factor requires acquisition of the 204, 205 & 206 parcels by July 2015.

Based upon all of the above, especially considering the fact that the appraisal billings will continue to be assessed against the cap set forth in the legal services contract and that the need for continuing legal services on the Wekiva and All Aboard projects will continue, I recommend that an additional two million five hundred thousand dollars (\$2,500,000) be authorized for the right of way services contract with Shutts & Bowen, CFX Contract #000930.

Finally, at its October 22, 2014 meeting, the Right of Way Committee directed that all future appraisal assignments be negotiated on a flat fee basis unless there are extenuating circumstances unique to certain parcels which justify an hourly rate method of compensation. In addition, I have instructed Shutts to provide me with monthly updates on their fees and expert costs so that costs will be more closely monitored. Lastly, all future assignments will be given via written task authorization with separate caps included for each assignment. I believe that with these procedures in place we will be better able to track our legal expenses on these important projects.

**ACTION REQUESTED:** Based on the above, staff requests authorization for execution of Supplemental Agreement No. 1 to Contract No. 000930 Right of Way Counsel Services with Shutts & Bowen, LLP.

JLP/ml

Enclosures (Supplemental Agreement No. 1, Shutts & Bowen Right of Way Counsel Services Agreement #000930 and Shutts & Bowen Parcel Assignment)

cc: Joe Berenis, CFX  
Laura Kelley, CFX  
Ken Wright, Esq., Shutts & Bowen, LLP

# **AGREEMENT**

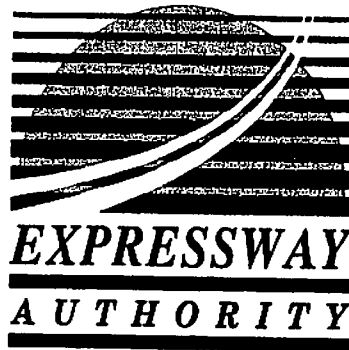
**ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY  
AND  
SHUTTS & BOWEN LLP**

**RIGHT-OF-WAY COUNSEL SERVICES**

**CONTRACT NO. 000930**

**CONTRACT DATE: FEBRUARY 27, 2013**

**CONTRACT AMOUNT: \$2,535,000.00**



**ORLANDO-ORANGE COUNTY  
EXPRESSWAY AUTHORITY**

**AGREEMENT, SCOPE OF SERVICES, TECHNICAL  
PROPOSAL AND PRICE PROPOSAL**

**AGREEMENT, SCOPE OF SERVICES, TECHNICAL PROPOSAL AND PRICE  
PROPOSAL  
FOR  
RIGHT-OF-WAY COUNSEL SERVICES**

**CONTRACT NO. 000930**

**February 2013**

**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**

**Executive Director**

**Max Crumit, P.E.**



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**AGREEMENT  
RIGHT-OF-WAY COUNSEL SERVICES  
CONTRACT NO. 000930**

THIS AGREEMENT ("Agreement") is entered into as of February 27, 2013, by and between the ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY, a body politic and corporate, and an agency of the State of Florida, 4974 ORL Tower Road, Orlando, Florida 32807 ("AUTHORITY"), and SHUTTS & BOWEN LLP ("COUNSEL").

**WITNESSETH:**

WHEREAS, the AUTHORITY desires to retain the services of competent and qualified legal counsel to provide right-of-way counsel services on an as-needed basis;

WHEREAS, on December 15, 2012, the AUTHORITY issued a Request for Proposals for Right-of-Way Counsel Services;

WHEREAS, based upon the recommendation of the Evaluation Committee at its meeting held on February 6, 2013, the Board of Directors of the AUTHORITY at its meeting held on February 27, 2013, selected COUNSEL to serve as Right-of-Way Counsel; and

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

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

**SECTION 1. SERVICES.** The AUTHORITY does hereby retain COUNSEL to furnish professional services and perform those tasks generally described as legal services related to AUTHORITY right-of-way matters 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 the AUTHORITY currently anticipates using the services of COUNSEL, the AUTHORITY provides no assurance to COUNSEL regarding the amount or quantity of legal services that COUNSEL will provide the AUTHORITY 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. The AUTHORITY designates the AUTHORITY's General Counsel or Assistant General Counsel as the AUTHORITY 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 the AUTHORITY's policy and decisions pertinent to the work covered by this Agreement. The AUTHORITY 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. RESPONSIBILITIES OF COUNSEL.**

(a) COUNSEL agrees to timely provide the professional services and facilities required by the Scope of Services and to assist the AUTHORITY in other areas of responsibility as deemed necessary by the AUTHORITY.

(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 David A. Shontz, as the primary attorney to provide services to the AUTHORITY and will be assisted from time to time by other members of the firm, as he deems appropriate to the needs of the particular activity.

(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 4. PAYMENT FOR SERVICES AND BILLING.**

(a) In consideration of the promises and the faithful performance by COUNSEL of its obligations, the AUTHORITY agrees to pay COUNSEL an amount not-to-exceed \$2,535,000.00 based on the hourly rates attached hereto in the Price Proposal. AUTHORITY will not provide a retainer and there will be no increase in the rates during the three year term of the agreement.

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

(1) Reasonable expenses of transportation, when traveling outside of Orlando, pursuant to Section 112.061, Florida Statutes.

(2) COUNSEL will be reimbursed for the following out-of-pocket expenses, but only at cost and only to the extent they are incurred directly in connection with the Scope of Services: court reporters, deposition transcripts, exhibits.

COUNSEL will also be reimbursed for monthly computer research charges, provided that such costs are documented and provided that if such monthly amount is anticipated to exceed \$400, that COUNSEL will first obtain permission from the General Counsel's Office to exceed such amount.

COUNSEL will not be reimbursed 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 the General Counsel's Office 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) Express approval by the AUTHORITY's Board is required before the retention of consultants equal to or in excess of \$25,000. Written authorization from the General Counsel's Office is required for consultant or expert contracts less than \$25,000.

#### **SECTION 5. GENERAL TERMS AND PAYMENT.**

(a) COUNSEL shall have a documented invoice procedure and shall invoice the AUTHORITY as designated by the AUTHORITY. The AUTHORITY will pay COUNSEL within thirty (30) days of receipt of a 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 6. 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 the AUTHORITY 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 any subcontracts.

**SECTION 7. TERM.** This Agreement shall become effective on the date first written above and, unless earlier terminated as provided for herein, shall run for a term of three (3) years, with two one-year renewals at the AUTHORITY's option. The options to renew are at the sole discretion and election of the AUTHORITY. Renewals will be based, in part, on a determination by the AUTHORITY that the value and level of service provided by COUNSEL are satisfactory and adequate for the AUTHORITY's needs. If a renewal option is exercised, the AUTHORITY 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 8. CONFLICT OF INTEREST.** COUNSEL hereby certifies that no officer, agent or employee of the AUTHORITY 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 9. NO ASSIGNMENT.** The parties fully understand and agree that the professionalism and specialization involved in serving as Right-of-Way Counsel is of paramount importance and that this Agreement would not be entered into by the AUTHORITY 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 the AUTHORITY.

**SECTION 10. 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 11. 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 the AUTHORITY the right to terminate this Agreement immediately upon written notice to COUNSEL. It shall be solely within the discretion of the AUTHORITY 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 12. 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 this Agreement or the Scope of Services be construed to create a joint venture, association, or partnership by or among the AUTHORITY and COUNSEL (including its officers, employees, and agents), nor shall COUNSEL hold itself out as or be considered an agent, representative or employee of the AUTHORITY for any purpose, or in any manner, whatsoever. COUNSEL shall not create any obligation or responsibility, contractual or otherwise, on behalf of the AUTHORITY nor bind the AUTHORITY in any manner.

**SECTION 13. 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 the AUTHORITY may immediately terminate this Agreement with respect to the party in bankruptcy or receivership.

**SECTION 14. 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 the AUTHORITY with properly executed Certificate(s) of Insurance forms on all the policies of insurance and renewals thereof in a form(s) acceptable to the AUTHORITY. The AUTHORITY 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.

**SECTION 15. 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 16. WAIVER.** The failure of the AUTHORITY to insist upon strict and prompt performance of any of the terms and conditions of this Agreement shall not constitute a waiver of the AUTHORITY's right to strictly enforce such terms and conditions thereafter.

**SECTION 17. 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 the AUTHORITY:

Mr. Joseph Passiatore, General Counsel  
Ms. Dyana Petro, Assistant General Counsel  
Orlando-Orange County Expressway Authority  
4974 ORL Tower Road  
Orlando, Florida 32807

For COUNSEL:

Mr. David A. Shontz  
Mr. Kenneth Wright  
Shutts & Bowen LLP  
300 South Orange Avenue, Suite 1000  
Orlando, Florida 32801

**SECTION 18. TERMINATION.** The AUTHORITY 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 the AUTHORITY all data, drawings, 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 19. 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 20. 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 21. 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.

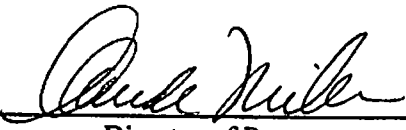
**SECTION 22. PUBLIC ENTITY CRIMES.** COUNSEL hereby acknowledges that it has been notified that under Florida Law a person or affiliate, as defined in §287.133, Florida Statutes, who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on 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 23. RIGHTS AT LAW RETAINED.** The rights and remedies of the AUTHORITY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

**SECTION 24. 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.

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 the Authority's Board of Directors at its meeting on February 27, 2013.

**ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY**

By:   
Director of Procurement

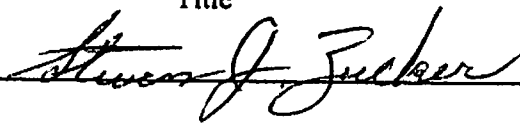
Print Name: Claude Miller

**SHUTTS & BOWEN LLP**

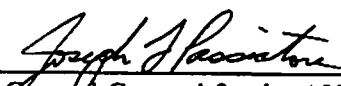
By: 

Print Name: KENNETH WRIGHT

Partner  
Title

ATTEST:  (Seal)

Approved as to form and execution, only.

  
General Counsel for the AUTHORITY



**SCOPE OF SERVICES  
RIGHT-OF-WAY COUNSEL**

This Scope of Services is a general guide and is not intended to be a complete list of all work and materials that may be required by the Authority. Services are non-exclusive and shall apply to those future right-of-way matters not currently assigned to other counsel. Services to be performed by Counsel include, but are not limited to, the following:

1. Working with and under the supervision of the Authority's General Counsel's office and Right-of-Way Committee to provide right-of-way, real estate and eminent domain services as needed by the Authority.
2. Coordinating with the Authority's right-of-way acquisition agent(s), project engineers, appraisers, planning consultants and other Authority consultants to plan and effectuate right of way easements and other property interests required for future Authority projects.
3. Coordinating with the Authority's right of way acquisition agent(s), to negotiate voluntary contract purchases and settlements of right of way acquisition.
4. Handling all aspects of real estate due diligence, including title review, survey review, appraisal review and environmental assessment review. Counsel shall provide real estate closing services for purchases and sales of property.
5. Coordinating as needed with other right-of-way or eminent domain counsel designated by the Authority.
6. Coordinating surplus property contract negotiations and closings with the Authority's real estate broker(s) and land agent(s).
7. Reporting regularly to the Authority's Right-of-Way Committee and on an as-needed basis to the Authority Board.
8. Providing input on project budgets and cash flow as requested by the Authority.
9. Coordinating with the designated communications and public records officers to respond to real estate and right-of-way related public records inquiries.
10. Providing additional services related to real estate or right-of-way matters as from time to time may be requested and authorized by the Authority.

End of Scope of Services