SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

Legal Services Committee
May 13, 2011
8:30 a.m.

South Florida Regional Transportation Authority
Executive Conference Room
800 NW 33rd Street
Suite 100
Pompano Beach, FL 33064

FOR FURTHER INFORMATION CALL (954)942-RAIL (7245).
TIME OF MEETINGS SUBJECT TO CHANGE.

SFRTA Committee Members

James A. Cummings Felix M. Lasarte F. Martin Perry

Executive Director

Joseph Giulietti

LEGAL SERVICES COMMITTEE MEETING
OF MAY 13, 2011

The Committee meeting will convene at 8:30 a.m., and will be held in the Executive Conference Room of the South Florida Regional Transportation Authority, Administrative Offices, 800 NW 33rd Street, Suite 100, Pompano Beach, Florida 33064.

CALL TO ORDER

AGENDA APPROVAL – Additions, Deletions, Revisions

MATTERS BY THE PUBLIC – Persons wishing to address the Board are requested to complete an "Appearance Card" and will be limited to three (3) minutes. Please see the Minutes Clerk prior to the meeting.

REGULAR AGENDA

Those matters included under the Regular Agenda differ from the Consent Agenda in that items will be voted on individually. In addition, presentations will be made on each motion, if so desired.

R1. MOTION TO RECOMMEND: Outside Counsel Contracts

R2. GENERAL COUNSEL EVALUATION

LEGAL COUNSEL COMMENTS

CHAIR COMMENTS

MEMBER COMMENTS

ADJOURNMENT

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this proceeding, must at least 48 hours prior to the meeting, provide a written request directed to the Executive Office at 800 NW 33rd Street, Suite 100, Pompano Beach, Florida, or telephone (954) 942-RAIL (7245) for assistance; if hearing impaired, telephone (800) 273-7545 (TTY) for assistance.

Any person who decides to appeal any decision made by the Legal Services Committee of the South Florida Regional Transportation Authority with respect to any matter considered at this meeting or hearing, will need a record of the proceedings, and that, for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Persons wishing to address the Committee are requested to complete an "Appearance Card" and will be limited to three (3) minutes. Please see the Minutes Clerk prior to the meeting.

Tracking No. 05131101 AGENDA ITEM NO. R1

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY
LEGAL SERVICES COMMITTEE MEETING: MAY 13, 2011

AGENDA ITEM REPORT

☐ Consent ☒ Regular

OUTSIDE COUNSEL CONTRACTS

REQUESTED ACTION:

MOTION TO RECOMMEND:

Approval by the SFRTA Governing Board of Outside Counsel Contracts with Shutts & Bowen LLP, Akerman Senterfitt P.A., and Kaplan, Kirsch and Rockwell, P.A., for the provision of services as provided in the Outside Counsel Contracts.

SUMMARY EXPLANATION AND BACKGROUND:

Pursuant to direction from the Legal Services Committee, General Counsel has negotiated outside counsel contracts with Shutts & Bowen LLP ("Shutts"), Akerman Senterfit, P.A. ("Akerman") and Kaplan, Kirsch and Rockwell, P.A ("KKR") (see Exhibits 1-3). Two of these firms (Shutts and Akerman) are from the original group of four law firms originally shortlisted for the General Counsel Legal Services procurement. The two other shortlisted law firms (Berger Singermann, P.A. and Williams, McMillian Schloss, P.A. f/k/a Williams Wilson, P.A, f/k/a Williams Wilson Sexton, P.A.) declined to enter into outside legal counsel contracts with SFRTA.

Both Shutts and Akerman have agreed to perform the work at the attorney and paralegal rates stated in the original Shutts proposal (see Exhibit D of each contract) which applies through 2014 (using the 2011 rate of $225 from Shutts proposal as the first year rate in these Agreements). The rate for year 2015 is the same as the 2014 rate, although the proposal rates only extended to 2014. KKR, the labor protection and railroad firm (specifically, Chuck Spitulnik), has agreed to bill for services using the Greenberg Traurig rate for 2011 ($282) and has proposed alternative rates for the remaining years, as shown in Exhibit D of KKR's contract ($305 in 2012, with the rates increasing 5% over each of the remaining 3 years). All other attorneys and paralegals at KKR will bill at the rates agreed upon by both Shutts and Akerman.

(Continued on Page 2)

Department: Legal General Counsel: Teresa J. Moore

FISCAL IMPACT: none

EXHIBITS:
Exhibit 1 – Shutts & Bowen LLP Contract
Exhibit 2 – Akerman Senterfitt, P.A. Contract
Exhibit 3 – Kaplan, Kirsch and Rockwell, P.A. Contract

OUTSIDE COUNSEL CONTRACTS

SUMMARY EXPLANATION AND BACKGROUND (continued):

The Agreements are similar in wording to those included in SFRTA's previous General Counsel procurement. Notable changes include: (1) changes to reflect Outside Counsel, as opposed to General Counsel, services; (2) modifications to KKR's scope to exclude certain Florida law-related services; (3) an amended conflict waiver provision (Exhibit B, para. 3.6); (4) a mutual termination for convenience provision (Exhibit A, para. 2.13); (5) amendments to the legislative provision (Exhibit D, para. 24); and (6) a provision regarding the adherence to General Counsel Procedures for Outside Counsel Services, which shall be developed by the General Counsel (Exhibit B, para. 3.7).

OUTSIDE COUNSEL CONTRACTS

Recommended by:_____ Approved by:_____
Department Director Date Contracts Director Date

Authorized by:_____ Approved as to Form by:_____ 5-6-11
Executive Director Date General Counsel Date

Committee Action:

Approved: _____Yes _____No

Vote: _____ Unanimous

Amended Motion:

F. Martin Perry. _____Yes _____ No
James A .Cummings _____Yes ____No
Felix M. Lasarte _____Yes _____No

EXHIBIT 1

AGREEMENT NO. 11-014

BETWEEN

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

AND

SHUTTS & BOWEN LLP

FOR

OUTSIDE COUNSEL SERVICES

This Agreement (the "Agreement"), by and between the **SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY**, a body politic and corporate and an agency of the state of Florida created pursuant to Chapter 343, Florida Statutes (hereinafter referred to as "**SFRTA**" or the "**Authority**"),

and

SHUTTS & BOWEN LLP, a Florida Limited Liability Partnership, authorized to and doing business in the State of Florida, hereinafter referred to as "**Outside Counsel**".

WITNESSETH:

WHEREAS, SFRTA wishes to retain Outside Counsel to provide the Services (as defined herein); and

WHEREAS, Outside Counsel wishes to perform the Services (as defined herein) for SFRTA;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein and other valuable consideration, receipt of which is hereby acknowledged, the parties mutually undertake, promise and agree for themselves, their successors and assigns as follows:

1. **RECITALS.** The Recitals to this Agreement are true and correct and incorporated herein.

2. **DEFINITIONS.** For the purposes of this Agreement and the other Contract Documents, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

   a. **Board**. The governing body of the SFRTA, created pursuant to Chapter 343, Florida Statutes, as amended.
   b. **Contract.** Same as Agreement.
   c. **Contract Administrator**. The General Counsel or appointed designee. In the administration of this Agreement, all parties may rely upon the instructions or determinations made by the Contract Administrator.
   d. **Contract Documents**. The Agreement (which may also be referred to as the "Contract"), all attached Exhibits to this Agreement and the proposal submitted by Outside Counsel in response to SFRTA's Request for Proposal for General Counsel Legal Services (RFP NO. 09-008), as applicable, which proposal is incorporated herein by reference.
   e. **Contractor**. Same as Outside Counsel
   f. **Effective Date**. The date on which the last party executes the Agreement.
   g. **General Counsel.** SFRTA General Counsel or appointed designee.
   h. **Matter.** A legal issue, or related legal issues, as determined by General Counsel.
   i. **Outside Counsel**. Shutts & Bowen LLP
   j. **Outside Counsel Representative**. Sidney Calloway, Esq.
   k. **Project, Services or Work**. Same as the Scope of Services (Exhibit C)
   l. **Project Manager**. Same as Contract Administrator.
   m. **Work Order**. Written authorization from the General Counsel regarding a specific Matter or general services to be performed under the Agreement.

3. **TERMS AND CONDITIONS.**

Outside Counsel agrees to comply with all of the General Terms and Conditions (Exhibit A) and the Special Terms and Conditions (Exhibit B). In the event Outside Counsel

becomes aware of a conflict between any terms and conditions of the Agreement, Outside Counsel shall immediately notify General Counsel who shall then determine which provision of the Agreement shall control.

4. COMPENSATION

SFRTA agrees to pay Outside Counsel compensation at the hourly rates provided for attorneys and paralegals in Exhibit D, for the Services.

5. NOTICE.

Any notice, request, demand, instruction, or other communications to be given to the parties hereunder shall be in writing and shall be deemed to be delivered upon the earlier to occur of (i) actual receipt if delivered by hand or by commercial courier to the address indicated or if faxed with confirmation of receipt, or (ii) the first attempted delivery by registered or certified United States Parcel Service mail, Federal Express or other overnight carrier, return receipt requested, postage prepaid, addressed as follows:

If to OUTSIDE COUNSEL:

SHUTTS & BOWEN LLP
200 East Broward Blvd., Suite 2100
Ft. Lauderdale, FL 33301
Attn: Sidney Calloway, Esq.

If to SFRTA:

South Florida Regional Transportation Authority (SFRTA)
800 N.W. 33rd Street
Pompano Beach, FL 33064
Attn: Teresa J. Moore, General Counsel

6. MISCELLANEOUS.

a. **Headings.** Section headings are for convenience of reference only and shall in no way effect the interpretation of this Agreement or other Contract Documents.

b. **Full Execution.** This Agreement shall be deemed fully executed and binding upon each party when both parties hereto have executed this Agreement as set forth below and are in possession of the original, a photocopy or faxed copy of the fully executed Agreement.

c. **Third Parties.** Unless expressly stated herein to the contrary nothing in the Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of the Agreement on any person other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any persons any right of subrogation or action over or against any party to this Agreement.

d. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy or facsimile copy of this Agreement and any signatory hereon shall be considered for all purposes as an original.

e. **Sovereign Immunity.** Nothing herein shall be construed as a waiver of SFRTA's sovereign immunity or a waiver by SFRTA of the benefits of Section 768.28, Florida Statutes, or any similar provision of law.

f. **Expenditures by SFRTA.** SFRTA, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. SFRTA shall require a statement from the SFRTA director of finance that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of

contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years.

g. **Exhibits.** All exhibits to this Agreement are attached hereto and incorporated herein.

h. **Purchase Orders.** Purchase orders shall be issued under the Agreement for each Matter for the purpose of paying invoices. Terms and conditions of the Agreement shall supersede any general terms and conditions associated with SFRTA's Purchase Orders.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective date under each signature: **SHUTTS & BOWEN LLP,** signing by and through its _____, duly authorized to execute same and **SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY**, signing by and through its Chair, authorized to execute same the ____ day of _____, 2011.

ATTEST:

_____
Joseph Giulietti, Exec. Director

(SFRTA SEAL)

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By_____
Bruno Barriero, Chair

_____ DAY OF _____, 2011

Approved as to form by:

_____
Christopher Bross
Director, Procurement

_____
Teresa Moore, General Counsel

ATTEST:

SHUTTS & BOWEN LLP

_____
WITNESS

_____
Authorized Party

_____ DAY OF _____, 2011

(CORPORATE SEAL)

EXHIBIT A

GENERAL TERMS AND CONDITIONS ("GTC's")

EXHIBIT A
GENERAL TERMS AND CONDITIONS

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2.0 - GENERAL TERMS AND CONDITIONS

2.1 EXAMINATION OF DOCUMENTS

N/A

2.2 PROPOSAL COSTS

N/A

2.3 CONFLICT OF INTEREST

SFRTA shall not enter into a contract or arrangement in connection with the Project, with any officer, director or employee of SFRTA, or any business entity of which the SFRTA officer, director or employee or the SFRTA officer's, director's or employee's spouse or child is an officer, partner, director, or proprietor or in which such SFRTA officer, director or employee or the SFRTA officer's director's or employee's spouse or child, or any combination of them, has a material interest. Material interest means direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity.

SFRTA shall not enter into any contract or arrangement in connection with the Project, with any person or entity who was represented before SFRTA by any person who at any time during the immediately preceding two years was an officer, director or employee of SFRTA.

2.4 ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of any resultant Agreement, including any or all of its right, title or interest therein, or its power to execute such contract to any person, company or corporation without the prior written consent of SFRTA.

SFRTA may assign its rights and obligations under any resultant Agreement to any successor to the rights and functions of SFRTA or to any governmental agency to the extent required by applicable laws or governmental regulations all or part of the specified deliverable items as originally competed and evaluated to one or more third parties.

2.5 FAMILIARITY WITH LAWS

The Contractor is required to be familiar and shall comply with all Federal, State and local laws, ordinances, rules, and regulations ("Legal Requirements") that in any manner affect the Work. Ignorance on the part of the Contractor will in no way relieve the Contractor from responsibility for compliance with such Legal Requirements.

2.6 ADVERTISEMENTS

Contractor agrees not to use SFRTA's name as a part of any commercial advertising, without the prior express written consent of SFRTA.

2.7 PUBLIC RECORDS

SFRTA shall not be liable to a Contractor for disclosure of all or any portion of a submitted Proposal or the Contract Documents. The Contractor shall allow public access to all documents, papers, letters, or other material, subject to the applicable provisions of Chapter 119, Fla. Stat., and made or received by the Contractor in conjunction with the Agreement. Failure by the Contractor to grant such public access shall be grounds for immediate unilateral cancellation of the Agreement by SFRTA.

2.8 REQUIRED LICENSES

The Contractor and its employees shall be licensed to practice law pursuant to the Florida Bar's Rules of Professional Conduct and/or similar rules from a Bar association that is acceptable to SFRTA. All attorneys shall be in good standing with the applicable Bar under which they are licensed to practice law.

2.9 INSURANCE

The Contractor shall provide at its own cost all General Liability, Business Auto Liability, Professional Liability, Workers' Compensation and all other employee related insurance as may be required by law to SFRTA.

2.9.1 Self insurance shall not be acceptable for this Project.

2.9.2 The Contractor shall furnish certification of insurance to SFRTA within seven (7) business days of receipt of a fully executed Agreement. If the insurance certificate is received within the specified time frame but not in the manner prescribed, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) business days to submit a corrected certificate to SFRTA. If the Contractor fails to submit the required insurance certificate in the manner prescribed within fifteen (15) business days of receipt of a fully executed Agreement, the Contractor shall be in default, and the Agreement may be rescinded. Under such circumstances, the Contractor may be subject to SFRTA's debarment and suspension procedures, Section 30C-2.009 of the Procurement Code.

2.9.3 Such policy or policies shall be issued by a company or companies authorized to transact business in the State of Florida or an eligible surplus lines insurer in good standing with the Florida Insurance Commissioner's Office. Contractor shall specifically protect SFRTA by naming SFRTA as an additional insured under the Insurance Policy(ies) hereinafter described, except Workers' Compensation Insurance and

Professional Liability Insurance. All policies must be endorsed to provide SFRTA with thirty (30) days, notice of cancellation, non-renewal and/or restriction.

2.9.4 Workers' Compensation Insurance is to apply to all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include Employer's Liability with a limit of One Hundred Thousand Dollars ($100,000.00) per accident.

2.9.5 Comprehensive General Liability Insurance with minimum limits of One Million Dollars ($1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

2.9.5.1 Premises and/or Operations;

2.9.5.2 Independent Contractors;

2.9.5.3 Products and/or Completed Operations.

2.9.6 Business Automobile Liability Insurance with minimum limits of Three Hundred Thousand Dollars ($300,000.00) per occurrence combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

2.9.6.1 Owned Vehicles;

2.9.6.2 Hired and Non-Owned Vehicles;

2.9.6.3 Employees' non-ownership; and,

2.9.6.4 Personal Injury, Property Damage, Uninsured Motorist, Collision, and Comprehensive Coverages.

2.9.7 Malpractice Insurance. The Contractor shall maintain during the life of the Agreement standard professional liability insurance with the minimal amount of coverage of One Million Dollars ($1,000,000.00) per occurrence.

2.9.8 Renewal of Insurance. Contractor shall be responsible for assuring that the insurance certificate required in conjunction with this section remains in force for the duration of the contractual period. If the insurance certificate is scheduled to expire during this period, Contractor shall be responsible for submitting a new or renewed insurance certificate to SFRTA at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificate is not replaced with a new or

renewed certificate which covers the contractual period, SFRTA may suspend this Agreement until such time as the new or renewed certificate is received by SFRTA.

2.9.9 Minimum Coverage. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Contractor of liability in excess of such coverage, nor shall it preclude SFRTA from taking such other actions as is available to it under any other provisions of this Agreement or otherwise in law or equity.

2.10 INDEMNIFICATION

The Contractor shall be required to indemnify and hold harmless, SFRTA and all of SFRTA's officers, agents, and employees from any claim, loss, damage, cost, charge, judgment or expense, the extent arising out of any negligence, recklessness, or intentionally wrongful conduct by the Contractor, its agents, employees, subconsultants or subcontractors during the performance of the Contract, whether direct or indirect, and whether to any person or property to which SFRTA or said parties may be subject.

The Contractor's obligation to indemnify SFRTA shall be activated by SFRTA's notice of claim for indemnification to the Contractor. The Contractor's inability to evaluate liability or its evaluation of liability shall not excuse the Contractor's duty to indemnify within seven (7) days after such notice by SFRTA is given by registered mail. Only an adjudication or judgment after the highest appeal is exhausted specifically finding SFRTA solely negligent shall excuse performance of this provision by the Contractor. The Contractor shall pay all costs and fees related to this obligation and its enforcement by SFRTA. SFRTA's failure to notify the Contractor of a claim shall not release the Contractor of the above duty to indemnify.

It is specifically agreed between the parties executing the Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third-party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

The Contractor guarantees the payment of all just claims for materials, supplies, tools or labor and other just claims against it or any subcontractor or subconsultant, in connection with the Contract.

The parties hereby agree and acknowledge that one hundred dollars ($100.00) of the first payment to the Contractor for performance of this Agreement is the specific consideration from SFRTA to the Contractor for the Contractor's indemnity agreement.

2.11 WAIVER OF SUBROGATION

Contractor shall require all policies of insurance that are in any way related to the Work and that are secured and maintained by Contractor and all Subcontractors to include clauses providing that each underwriter shall waive all of its rights of recovery, under subrogation or otherwise, against SFRTA, Contractor, separate Contractors, and Subcontractors.

Contractor waives all rights of recovery against SFRTA, separate Contractors, and all Subcontractors which Contractor may have or acquire because of deductible clauses in or inadequacy of limits of any policies of insurance that are in any way related to the Work and that are secured and maintained by Contractor.

Contractor shall require all Subcontractors to waive their rights of recovery (as aforesaid waiver by Contractor) against SFRTA, Contractor, separate Contractors, and other Subcontractors (including Subcontractors of separate Contractors).

2.12 TERMINATION FOR DEFAULT

The Contractor shall be considered in material default of the Contract and such default shall be considered cause for SFRTA to terminate the Contract, in whole or in part, as further set forth in this Article, if the Contractor: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by SFRTA; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work contrary to the requirements of the Contract; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; or (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) materially breaches any other provision of the Contract Documents.

If SFRTA determines that the Contractor is in default under this Contract, SFRTA shall notify the Contractor in writing of the Contractor's default(s). If SFRTA determines that the Contractor has not remedied and cured the default(s) within seven (7) calendar days following receipt by the Contractor of said written notice, then SFRTA, at its option, without releasing or waiving its rights and remedies against the Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate the Contractor's right to proceed under the Contract, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of the Contractor, take assignments of any of the Contractor's subcontracts and purchase orders that SFRTA may designate, and complete all or any portion of the Contractor's Work by whatever means, method or agency which SFRTA, in its sole discretion, may choose. In the event of termination, Contractor shall cooperate with SFRTA in the retrieval of all information and documentation to be taken into SFRTA's possession within seven (7) calendar days from notice of termination.

If SFRTA deems any of the foregoing remedies necessary, the Contractor agrees that it shall not be entitled to receive any further payments hereunder until after the Work is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including attorneys' fees) or damages incurred by SFRTA incident to such completion, shall be deducted from the unpaid balance of the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, the Contractor agrees to pay promptly to SFRTA on demand

the full amount of such excess, including costs of collection, attorney's fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by SFRTA to complete the Work, the Contractor shall be entitled to such unpaid excess portion. Any amounts to be paid to SFRTA by the Contractor pursuant to this Paragraph, the obligation for payment shall survive termination of the Contract.

The liability of the Contractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by SFRTA in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefore or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder.

If, after notice of termination of the Contractor's notice to proceed pursuant to this Article, it is determined for any reason that the Contractor was not in default, or that its default was excusable, or that SFRTA is not entitled to the remedies against the Contractor provided herein, then such termination shall be deemed a termination for SFRTA's convenience and the Contractor's remedies against SFRTA shall be the same as and limited to those afforded the Contractor under Paragraph below.

2.13 TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION

Either party shall have the right to terminate this Contract, in whole or in part, without cause upon thirty (30) calendar days written notice to other party. In the event of termination for convenience by SFRTA, the Contractor's recovery against SFRTA shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but the Contractor shall not be entitled to any other or further recovery against SFRTA, including, but not limited to, damages or any anticipated profit on portions of the Work not performed. In the event of termination, Contractor shall cooperate with SFRTA in the retrieval of all information and documentation to be taken into SFRTA's possession within thirty (30) calendar days from notice of termination. Nothing herein shall limit SFRTA's recovery against the Contractor in the event of termination for convenience by the Contractor.

SFRTA shall have the right to suspend all or any portions of the Work upon giving the Contractor two (2) calendar days prior written notice of such suspension. If all or any portion of the Work is so suspended, the Contractor's sole and exclusive remedy shall be to seek an extension to the Contract Time in accordance with the procedures set forth in the Contract Documents. In no event shall the Contractor be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds two hundred (200) calendar days, the Contractor shall have the right to terminate the Contract with respect to that portion of the Work which is subject to the ordered suspension.

2.14 PUBLIC ENTITY CRIMES

Pursuant to Section 287.133, Florida Statutes, a person or affiliate 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 firm, 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 Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being on the convicted vendor list.

2.15 UNCONTROLLABLE FORCES

Neither SFRTA nor the Contractor shall be considered to be in default of the Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under the Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing party shall within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

2.16 CLAIMS AND DISPUTES

A Claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between SFRTA and the Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim shall rest with the party making the Claim.

Initial notice of Claims by the Contractor shall be made in writing to the SFRTA Project Manager within forty-eight (48) hours after the first day of the event giving rise to such Claim, or else the Contractor shall be deemed to have waived the Claim. Written supporting data shall be submitted to the SFRTA Project Manager within fifteen (15) calendar days after the occurrence of the event unless SFRTA grants additional time in writing, or else the Contractor shall be deemed to have waived the Claim. All Claims shall be priced so as to compensate the Contractor

for its actual and direct labor, material and equipment costs and extended general conditions expenses, together with markup, as set forth in Paragraph above.

The Contractor shall proceed diligently with its performance as directed by SFRTA, regardless of any pending Claim, unless otherwise agreed to by SFRTA in writing. SFRTA shall continue to make payments in accordance with the Contract Documents during the pendency of any Claim.

Prior to the initiation of any action or proceeding permitted by this Contract to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power. Failing resolution, and prior to the commencement of depositions in any litigation between the parties with respect to the Contract, the parties shall attempt to resolve the dispute through mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may request a court of law to order mediation under Florida Statutes Section 44.102.

Any litigation between SFRTA and the Contractor, whether arising out of any Claim or arising out of the Contract or any breach thereof, shall be brought, maintained and pursued only in the appropriate State courts of the State of Florida; and SFRTA and the Contractor each hereby waive and renounce any and all rights and options which they, or either of them, have or might have to bring or maintain any such litigation or action in the Federal Court system of the United States or in any United States Federal District Court. Venue of any such litigation between the SFRTA and the Contractor shall lie and be only in the appropriate State courts of the State of Florida's Seventeenth Circuit in and for Broward County, Florida. SFRTA and the Contractor consent and submit to the jurisdiction of any such court and agree to accept service of process outside the State of Florida in any matter to be submitted to any such court pursuant hereto. By submittal of its Proposal and/or execution of this Agreement, the Proposer EXPRESSLY WAIVES ALL RIGHTS TO TRIAL BY JURY REGARDING ANY DISPUTE RELATING TO THE CONTRACT (AND THE CONTRACTOR'S WORK HEREUNDER) THAT RESULTS IN LITIGATION.

2.17 RIGHTS IN TECHNICAL DATA

All documents and materials prepared or developed by the Contractor and its subcontractors pursuant to this Agreement shall become the property of SFRTA without restriction or limitation on their use and shall be made available upon request to SFRTA at any time. Original copies of such shall be delivered to SFRTA upon completion of the services or termination of the services. The Contractor shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the written approval of SFRTA.

No material or technical data prepared by the Contractor under this Agreement is to be released by the Contractor to any other person or agency except as necessary for the performance of the services. All press releases or information to be published in print or electronic media, shall be distributed only after first being authorized by SFRTA.

SFRTA shall have the right to use, duplicate, modify or disclose the technical data and the information conveyed therein, in whole or in part, in any manner whatsoever, and to have or permit others to do so.

The Contractor shall agree to grant to SFRTA and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free license to publish, translate, reproduce, deliver, and use as they deem fit all technical data covered by copyright supplied for this Agreement. No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for SFRTA to use in the manner herein described.

The Contractor warrants that the processes, design, equipment, materials, or devices used in providing the services shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If a suit or proceeding based on a claimed infringement of a patent or copyright is brought against SFRTA the Contractor shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by SFRTA, and indemnify and hold harmless SFRTA, its subsidiaries, agents and employees from all liability, damages, costs, and expenses associated therewith, including, without limitation, defense costs and attorney fees.

2.18 CONTRACTOR PERSONNEL

SFRTA's selection of the Contractor for the performance of the Scope of Services is based in part upon a careful consideration of the qualifications and experience of Contractor's personnel, including subcontractors, who will participate in the Scope of Services. The names of these personnel and their areas of participation under this Agreement are set forth in the Contractor's submittal or shall be agreed upon between the parties.

The Contractor shall be responsible for the performance of all of the work and shall utilize the specialized expertise and experience of the personnel listed in the Contractor's submittal.

SFRTA shall have the right to demand the removal of any of the personnel listed in the Contractor's submittal for reasonable cause and by written notice.

The Contractor shall not replace any of the personnel listed in the Contractor's submittal without the prior written approval of SFRTA, which SFRTA agrees, will not be unduly withheld.

In the event the Contractor, through circumstances beyond its control, is unable to provide the services of the personnel listed in the Contractor's submittal or agreed upon between the parties, the Contractor shall be responsible for providing other personnel for the performance of the particular items of work involved, whose expertise and experience, in the opinion of SFRTA are equivalent to that which would have been provided by the originally listed person.

The Contractor shall be responsible for any additional costs caused by the substitution of personnel for those listed in the Contractor's submittal. In no event shall any substitution of personnel result in an increase in compensation to be paid by SFRTA.

2.19 SUCCESSORS AND ASSIGNS

Subject to other provisions hereof, Contract shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Contract.

2.20 GOVERNING LAW

The Contract shall be interpreted under and its performance governed by the laws of the State of Florida.

2.21 NO WAIVER

The failure of SFRTA to enforce at any time or for any period of time any one or more of the provisions of the Contract shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

2.22 JOINT PREPARATION

The preparation of this agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

2.23 SEVERABILITY

In the event any term or provision of this agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed or deleted as such authority determines, and the remainder of this agreement shall be construed to be in full force and effect.

2.24 ATTORNEY'S FEES

In the event it shall become necessary for either party to this agreement to institute legal proceedings against the other party for recovery of any amounts due and owing under this agreement, then in such event, it is expressly agreed that the prevailing party in any such action shall be entitled to recover from the non-prevailing party all costs, including reasonable attorneys' fees, of pre-suit collection attempts, suit, and post judgment or settlement collection including those incurred on appeal.

2.25 RELATIONSHIP OF THE PARTIES

Except as set forth herein, no party to this agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other party. The

Contractor is and shall be in the performance of all work, services, and activities under this agreement independent, and not an employee, agent, or servant of SFRTA. All persons engaged in any of the work or services performed pursuant to this agreement shall at all times and in all places be subject to the Contractor's sole discretion, supervision, and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respect the Contractor's relationship and the relationship of its employees to SFRTA shall be that as an independent and not as employees or agent.

2.26 CONTINGENT FEE

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the making of this agreement. For the breach or violation of this provision, SFRTA shall have the right to terminate the agreement without liability at its discretion, to deduct from the contract price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

2.27 TRUTH IN NEGOTIATING

Execution of this Agreement by the Contractor shall act as the execution of a truth in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which SFRTA determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this agreement.

2.28 CONFLICT OF PROVISIONS

Where there is a conflict between any provision set forth within this Agreement and a more stringent state or federal provision that is applicable to any services performed under this Agreement, the more stringent state or federal provision shall prevail.

2.29 MODIFICATION AND AMENDMENTS

This Agreement may not be changed, altered, or modified except by an instrument in writing signed by all parties against whom enforcement of such change would be sought.

2.30 [NOT USED]

2.31 OWNERSHIP OF DOCUMENTS

All tracings, plans, specifications, maps and/or reports prepared or obtained under the Contract Documents shall be considered works made for hire and shall become property of SFRTA

without restriction or limitation on their use, and shall be made available upon request to SFRTA at any time. The Contractor therefore agrees not to publish, copyright or patent any of the data furnished in compliance with the Agreement. SFRTA shall have the right to visit the offices of the Contractor for review of such data at any time. The Contractor shall not be liable for use by SFRTA of said tracings, plans, specifications, documents, studies, or other data for any purpose other than intended by the terms of the Contract Documents.

2.32 VARIANCES IN TERMS AND CONDITIONS

Where there appears to be variances or conflicts between the General Terms and Conditions, the Special Terms and Conditions, and the Scope of Services outlined in the Purchase Order, the governing order shall be as follows:

Scope of Services
Special Terms and Conditions
General Terms and Conditions

2.33 MISCELLANEOUS

All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

There are no understandings or agreements except as herein expressly stated.

Failure to capitalize any defined term in the Contract Documents shall not change the meaning of the defined term when used in the Contract Documents.

Use of the term "Agreement" or "Contract" in these General Terms and Conditions shall mean the Purchase Order and all exhibits, including the General Terms and Conditions.

Any reference to Contractor shall mean Shutts & Bowen LLP.

2.34 FEDERAL REQUIREMENTS

1. Federal Changes - The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (15) dated October, 2008) between SFRTA and FTA, as they may be amended or promulgated from time to time during the term of this agreement. Contractor's failure to so comply shall constitute a material breach of this agreement.

2. Drugfree Workplace - The Contractor shall comply with the terms of the State of Florida and the U.S. DOT regulations for Drugfree Workplace Requirements, 49 C.F.R. Part 29, Subpart F.

3. Debarment and Suspension - The Contractor shall comply with U.S. DOT regulations, "Government wide Debarment and Suspension" (Non-procurement). This requirement shall pass to any and all subcontractors engaged to perform services under the Agreement.

4. Program Fraud and False or Fraudulent Statements or Related Acts - The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

5. Lobbying - Pursuant to the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.], Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the SFRTA. This requirement shall pass through to any and all Subcontractors engaged to perform services under this Agreement.

6. Interest of Members of or Delegates to Congress - In accordance with 18 U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of the Agreement or to any benefit arising there from.

7. Organizational Conflict of Interest - Prior to entering into this Agreement, the Contractor is required to inform SFRTA of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the nature of the work to be performed under a contract may, without some restriction on future activities, results in an unfair competitive advantage to the Contractor, or may impact the Contractor's objectivity in performing the contract work.

8. Civil Rights - Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,"41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Age – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

9. Clean Air - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report each violation to SFRTA and understands and agrees that SFRTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

10. Clean Water - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to SFRTA and understands and agrees that SFRTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

11. Access to Records and Reports - The Contractor agrees to provide SFRTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this agreement for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until SFRTA, the FTA Administrator, the Comptroller General, or any of

their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

12. Energy Conservation - The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

13. Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SFRTA requests, which would cause SFRTA to be in violation of the FTA terms and conditions.

14. Disadvantaged Business Enterprise – The Contractor, sub recipient or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as SFRTA deems appropriate.

15. Environmental Protection - The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq*. consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

16. Fly America Requirements – The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their Contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of

compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

17. No Government Obligation to Third Parties - SFRTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to SFRTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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EXHIBIT B

SPECIAL TERMS AND CONDITIONS ("STC's")

EXHIBIT B
SPECIAL TERMS AND CONDITIONS

3.1 TERM

The term of this Project shall commence starting upon SFRTA's issuance of a Notice to Proceed (which for the purposes herein shall be the execution of the Agreement by SFRTA) and shall be for a period determined by General Counsel.

3.2 COMPENSATION

3.2.1 SFRTA agrees to pay Outside Counsel compensation for its services pursuant to the terms and conditions of the Agreement and associated exhibits.

3.2.2 Outside Counsel shall bill SFRTA monthly for the Services outlined in the Agreement and the monthly invoice shall include an itemized listing of services rendered by Outside Counsel for the Matter that is the subject of the representation in a form satisfactory to General Counsel. The sums paid pursuant to this paragraph are inclusive of all employee benefits, excise and payroll taxes, social security, unemployment compensation insurance, retirement benefits, legal research, and direct and indirect overhead of Outside Counsel.

3.2.3 SFRTA will pay Outside Counsel, at direct cost without markup, reasonable and appropriate reimbursable expenses for travel pre-approved in writing by General Counsel. SFRTA shall not pay Outside Counsel any expenses for travel or meals in Miami-Dade, Broward or Palm Beach counties. Reimbursable expenses shall not be paid without the prior express written approval of the expenses by SFRTA. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Agreement shall be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes. Approved travel shall be itemized and invoiced separately.

3.2.4 The Agreement shall not exceed $50,000 for any one Work Order. Any work performed which exceeds $50,000 without prior approval from the SFRTA Governing Board, shall be considered work performed at Outside Counsel's risk and SFRTA does not guarantee that Outside Counsel shall be compensated for any such work not previously authorized. At such time as the Outside Counsel reasonably believes that work being performed under a Work Order shall exceed $50,000, Outside Counsel shall immediately inform the General Counsel. If General Counsel determines that additional Outside Counsel work is necessary in excess of the $50,000 threshold for the Work Order, General Counsel shall prepare an agenda item for the next available regular Board meeting, including Outside Counsel's best estimate of the cost of such additional services, seeking Board authorization to perform such additional legal services. Board approval shall be required for all Work Orders if the cumulative amount of any Work Orders in any one fiscal year exceeds the annual budgeted amount for legal services.

3.2.5 Payments shall be made upon proper submittal of an invoice for performance of the work which each payment represents. Outside Counsel shall make Application for Payment

for work completed at intervals of not more than once a month, unless more frequent invoices are requested by General Counsel. The Outside Counsel's invoice shall show a complete breakdown of the work components, and Contract and Work Order Numbers. In addition, the invoice must contain the level of detail as required by the General Counsel. All invoices must meet or exceed generally accepted accounting standards, and must be in a format suitable for SFRTA's audit requirements. SFRTA shall pay Outside Counsel invoices or items set forth in such invoices which are not in dispute within forty-five (45) days after receipt of the invoices. Invoices are to be sent to the Attention of General Counsel and not to any other individual or department.

3.2.6 Outside Counsel represents that it has, or will secure at its own expense, all necessary personnel, with the exception of secretarial and administrative personnel located at SFRTA's administrative offices, required to perform the legal services. Such personnel shall not be the employee of or have any contractual relationship with SFRTA. Outside Counsel shall be considered an independent contractor of SFRTA. The legal services shall be performed by Outside Counsel or under its supervision and all personnel engaged in performing the legal services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. Outside Counsel warrants that the legal services shall be performed by skilled and competent personnel and will meet the appropriate professional standards.

3.2.7 Outside Counsel's books and records shall be available at all reasonable times for examination and audit by SFRTA, state and federal auditors during the term of this Agreement and for a period of three (3) years thereafter. Incomplete or incorrect entries in such books and records will be grounds for disallowance by SFRTA of any fees or expenses based upon such entries.

3.2.8 SFRTA, during any fiscal year, shall not expend money, incur any liability or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void and no money may be paid on such contract.

3.3 FORMAT OF INVOICES

3.3.1 Within thirty (30) days of services rendered, each statement for fees and costs shall be submitted (two copies) in a format that includes, at a minimum, the following information:

A.) Case name and number, if applicable, or other legal Matter reference.

B.) Contract and Work Order numbers, and invoice number for the particular bill.

C) Outside Counsel taxpayer identification number.

D) Outside Counsel and General Counsel's name.

E) Inclusive dates of the month covered by the invoice.

F) Itemization of the date; hours or portions of hours billed; a concise meaningful description of the services rendered, with sufficient detail to enable SFRTA to evaluate the services rendered and costs; the person(s) who performed the services for each day during which the Outside Counsel and its Paralegals performed work; and their hourly rate as specified in the Agreement.

G) The total of only the current bill. Prior balances or payment histories should be shown separately, if at all.

H) A certification statement, signed by the Outside Counsel's contract administrator, that reads, "I certify that all costs and fees claimed for payment are accurate and were performed in furtherance of the AGREEMENT between Outside Counsel and South Florida Regional Transportation Authority."

I) Any other information as may be requested by General Counsel.

3.4 ADMINISTRATION OF AGREEMENT

3.4.1 Contract Administrator/Project Manager shall be General Counsel. In the administration of this Agreement, all parties may rely upon the instructions or determinations made by General Counsel. Any legal opinions, decisions and interpretations provided to SFRTA on any Matter shall be solely the responsibility of Outside Counsel.

3.4.2 The Outside Counsel's Representative shall be designated in the Agreement.

3.4.3 All approvals must be obtained from, and all notices provided to, Outside Counsel's Representative and General Counsel.

3.4.4 This Agreement shall be governed by and construed under the laws of Florida.

3.5 MISCELLANEOUS CONDITIONS

3.5.1 The Outside Counsel will make affirmative efforts to achieve cost effectiveness by consolidating court hearings, limiting travel, streamlining case processing, using printed forms, using the appropriate level of attorney or staff experience required by task, and taking other actions to improve efficiency.

3.5.2 Multiple staffing of Outside Counsel attorneys at meetings, hearings, depositions, trials, etc., by Outside Counsel will not be compensated without prior written approval from the General Counsel.

3.5.3 Outside Counsel agrees that all documents shall be promptly returned at the termination of the Outside Counsel's involvement in the case or Matter.

3.5.4 Outside Counsel shall, as it becomes aware, provide immediate notice by e-mail, facsimile transmission or telephone regarding significant legal developments, especially those that will likely result in media inquiries and Outside Counsel shall not make any statements (whether written or oral) to the media without first having obtained General Counsel's prior authorization.

3.5.5 Outside Counsel shall provide General Counsel with immediate notice of any representation undertaken by Outside Counsel in Matters where another client of Outside Counsel is suing or being sued by the State of Florida, state entities or Miami-Dade, Broward or Palm Beach counties in any civil or adversarial administrative action.

3.6 CONFLICT OF INTEREST

Outside Counsel shall promptly notify General Counsel in writing of any and all existing, apparent or potential conflicts of interest (whether legal or business) for any and all existing or prospective representations, interests or other circumstances which will be directly adverse to the SFRTA or when there is a substantial risk that the representation will materially limit the Outside Counsel responsibilities to SFRTA. This notification shall be provided to General Counsel no later than two (2) business days following Outside Counsel learning of such existing, apparent or potential conflicts of interest. **REPORTABLE CONFLICTS INCLUDE, BUT ARE NOT LIMITED TO, ANY BUSINESS OR LOBBYING ACTIVITIES THAT CONFLICT WITH THE INTERESTS OF SFRTA, AS WELL AS LEGAL CONFLICTS.** The notice shall identify the existing or prospective representation, interest or circumstance and the nature of the work that the Outside Counsel is already undertaking or wishes to undertake and requests General Counsel's opinion as to whether the representation, interest or circumstance would, in the opinion of General Counsel, constitute a conflict of interest under this Agreement(the "Notice"). General Counsel agrees to notify Outside Counsel of his/her opinion within three (3) business days of receipt of the Notice. If, in the opinion of General Counsel, the existing or prospective representation, interest or circumstance would not constitute a conflict of interest by the Outside Counsel, then General Counsel shall so state in his/her opinion, and the representation, interest or circumstance shall not be deemed a conflict of interest with respect to the legal services provided under this Agreement. If General Counsel concludes a conflict of interest exists that is not waivable pursuant to the Florida Bar's Rules of Professional Conduct, Outside Counsel shall cease any existing third-party representation or not accept the potential representation. Outside Counsel may appeal the General Counsel's determination to the SFRTA Board at its next regularly scheduled meeting, but shall not undertake the representation, or continue with an existing third-party representation, pending the Board's decision. In the event General Counsel determines that the conflict of interest is waivable or Outside Counsel is appealing General Counsel's determination as provided above, Outside Counsel may seek consent from the Board to undertake or continue the third-party representation.

Regarding an item which requires resolution prior to the next regularly-scheduled SFRTA Board meeting, the SFRTA Chair (or Vice-Chair if the Chair is unavailable) may, at his or her sole discretion, act on behalf of the SFRTA Board to address a conflict of interest waiver request

from General Counsel. Any such conflict waiver decisions shall be reported to the SFRTA Board at its next regularly scheduled meeting.

Outside Counsel shall not represent any other party before the State Legislature or any committee thereof, the office of the Governor or any member of the cabinet or any state agency, on any matter where such party's interest may be adverse to SFRTA without the prior permission of the SFRTA Board. In the event Outside Counsel desires to represent another party before any of the aforementioned public officials, bodies or agencies on any matter where such party's interest may be adverse to SFRTA, it shall follow the procedure described above. However, the conflict waiver delegation to the SFRTA Chair, as described herein, shall not apply to this situation.

The SFRTA Board (or as delegated herein), in its sole and absolute discretion, may preclude Outside Counsel from simultaneously representing SFRTA and another party when SFRTA determines that representation of such other party may be adverse to SFRTA's interests. In making such determination, SFRTA Board (or as delegated herein) shall have sole and absolute discretion to determine the role of Outside Counsel and the nature of its representation of SFRTA. Should Outside Counsel fail, after five (5) days' notice, to cure a conflict as determined by SFRTA, SFRTA shall have the right to terminate the Agreement, in whole or in part, with Outside Counsel.

3.7 GENERAL COUNSEL PROCEDURES

Outside Counsel agrees to comply with any General Counsel Procedures which may be promulgated and issued by General Counsel for Work performed under this Agreement.

EXHIBIT C

SCOPE OF SERVICES

EXHIBIT C
SCOPE OF SERVICES

4.1. INTRODUCTION

A) Outside Counsel shall provide legal services for the South Florida Regional Transportation Authority (SFRTA). The Agreement between SFRTA and Outside Counsel shall be considered a personal service contract and the Outside Counsel services shall be performed, managed and supervised by a designated Outside Counsel Representative and such partners, associates and employees of Outside Counsel assigned by the designated Outside Counsel's Representative to SFRTA Matters. Outside Counsel may also retain experts, consultants, etc. as needed to provide the services to SFRTA, subject to prior approval by General Counsel.

B) The designated Outside Counsel's Representative shall attend meetings as required by General Counsel. Outside Counsel shall send a replacement when Outside Counsel Representative is out on vacation or ill. General Counsel shall first approve all attorneys assigned to SFRTA Matters.

C) The specialties and resources of Outside Counsel's entire firm shall be made available to SFRTA through Outside Counsel's Representative.

D) Outside Counsel's Representative shall be available to provide legal services for emergency situations seven days a week, 24 hours a day, pursuant to arrangements acceptable to SFRTA and Outside Counsel.

E) Outside Counsel's Representative shall work with and report to the General Counsel.

F) Legal support services shall also be provided at Outside Counsel's offices. All direct and indirect expenses, including, but not limited to, copying, faxing, scanning, postage, etc. but not including any filing fees or any actual travel-related costs incurred by Outside Counsel (outside of the tri-county area) shall be incurred by Outside Counsel.

G) Outside Counsel shall at all times comply with the Florida Bar's Rules of Professional Conduct, including, but not limited to, provisions relating to conflicts of interest. Outside Counsel shall have a continuing obligation to report any existing, apparent or potential conflicts to SFRTA as required by Section 3.6 of the Agreement. Failure to comply with this provision may result in termination of the Contract.

I) Outside Counsel's Representative shall provide periodic status reports, either oral or in writing, as requested by the General Counsel.

J) All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by SFRTA or at its expense shall be kept confidential by Outside Counsel and shall not be disclosed to any other

party, directly or indirectly, without SFRTA's prior written consent, unless required by Florida Statutes Chapter 119 or an order issued by a court or like authority of lawful jurisdiction. All drawings, maps and sketches, and other data developed or purchased under this Agreement, or at SFRTA's expense, shall be and remain the property of SFRTA and shall be reproduced and used solely at the discretion of SFRTA. Outside Counsel shall at all times comply with the provisions of Chapter 119, Florida Statutes (Public Records Law). Should Outside Counsel receive any public records requests, Outside Counsel shall immediately inform the General Counsel of the nature of the request.

4.2 OUTSIDE COUNSEL LEGAL SERVICES; GENERAL REQUIREMENTS

A) It is the intent of this specification to describe the essential duties and responsibilities of Outside Counsel. All items or features not specifically mentioned which are necessary or which are normally furnished in order to provide such services shall be furnished by Outside Counsel. In providing legal services, Outside Counsel shall exercise the degree of reasonable knowledge and skill that lawyers of ordinary ability and skill possess and exercise.

B) Outside Counsel should possess the necessary qualifications, knowledge, skills and abilities to provide SFRTA with the following legal services:

1. Advice regarding general matters, including review and assistance in drafting commodity, construction, consultant, personal services, and other public contracts as requested, as well as providing advice on the federal requirements (laws, regulations, circulars and guidance) relating to such contracts.

2. Advice regarding Chapter 53 of Title 49, of the U.S. Code, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), as well as other federal legislation and programs relating to public transit and commuter rail systems, including, but not limited to, disadvantaged business enterprise (DBE) programs of recipients of federal financial assistance governed by 49 CFR Part 26; and the Americans with Disabilities Act (ADA).

3. Support for SFRTA interaction with the state, counties, cities, metropolitan planning organizations, regional planning councils and the federal government, including the Federal Transit Administration (FTA), Federal Railroad Administration (FRA), and the United States Department of Transportation (USDOT).

4. Support for preparing easements and access agreements, and/or acquiring, purchasing, holding, leasing real estate owned by SFRTA, including addressing environmental issues related to such transactions.

5. Support to sell, convey, exchange, lease, or otherwise dispose of any real or personal property acquired by SFRTA or to enter into joint development agreements involving SFRTA property, including addressing environmental issues related to such transactions.

6. In-service training programs for SFRTA managers and supervisors regarding topics as requested by SFRTA.

7. Research and informal oral and formal written opinions regarding any subject requested by SFRTA.

8. Research and preparation of written briefs and oral argument in all cases where so required before administrative agencies or courts of law.

9. Advice regarding all employment practices, including hiring and termination, employment applications, employee handbook, and policy and procedure manuals.

10. Advice and representation regarding all labor relations matters, including but not limited to recognition petitions, collective bargaining, grievances, and arbitration cases.

11. Advice regarding the Federal Fair Labor Standards Act (FLSA) and Florida Wage-Hour Laws.

12. Advice and representation regarding Federal Equal Employment Opportunity Commission (EEOC) and Florida Commission of Human Relations (FCHR), discrimination cases, including but not limited to administrative agency investigations and hearings.

13. Advice regarding Occupational Safety and Health Administration (OSHA) matters, including representation before administrative agencies, and review and assistance in drafting safety procedures, plans, etc.

14. Advice to SFRTA management on all types of employee, labor relations, human resource and other personnel issues.

15. Advice and representation regarding claims of wrongful discharge, breach of employment contract, etc.

16. Advice and representation regarding unemployment compensation matters, including administrative hearings.

17. Advice regarding Florida's Retirement Program and any other SFRTA employee benefit matters.

18. Advice regarding the Federal and Florida Family and Medical Leave Acts (FMLA), and review and assistance in drafting FMLA compliance plans, procedures, forms, policies, etc.

19. Advice regarding the FTA matters, including but not limited to required drug and alcohol testing, and review and assistance in drafting substance abuse policies and procedures.

20. Advice regarding standard terms and conditions governing the administration of federal and state assistance awarded by the USDOT or FDOT through a Grant Agreement, Cooperative Agreement, Joint Participation Agreement or other agreement.

21. Advice regarding legal issues related to the operations and management of a public regional transportation authority, including but not limited to compliance with Florida's Public Meetings Law (Chapter 286, F.S.), Public Records Law (Chapter 119, F.S.,) and Public Ethics Laws (Section 112.311, et seq., F.S.).

22. Advice regarding the design, construction and maintenance of transportation facilities, including, but not limited to, vertical construction, railroad tracks, roads and bridges, etc., including but not limited to state and federal laws and standards and practices.

23. Advice and representation regarding right-of-way acquisition, relocation assistance, and condemnation of real property for transportation facilities.

24. Advice, counsel and assistance regarding both federal and state legislative and executive branch governmental issues which may impact SFRTA, including but not limited to the drafting or interpretation of legislative bills to be considered by the Florida Legislature or U.S. Congress and their possible impact on the authority.

25. Advice regarding the drafting or amending the SFRTA By-laws and Policies.

26. Advice relating to Railway Labor Act, labor protection, union agreements and other such matters.

4.3 OTHER LEGAL SERVICES

A) Nothing herein shall preclude SFRTA from retaining other outside counsel to perform any legal service as may be determined to be necessary from time to time by the General Counsel including, but not limited to:

1. Any of the legal services described in Section 4.2

2. Transactional matters relating to the drafting, interpretation and enforcement of certain complex contracts.

3. Litigation.

4. Matters involving a conflict of interest for Outside Counsel. In the event that SFRTA is required to obtain the legal services of another attorney due to a conflict of interest (whether legal or business) for Outside Counsel on a matter in which Outside Counsel is performing Work for SFRTA, Outside Counsel may be required by SFRTA to compensate it for the costs of obtaining those separate legal services in an amount negotiated with Outside Counsel.

B) Outside Counsel may, upon the recommendation of SFRTA's Board and/or General Counsel, be used to perform certain specialized outside counsel services that are not within the scope of the general legal services agreement. Such services shall be performed based on the hourly fee schedule in Exhibit D to this Agreement.

EXHIBIT D

HOURLY RATES

Shutts & Bowen	**Yr 1 (2011)**	**Yr 2 (2012)**	**Yr3 (2013)**	**Yr 4 (2014)**	**Yr 5 (2015)**
All Attorneys	225	250	250	250	250
All Paralegals	110	110	110	110	110

EXHIBIT 2

AGREEMENT NO. 11-016

BETWEEN

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

AND

AKERMAN SENTERFITT. P.A.

FOR

OUTSIDE COUNSEL SERVICES

This Agreement (the "Agreement"), by and between the **SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY**, a body politic and corporate and an agency of the state of Florida created pursuant to Chapter 343, Florida Statutes (hereinafter referred to as "**SFRTA**" or the "**Authority**"),

and

AKERMAN SENTERFITT. P.A., a Florida Professional Association, authorized to and doing business in the State of Florida, hereinafter referred to as "**Outside Counsel**".

WITNESSETH:

WHEREAS, SFRTA wishes to retain Outside Counsel to provide the Services (as defined herein); and

WHEREAS, Outside Counsel wishes to perform the Services (as defined herein) for SFRTA;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein and other valuable consideration, receipt of which is hereby acknowledged, the parties mutually undertake, promise and agree for themselves, their successors and assigns as follows:

1. **RECITALS.** The Recitals to this Agreement are true and correct and incorporated herein.

2. **DEFINITIONS.** For the purposes of this Agreement and the other Contract Documents, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

   a. **Board**. The governing body of the SFRTA, created pursuant to Chapter 343, Florida Statutes, as amended.
   b. **Contract.** Same as Agreement.
   c. **Contract Administrator**. The General Counsel or appointed designee. In the administration of this Agreement, all parties may rely upon the instructions or determinations made by the Contract Administrator.
   d. **Contract Documents**. The Agreement (which may also be referred to as the "Contract"), all attached Exhibits to this Agreement and the proposal submitted by Outside Counsel in response to SFRTA's Request for Proposal for General Counsel Legal Services (RFP NO. 09-008), as applicable, which proposal is incorporated herein by reference.
   e. **Contractor**. Same as Outside Counsel
   f. **Effective Date**. The date on which the last party executes the Agreement.
   g. **General Counsel.** SFRTA General Counsel or appointed designee.
   h. **Matter.** A legal issue, or related legal issues, as determined by General Counsel.
   i. **Outside Counsel**. Akerman Senterfitt. P.A.
   j. **Outside Counsel Representative**. Neisen Kasdin, Esq.
   k. **Project, Services or Work**. Same as the Scope of Services (Exhibit C)
   l. **Project Manager**. Same as Contract Administrator.
   m. **Work Order**. Written authorization from the General Counsel regarding a specific Matter or general services to be performed under the Agreement.

3. **TERMS AND CONDITIONS.**

Outside Counsel agrees to comply with all of the General Terms and Conditions (Exhibit A) and the Special Terms and Conditions (Exhibit B). In the event Outside Counsel

becomes aware of a conflict between any terms and conditions of the Agreement, Outside Counsel shall immediately notify General Counsel who shall then determine which provision of the Agreement shall control.

4. COMPENSATION

SFRTA agrees to pay Outside Counsel compensation at the hourly rates provided for attorneys and paralegals in Exhibit D, for the Services.

5. NOTICE.

Any notice, request, demand, instruction, or other communications to be given to the parties hereunder shall be in writing and shall be deemed to be delivered upon the earlier to occur of (i) actual receipt if delivered by hand or by commercial courier to the address indicated or if faxed with confirmation of receipt, or (ii) the first attempted delivery by registered or certified United States Parcel Service mail, Federal Express or other overnight carrier, return receipt requested, postage prepaid, addressed as follows:

If to OUTSIDE COUNSEL:

AKERMAN SENTERFITT. P.A.
One Southwest Third Avenue
Miami, Florida 33131
Attn: Neisen Kasdin, Esq.

If to SFRTA:

South Florida Regional Transportation Authority (SFRTA)
800 N.W. 33rd Street
Pompano Beach, FL 33064
Attn: Teresa J. Moore, General Counsel

6. MISCELLANEOUS.

a. **Headings.** Section headings are for convenience of reference only and shall in no way effect the interpretation of this Agreement or other Contract Documents.

b. **Full Execution.** This Agreement shall be deemed fully executed and binding upon each party when both parties hereto have executed this Agreement as set

forth below and are in possession of the original, a photocopy or faxed copy of the fully executed Agreement.

c. **Third Parties.** Unless expressly stated herein to the contrary nothing in the Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of the Agreement on any person other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any persons any right of subrogation or action over or against any party to this Agreement.

d. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy or facsimile copy of this Agreement and any signatory hereon shall be considered for all purposes as an original.

e. **Sovereign Immunity.** Nothing herein shall be construed as a waiver of SFRTA's sovereign immunity or a waiver by SFRTA of the benefits of Section 768.28, Florida Statutes, or any similar provision of law.

f. **Expenditures by SFRTA.** SFRTA, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. SFRTA shall require a statement from the SFRTA director of finance that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be

executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years.

g. **Exhibits.** All exhibits to this Agreement are attached hereto and incorporated herein.

h. **Purchase Orders.** Purchase orders shall be issued under the Agreement for each Matter for the purpose of paying invoices. Terms and conditions of the Agreement shall supersede any general terms and conditions associated with SFRTA's Purchase Orders.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective date under each signature: **AKERMAN SENTERFITT. P.A.,** signing by and through its _____, duly authorized to execute same and **SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY**, signing by and through its Chair, authorized to execute same the ____ day of _____, 2011.

ATTEST:

_____
Joseph Giulietti, Exec. Director

(SFRTA SEAL)

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By_____
Bruno Barriero, Chair

_____ DAY OF _____, 2011

Approved as to form by:

_____
Teresa Moore, General Counsel

_____
Christopher Bross
Director, Procurement

ATTEST:

AKERMAN SENTERFITT. P.A.

_____
WITNESS

_____
Authorized Party

_____ DAY OF _____, 2011

(CORPORATE SEAL)

EXHIBIT A

GENERAL TERMS AND CONDITIONS ("GTC's")

EXHIBIT A
GENERAL TERMS AND CONDITIONS

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2.0 - GENERAL TERMS AND CONDITIONS

2.1 EXAMINATION OF DOCUMENTS

N/A

2.2 PROPOSAL COSTS

N/A

2.3 CONFLICT OF INTEREST

SFRTA shall not enter into a contract or arrangement in connection with the Project, with any officer, director or employee of SFRTA, or any business entity of which the SFRTA officer, director or employee or the SFRTA officer's, director's or employee's spouse or child is an officer, partner, director, or proprietor or in which such SFRTA officer, director or employee or the SFRTA officer's director's or employee's spouse or child, or any combination of them, has a material interest. Material interest means direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity.

SFRTA shall not enter into any contract or arrangement in connection with the Project, with any person or entity who was represented before SFRTA by any person who at any time during the immediately preceding two years was an officer, director or employee of SFRTA.

2.4 ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of any resultant Agreement, including any or all of its right, title or interest therein, or its power to execute such contract to any person, company or corporation without the prior written consent of SFRTA.

SFRTA may assign its rights and obligations under any resultant Agreement to any successor to the rights and functions of SFRTA or to any governmental agency to the extent required by applicable laws or governmental regulations all or part of the specified deliverable items as originally competed and evaluated to one or more third parties.

2.5 FAMILIARITY WITH LAWS

The Contractor is required to be familiar and shall comply with all Federal, State and local laws, ordinances, rules, and regulations ("Legal Requirements") that in any manner affect the Work. Ignorance on the part of the Contractor will in no way relieve the Contractor from responsibility for compliance with such Legal Requirements.

2.6 ADVERTISEMENTS

Contractor agrees not to use SFRTA's name as a part of any commercial advertising, without the prior express written consent of SFRTA.

2.7 PUBLIC RECORDS

SFRTA shall not be liable to a Contractor for disclosure of all or any portion of a submitted Proposal or the Contract Documents. The Contractor shall allow public access to all documents, papers, letters, or other material, subject to the applicable provisions of Chapter 119, Fla. Stat., and made or received by the Contractor in conjunction with the Agreement. Failure by the Contractor to grant such public access shall be grounds for immediate unilateral cancellation of the Agreement by SFRTA.

2.8 REQUIRED LICENSES

The Contractor and its employees shall be licensed to practice law pursuant to the Florida Bar's Rules of Professional Conduct and/or similar rules from a Bar association that is acceptable to SFRTA. All attorneys shall be in good standing with the applicable Bar under which they are licensed to practice law.

2.9 INSURANCE

The Contractor shall provide at its own cost all General Liability, Business Auto Liability, Professional Liability, Workers' Compensation and all other employee related insurance as may be required by law to SFRTA.

2.9.1 Self insurance shall not be acceptable for this Project.

2.9.2 The Contractor shall furnish certification of insurance to SFRTA within seven (7) business days of receipt of a fully executed Agreement. If the insurance certificate is received within the specified time frame but not in the manner prescribed, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) business days to submit a corrected certificate to SFRTA. If the Contractor fails to submit the required insurance certificate in the manner prescribed within fifteen (15) business days of receipt of a fully executed Agreement, the Contractor shall be in default, and the Agreement may be rescinded. Under such circumstances, the Contractor may be subject to SFRTA's debarment and suspension procedures, Section 30C-2.009 of the Procurement Code.

2.9.3 Such policy or policies shall be issued by a company or companies authorized to transact business in the State of Florida or an eligible surplus lines insurer in good standing with the Florida Insurance Commissioner's Office. Contractor shall specifically protect SFRTA by naming SFRTA as an additional insured under the Insurance Policy(ies) hereinafter described, except Workers' Compensation Insurance and

Professional Liability Insurance. All policies must be endorsed to provide SFRTA with thirty (30) days, notice of cancellation, non-renewal and/or restriction.

2.9.4 Workers' Compensation Insurance is to apply to all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include Employer's Liability with a limit of One Hundred Thousand Dollars ($100,000.00) per accident.

2.9.5 Comprehensive General Liability Insurance with minimum limits of One Million Dollars ($1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

2.9.5.1 Premises and/or Operations;

2.9.5.2 Independent Contractors;

2.9.5.3 Products and/or Completed Operations.

2.9.6 Business Automobile Liability Insurance with minimum limits of Three Hundred Thousand Dollars ($300,000.00) per occurrence combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

2.9.6.1 Owned Vehicles;

2.9.6.2 Hired and Non-Owned Vehicles;

2.9.6.3 Employees' non-ownership; and,

2.9.6.4 Personal Injury, Property Damage, Uninsured Motorist, Collision, and Comprehensive Coverages.

2.9.7 Malpractice Insurance. The Contractor shall maintain during the life of the Agreement standard professional liability insurance with the minimal amount of coverage of One Million Dollars ($1,000,000.00) per occurrence.

2.9.8 Renewal of Insurance. Contractor shall be responsible for assuring that the insurance certificate required in conjunction with this section remains in force for the duration of the contractual period. If the insurance certificate is scheduled to expire during this period, Contractor shall be responsible for submitting a new or renewed insurance certificate to SFRTA at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificate is not replaced with a new or

renewed certificate which covers the contractual period, SFRTA may suspend this Agreement until such time as the new or renewed certificate is received by SFRTA.

2.9.9 Minimum Coverage. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Contractor of liability in excess of such coverage, nor shall it preclude SFRTA from taking such other actions as is available to it under any other provisions of this Agreement or otherwise in law or equity.

2.10 INDEMNIFICATION

The Contractor shall be required to indemnify and hold harmless, SFRTA and all of SFRTA's officers, agents, and employees from any claim, loss, damage, cost, charge, judgment or expense, the extent arising out of any negligence, recklessness, or intentionally wrongful conduct by the Contractor, its agents, employees, subconsultants or subcontractors during the performance of the Contract, whether direct or indirect, and whether to any person or property to which SFRTA or said parties may be subject.

The Contractor's obligation to indemnify SFRTA shall be activated by SFRTA's notice of claim for indemnification to the Contractor. The Contractor's inability to evaluate liability or its evaluation of liability shall not excuse the Contractor's duty to indemnify within seven (7) days after such notice by SFRTA is given by registered mail. Only an adjudication or judgment after the highest appeal is exhausted specifically finding SFRTA solely negligent shall excuse performance of this provision by the Contractor. The Contractor shall pay all costs and fees related to this obligation and its enforcement by SFRTA. SFRTA's failure to notify the Contractor of a claim shall not release the Contractor of the above duty to indemnify.

It is specifically agreed between the parties executing the Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third-party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

The Contractor guarantees the payment of all just claims for materials, supplies, tools or labor and other just claims against it or any subcontractor or subconsultant, in connection with the Contract.

The parties hereby agree and acknowledge that one hundred dollars ($100.00) of the first payment to the Contractor for performance of this Agreement is the specific consideration from SFRTA to the Contractor for the Contractor's indemnity agreement.

2.11 WAIVER OF SUBROGATION

Contractor shall require all policies of insurance that are in any way related to the Work and that are secured and maintained by Contractor and all Subcontractors to include clauses providing that each underwriter shall waive all of its rights of recovery, under subrogation or otherwise, against SFRTA, Contractor, separate Contractors, and Subcontractors.

Contractor waives all rights of recovery against SFRTA, separate Contractors, and all Subcontractors which Contractor may have or acquire because of deductible clauses in or inadequacy of limits of any policies of insurance that are in any way related to the Work and that are secured and maintained by Contractor.

Contractor shall require all Subcontractors to waive their rights of recovery (as aforesaid waiver by Contractor) against SFRTA, Contractor, separate Contractors, and other Subcontractors (including Subcontractors of separate Contractors).

2.12 TERMINATION FOR DEFAULT

The Contractor shall be considered in material default of the Contract and such default shall be considered cause for SFRTA to terminate the Contract, in whole or in part, as further set forth in this Article, if the Contractor: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by SFRTA; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work contrary to the requirements of the Contract; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; or (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) materially breaches any other provision of the Contract Documents.

If SFRTA determines that the Contractor is in default under this Contract, SFRTA shall notify the Contractor in writing of the Contractor's default(s). If SFRTA determines that the Contractor has not remedied and cured the default(s) within seven (7) calendar days following receipt by the Contractor of said written notice, then SFRTA, at its option, without releasing or waiving its rights and remedies against the Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate the Contractor's right to proceed under the Contract, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of the Contractor, take assignments of any of the Contractor's subcontracts and purchase orders that SFRTA may designate, and complete all or any portion of the Contractor's Work by whatever means, method or agency which SFRTA, in its sole discretion, may choose. In the event of termination, Contractor shall cooperate with SFRTA in the retrieval of all information and documentation to be taken into SFRTA's possession within seven (7) calendar days from notice of termination.

If SFRTA deems any of the foregoing remedies necessary, the Contractor agrees that it shall not be entitled to receive any further payments hereunder until after the Work is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including attorneys' fees) or damages incurred by SFRTA incident to such completion, shall be deducted from the unpaid balance of the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, the Contractor agrees to pay promptly to SFRTA on demand

the full amount of such excess, including costs of collection, attorney's fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by SFRTA to complete the Work, the Contractor shall be entitled to such unpaid excess portion. Any amounts to be paid to SFRTA by the Contractor pursuant to this Paragraph, the obligation for payment shall survive termination of the Contract.

The liability of the Contractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by SFRTA in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefore or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder.

If, after notice of termination of the Contractor's notice to proceed pursuant to this Article, it is determined for any reason that the Contractor was not in default, or that its default was excusable, or that SFRTA is not entitled to the remedies against the Contractor provided herein, then such termination shall be deemed a termination for SFRTA's convenience and the Contractor's remedies against SFRTA shall be the same as and limited to those afforded the Contractor under Paragraph below.

2.13 TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION

Either party shall have the right to terminate this Contract, in whole or in part, without cause upon thirty (30) calendar days written notice to other party. In the event of termination for convenience by SFRTA, the Contractor's recovery against SFRTA shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but the Contractor shall not be entitled to any other or further recovery against SFRTA, including, but not limited to, damages or any anticipated profit on portions of the Work not performed. In the event of termination, Contractor shall cooperate with SFRTA in the retrieval of all information and documentation to be taken into SFRTA's possession within thirty (30) calendar days from notice of termination. Nothing herein shall limit SFRTA's recovery against the Contractor in the event of termination for convenience by the Contractor.

SFRTA shall have the right to suspend all or any portions of the Work upon giving the Contractor two (2) calendar days prior written notice of such suspension. If all or any portion of the Work is so suspended, the Contractor's sole and exclusive remedy shall be to seek an extension to the Contract Time in accordance with the procedures set forth in the Contract Documents. In no event shall the Contractor be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds two hundred (200) calendar days, the Contractor shall have the right to terminate the Contract with respect to that portion of the Work which is subject to the ordered suspension.

2.14 PUBLIC ENTITY CRIMES

Pursuant to Section 287.133, Florida Statutes, a person or affiliate 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 firm, 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 Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being on the convicted vendor list.

2.15 UNCONTROLLABLE FORCES

Neither SFRTA nor the Contractor shall be considered to be in default of the Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under the Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing party shall within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

2.16 CLAIMS AND DISPUTES

A Claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between SFRTA and the Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim shall rest with the party making the Claim.

Initial notice of Claims by the Contractor shall be made in writing to the SFRTA Project Manager within forty-eight (48) hours after the first day of the event giving rise to such Claim, or else the Contractor shall be deemed to have waived the Claim. Written supporting data shall be submitted to the SFRTA Project Manager within fifteen (15) calendar days after the occurrence of the event unless SFRTA grants additional time in writing, or else the Contractor shall be deemed to have waived the Claim. All Claims shall be priced so as to compensate the Contractor

for its actual and direct labor, material and equipment costs and extended general conditions expenses, together with markup, as set forth in Paragraph above.

The Contractor shall proceed diligently with its performance as directed by SFRTA, regardless of any pending Claim, unless otherwise agreed to by SFRTA in writing. SFRTA shall continue to make payments in accordance with the Contract Documents during the pendency of any Claim.

Prior to the initiation of any action or proceeding permitted by this Contract to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power. Failing resolution, and prior to the commencement of depositions in any litigation between the parties with respect to the Contract, the parties shall attempt to resolve the dispute through mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may request a court of law to order mediation under Florida Statutes Section 44.102.

Any litigation between SFRTA and the Contractor, whether arising out of any Claim or arising out of the Contract or any breach thereof, shall be brought, maintained and pursued only in the appropriate State courts of the State of Florida; and SFRTA and the Contractor each hereby waive and renounce any and all rights and options which they, or either of them, have or might have to bring or maintain any such litigation or action in the Federal Court system of the United States or in any United States Federal District Court. Venue of any such litigation between the SFRTA and the Contractor shall lie and be only in the appropriate State courts of the State of Florida's Seventeenth Circuit in and for Broward County, Florida. SFRTA and the Contractor consent and submit to the jurisdiction of any such court and agree to accept service of process outside the State of Florida in any matter to be submitted to any such court pursuant hereto. By submittal of its Proposal and/or execution of this Agreement, the Proposer EXPRESSLY WAIVES ALL RIGHTS TO TRIAL BY JURY REGARDING ANY DISPUTE RELATING TO THE CONTRACT (AND THE CONTRACTOR'S WORK HEREUNDER) THAT RESULTS IN LITIGATION.

2.17 RIGHTS IN TECHNICAL DATA

All documents and materials prepared or developed by the Contractor and its subcontractors pursuant to this Agreement shall become the property of SFRTA without restriction or limitation on their use and shall be made available upon request to SFRTA at any time. Original copies of such shall be delivered to SFRTA upon completion of the services or termination of the services. The Contractor shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the written approval of SFRTA.

No material or technical data prepared by the Contractor under this Agreement is to be released by the Contractor to any other person or agency except as necessary for the performance of the services. All press releases or information to be published in print or electronic media, shall be distributed only after first being authorized by SFRTA.

SFRTA shall have the right to use, duplicate, modify or disclose the technical data and the information conveyed therein, in whole or in part, in any manner whatsoever, and to have or permit others to do so.

The Contractor shall agree to grant to SFRTA and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free license to publish, translate, reproduce, deliver, and use as they deem fit all technical data covered by copyright supplied for this Agreement. No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for SFRTA to use in the manner herein described.

The Contractor warrants that the processes, design, equipment, materials, or devices used in providing the services shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If a suit or proceeding based on a claimed infringement of a patent or copyright is brought against SFRTA the Contractor shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by SFRTA, and indemnify and hold harmless SFRTA, its subsidiaries, agents and employees from all liability, damages, costs, and expenses associated therewith, including, without limitation, defense costs and attorney fees.

2.18 CONTRACTOR PERSONNEL

SFRTA's selection of the Contractor for the performance of the Scope of Services is based in part upon a careful consideration of the qualifications and experience of Contractor's personnel, including subcontractors, who will participate in the Scope of Services. The names of these personnel and their areas of participation under this Agreement are set forth in the Contractor's submittal or shall be agreed upon between the parties.

The Contractor shall be responsible for the performance of all of the work and shall utilize the specialized expertise and experience of the personnel listed in the Contractor's submittal.

SFRTA shall have the right to demand the removal of any of the personnel listed in the Contractor's submittal for reasonable cause and by written notice.

The Contractor shall not replace any of the personnel listed in the Contractor's submittal without the prior written approval of SFRTA, which SFRTA agrees, will not be unduly withheld.

In the event the Contractor, through circumstances beyond its control, is unable to provide the services of the personnel listed in the Contractor's submittal or agreed upon between the parties, the Contractor shall be responsible for providing other personnel for the performance of the particular items of work involved, whose expertise and experience, in the opinion of SFRTA are equivalent to that which would have been provided by the originally listed person.

The Contractor shall be responsible for any additional costs caused by the substitution of personnel for those listed in the Contractor's submittal. In no event shall any substitution of personnel result in an increase in compensation to be paid by SFRTA.

2.19 SUCCESSORS AND ASSIGNS

Subject to other provisions hereof, Contract shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Contract.

2.20 GOVERNING LAW

The Contract shall be interpreted under and its performance governed by the laws of the State of Florida.

2.21 NO WAIVER

The failure of SFRTA to enforce at any time or for any period of time any one or more of the provisions of the Contract shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

2.22 JOINT PREPARATION

The preparation of this agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

2.23 SEVERABILITY

In the event any term or provision of this agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed or deleted as such authority determines, and the remainder of this agreement shall be construed to be in full force and effect.

2.24 ATTORNEY'S FEES

In the event it shall become necessary for either party to this agreement to institute legal proceedings against the other party for recovery of any amounts due and owing under this agreement, then in such event, it is expressly agreed that the prevailing party in any such action shall be entitled to recover from the non-prevailing party all costs, including reasonable attorneys' fees, of pre-suit collection attempts, suit, and post judgment or settlement collection including those incurred on appeal.

2.25 RELATIONSHIP OF THE PARTIES

Except as set forth herein, no party to this agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other party. The

Contractor is and shall be in the performance of all work, services, and activities under this agreement independent, and not an employee, agent, or servant of SFRTA. All persons engaged in any of the work or services performed pursuant to this agreement shall at all times and in all places be subject to the Contractor's sole discretion, supervision, and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respect the Contractor's relationship and the relationship of its employees to SFRTA shall be that as an independent and not as employees or agent.

2.26 CONTINGENT FEE

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the making of this agreement. For the breach or violation of this provision, SFRTA shall have the right to terminate the agreement without liability at its discretion, to deduct from the contract price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

2.27 TRUTH IN NEGOTIATING

Execution of this Agreement by the Contractor shall act as the execution of a truth in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which SFRTA determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this agreement.

2.28 CONFLICT OF PROVISIONS

Where there is a conflict between any provision set forth within this Agreement and a more stringent state or federal provision that is applicable to any services performed under this Agreement, the more stringent state or federal provision shall prevail.

2.29 MODIFICATION AND AMENDMENTS

This Agreement may not be changed, altered, or modified except by an instrument in writing signed by all parties against whom enforcement of such change would be sought.

2.30 [NOT USED]

2.31 OWNERSHIP OF DOCUMENTS

All tracings, plans, specifications, maps and/or reports prepared or obtained under the Contract Documents shall be considered works made for hire and shall become property of SFRTA

without restriction or limitation on their use, and shall be made available upon request to SFRTA at any time. The Contractor therefore agrees not to publish, copyright or patent any of the data furnished in compliance with the Agreement. SFRTA shall have the right to visit the offices of the Contractor for review of such data at any time. The Contractor shall not be liable for use by SFRTA of said tracings, plans, specifications, documents, studies, or other data for any purpose other than intended by the terms of the Contract Documents.

2.32 VARIANCES IN TERMS AND CONDITIONS

Where there appears to be variances or conflicts between the General Terms and Conditions, the Special Terms and Conditions, and the Scope of Services outlined in the Purchase Order, the governing order shall be as follows:

Scope of Services
Special Terms and Conditions
General Terms and Conditions

2.33 MISCELLANEOUS

All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

There are no understandings or agreements except as herein expressly stated.

Failure to capitalize any defined term in the Contract Documents shall not change the meaning of the defined term when used in the Contract Documents.

Use of the term "Agreement" or "Contract" in these General Terms and Conditions shall mean the Purchase Order and all exhibits, including the General Terms and Conditions.

Any reference to Contractor shall mean Shutts & Bowen LLP.

2.34 FEDERAL REQUIREMENTS

1. Federal Changes - The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (15) dated October, 2008) between SFRTA and FTA, as they may be amended or promulgated from time to time during the term of this agreement. Contractor's failure to so comply shall constitute a material breach of this agreement.

2. Drugfree Workplace - The Contractor shall comply with the terms of the State of Florida and the U.S. DOT regulations for Drugfree Workplace Requirements, 49 C.F.R. Part 29, Subpart F.

3. Debarment and Suspension - The Contractor shall comply with U.S. DOT regulations, "Government wide Debarment and Suspension" (Non-procurement). This requirement shall pass to any and all subcontractors engaged to perform services under the Agreement.

4. Program Fraud and False or Fraudulent Statements or Related Acts - The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

5. Lobbying - Pursuant to the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.], Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the SFRTA. This requirement shall pass through to any and all Subcontractors engaged to perform services under this Agreement.

6. Interest of Members of or Delegates to Congress - In accordance with 18 U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of the Agreement or to any benefit arising there from.

7. Organizational Conflict of Interest - Prior to entering into this Agreement, the Contractor is required to inform SFRTA of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the nature of the work to be performed under a contract may, without some restriction on future activities, results in an unfair competitive advantage to the Contractor, or may impact the Contractor's objectivity in performing the contract work.

8. Civil Rights - Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,"41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Age – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

9. Clean Air - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report each violation to SFRTA and understands and agrees that SFRTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

10. Clean Water - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to SFRTA and understands and agrees that SFRTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

11. Access to Records and Reports - The Contractor agrees to provide SFRTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this agreement for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until SFRTA, the FTA Administrator, the Comptroller General, or any of

their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

12. Energy Conservation - The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

13. Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SFRTA requests, which would cause SFRTA to be in violation of the FTA terms and conditions.

14. Disadvantaged Business Enterprise – The Contractor, sub recipient or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as SFRTA deems appropriate.

15. Environmental Protection - The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq*. consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

16. Fly America Requirements – The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their Contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of

compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

17. No Government Obligation to Third Parties - SFRTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to SFRTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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EXHIBIT B

SPECIAL TERMS AND CONDITIONS ("STC's")

EXHIBIT B
SPECIAL TERMS AND CONDITIONS

3.1 TERM

The term of this Project shall commence starting upon SFRTA's issuance of a Notice to Proceed (which for the purposes herein shall be the execution of the Agreement by SFRTA) and shall be for a period determined by General Counsel.

3.2 COMPENSATION

3.2.1 SFRTA agrees to pay Outside Counsel compensation for its services pursuant to the terms and conditions of the Agreement and associated exhibits.

3.2.2 Outside Counsel shall bill SFRTA monthly for the Services outlined in the Agreement and the monthly invoice shall include an itemized listing of services rendered by Outside Counsel for the Matter that is the subject of the representation in a form satisfactory to General Counsel. The sums paid pursuant to this paragraph are inclusive of all employee benefits, excise and payroll taxes, social security, unemployment compensation insurance, retirement benefits, legal research, and direct and indirect overhead of Outside Counsel.

3.2.3 SFRTA will pay Outside Counsel, at direct cost without markup, reasonable and appropriate reimbursable expenses for travel pre-approved in writing by General Counsel. SFRTA shall not pay Outside Counsel any expenses for travel or meals in Miami-Dade, Broward or Palm Beach counties. Reimbursable expenses shall not be paid without the prior express written approval of the expenses by SFRTA. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Agreement shall be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes. Approved travel shall be itemized and invoiced separately.

3.2.4 The Agreement shall not exceed $50,000 for any one Work Order. Any work performed which exceeds $50,000 without prior approval from the SFRTA Governing Board, shall be considered work performed at Outside Counsel's risk and SFRTA does not guarantee that Outside Counsel shall be compensated for any such work not previously authorized. At such time as the Outside Counsel reasonably believes that work being performed under a Work Order shall exceed $50,000, Outside Counsel shall immediately inform the General Counsel. If General Counsel determines that additional Outside Counsel work is necessary in excess of the $50,000 threshold for the Work Order, General Counsel shall prepare an agenda item for the next available regular Board meeting, including Outside Counsel's best estimate of the cost of such additional services, seeking Board authorization to perform such additional legal services. Board approval shall be required for all Work Orders if the cumulative amount of any Work Orders in any one fiscal year exceeds the annual budgeted amount for legal services.

3.2.5 Payments shall be made upon proper submittal of an invoice for performance of the work which each payment represents. Outside Counsel shall make Application for Payment

for work completed at intervals of not more than once a month, unless more frequent invoices are requested by General Counsel. The Outside Counsel's invoice shall show a complete breakdown of the work components, and Contract and Work Order Numbers. In addition, the invoice must contain the level of detail as required by the General Counsel. All invoices must meet or exceed generally accepted accounting standards, and must be in a format suitable for SFRTA's audit requirements. SFRTA shall pay Outside Counsel invoices or items set forth in such invoices which are not in dispute within forty-five (45) days after receipt of the invoices. Invoices are to be sent to the Attention of General Counsel and not to any other individual or department.

3.2.6 Outside Counsel represents that it has, or will secure at its own expense, all necessary personnel, with the exception of secretarial and administrative personnel located at SFRTA's administrative offices, required to perform the legal services. Such personnel shall not be the employee of or have any contractual relationship with SFRTA. Outside Counsel shall be considered an independent contractor of SFRTA. The legal services shall be performed by Outside Counsel or under its supervision and all personnel engaged in performing the legal services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. Outside Counsel warrants that the legal services shall be performed by skilled and competent personnel and will meet the appropriate professional standards.

3.2.7 Outside Counsel's books and records shall be available at all reasonable times for examination and audit by SFRTA, state and federal auditors during the term of this Agreement and for a period of three (3) years thereafter. Incomplete or incorrect entries in such books and records will be grounds for disallowance by SFRTA of any fees or expenses based upon such entries.

3.2.8 SFRTA, during any fiscal year, shall not expend money, incur any liability or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void and no money may be paid on such contract.

3.3 FORMAT OF INVOICES

3.3.1 Within thirty (30) days of services rendered, each statement for fees and costs shall be submitted (two copies) in a format that includes, at a minimum, the following information:

A.) Case name and number, if applicable, or other legal Matter reference.

B.) Contract and Work Order numbers, and invoice number for the particular bill.

C) Outside Counsel taxpayer identification number.

D) Outside Counsel and General Counsel's name.

E) Inclusive dates of the month covered by the invoice.

F) Itemization of the date; hours or portions of hours billed; a concise meaningful description of the services rendered, with sufficient detail to enable SFRTA to evaluate the services rendered and costs; the person(s) who performed the services for each day during which the Outside Counsel and its Paralegals performed work; and their hourly rate as specified in the Agreement.

G) The total of only the current bill. Prior balances or payment histories should be shown separately, if at all.

H) A certification statement, signed by the Outside Counsel's contract administrator, that reads, "I certify that all costs and fees claimed for payment are accurate and were performed in furtherance of the AGREEMENT between Outside Counsel and South Florida Regional Transportation Authority."

I) Any other information as may be requested by General Counsel.

3.4 ADMINISTRATION OF AGREEMENT

3.4.1 Contract Administrator/Project Manager shall be General Counsel. In the administration of this Agreement, all parties may rely upon the instructions or determinations made by General Counsel. Any legal opinions, decisions and interpretations provided to SFRTA on any Matter shall be solely the responsibility of Outside Counsel.

3.4.2 The Outside Counsel's Representative shall be designated in the Agreement.

3.4.3 All approvals must be obtained from, and all notices provided to, Outside Counsel's Representative and General Counsel.

3.4.4 This Agreement shall be governed by and construed under the laws of Florida.

3.5 MISCELLANEOUS CONDITIONS

3.5.1 The Outside Counsel will make affirmative efforts to achieve cost effectiveness by consolidating court hearings, limiting travel, streamlining case processing, using printed forms, using the appropriate level of attorney or staff experience required by task, and taking other actions to improve efficiency.

3.5.2 Multiple staffing of Outside Counsel attorneys at meetings, hearings, depositions, trials, etc., by Outside Counsel will not be compensated without prior written approval from the General Counsel.

3.5.3 Outside Counsel agrees that all documents shall be promptly returned at the termination of the Outside Counsel's involvement in the case or Matter.

3.5.4 Outside Counsel shall, as it becomes aware, provide immediate notice by e-mail, facsimile transmission or telephone regarding significant legal developments, especially those that will likely result in media inquiries and Outside Counsel shall not make any statements (whether written or oral) to the media without first having obtained General Counsel's prior authorization.

3.5.5 Outside Counsel shall provide General Counsel with immediate notice of any representation undertaken by Outside Counsel in Matters where another client of Outside Counsel is suing or being sued by the State of Florida, state entities or Miami-Dade, Broward or Palm Beach counties in any civil or adversarial administrative action.

3.6 CONFLICT OF INTEREST

Outside Counsel shall promptly notify General Counsel in writing of any and all existing, apparent or potential conflicts of interest (whether legal or business) for any and all existing or prospective representations, interests or other circumstances which will be directly adverse to the SFRTA or when there is a substantial risk that the representation will materially limit the Outside Counsel responsibilities to SFRTA. This notification shall be provided to General Counsel no later than two (2) business days following Outside Counsel learning of such existing, apparent or potential conflicts of interest. **REPORTABLE CONFLICTS INCLUDE, BUT ARE NOT LIMITED TO, ANY BUSINESS OR LOBBYING ACTIVITIES THAT CONFLICT WITH THE INTERESTS OF SFRTA, AS WELL AS LEGAL CONFLICTS.** The notice shall identify the existing or prospective representation, interest or circumstance and the nature of the work that the Outside Counsel is already undertaking or wishes to undertake and requests General Counsel's opinion as to whether the representation, interest or circumstance would, in the opinion of General Counsel, constitute a conflict of interest under this Agreement(the "Notice"). General Counsel agrees to notify Outside Counsel of his/her opinion within three (3) business days of receipt of the Notice. If, in the opinion of General Counsel, the existing or prospective representation, interest or circumstance would not constitute a conflict of interest by the Outside Counsel, then General Counsel shall so state in his/her opinion, and the representation, interest or circumstance shall not be deemed a conflict of interest with respect to the legal services provided under this Agreement. If General Counsel concludes a conflict of interest exists that is not waivable pursuant to the Florida Bar's Rules of Professional Conduct, Outside Counsel shall cease any existing third-party representation or not accept the potential representation. Outside Counsel may appeal the General Counsel's determination to the SFRTA Board at its next regularly scheduled meeting, but shall not undertake the representation, or continue with an existing third-party representation, pending the Board's decision. In the event General Counsel determines that the conflict of interest is waivable or Outside Counsel is appealing General Counsel's determination as provided above, Outside Counsel may seek consent from the Board to undertake or continue the third-party representation.

Regarding an item which requires resolution prior to the next regularly-scheduled SFRTA Board meeting, the SFRTA Chair (or Vice-Chair if the Chair is unavailable) may, at his or her sole discretion, act on behalf of the SFRTA Board to address a conflict of interest waiver request

from General Counsel. Any such conflict waiver decisions shall be reported to the SFRTA Board at its next regularly scheduled meeting.

Outside Counsel shall not represent any other party before the State Legislature or any committee thereof, the office of the Governor or any member of the cabinet or any state agency, on any matter where such party's interest may be adverse to SFRTA without the prior permission of the SFRTA Board. In the event Outside Counsel desires to represent another party before any of the aforementioned public officials, bodies or agencies on any matter where such party's interest may be adverse to SFRTA, it shall follow the procedure described above. However, the conflict waiver delegation to the SFRTA Chair, as described herein, shall not apply to this situation.

The SFRTA Board (or as delegated herein), in its sole and absolute discretion, may preclude Outside Counsel from simultaneously representing SFRTA and another party when SFRTA determines that representation of such other party may be adverse to SFRTA's interests. In making such determination, SFRTA Board (or as delegated herein) shall have sole and absolute discretion to determine the role of Outside Counsel and the nature of its representation of SFRTA. Should Outside Counsel fail, after five (5) days' notice, to cure a conflict as determined by SFRTA, SFRTA shall have the right to terminate the Agreement, in whole or in part, with Outside Counsel.

3.7 GENERAL COUNSEL PROCEDURES

Outside Counsel agrees to comply with any General Counsel Procedures which may be promulgated and issued by General Counsel for Work performed under this Agreement.

EXHIBIT C

SCOPE OF SERVICES

EXHIBIT C
SCOPE OF SERVICES

4.1. INTRODUCTION

A) Outside Counsel shall provide legal services for the South Florida Regional Transportation Authority (SFRTA). The Agreement between SFRTA and Outside Counsel shall be considered a personal service contract and the Outside Counsel services shall be performed, managed and supervised by a designated Outside Counsel Representative and such partners, associates and employees of Outside Counsel assigned by the designated Outside Counsel's Representative to SFRTA Matters. Outside Counsel may also retain experts, consultants, etc. as needed to provide the services to SFRTA, subject to prior approval by General Counsel.

B) The designated Outside Counsel's Representative shall attend meetings as required by General Counsel. Outside Counsel shall send a replacement when Outside Counsel Representative is out on vacation or ill. General Counsel shall first approve all attorneys assigned to SFRTA Matters.

C) The specialties and resources of Outside Counsel's entire firm shall be made available to SFRTA through Outside Counsel's Representative.

D) Outside Counsel's Representative shall be available to provide legal services for emergency situations seven days a week, 24 hours a day, pursuant to arrangements acceptable to SFRTA and Outside Counsel.

E) Outside Counsel's Representative shall work with and report to the General Counsel.

F) Legal support services shall also be provided at Outside Counsel's offices. All direct and indirect expenses, including, but not limited to, copying, faxing, scanning, postage, etc. but not including any filing fees or any actual travel-related costs incurred by Outside Counsel (outside of the tri-county area) shall be incurred by Outside Counsel.

G) Outside Counsel shall at all times comply with the Florida Bar's Rules of Professional Conduct, including, but not limited to, provisions relating to conflicts of interest. Outside Counsel shall have a continuing obligation to report any existing, apparent or potential conflicts to SFRTA as required by Section 3.6 of the Agreement. Failure to comply with this provision may result in termination of the Contract.

I) Outside Counsel's Representative shall provide periodic status reports, either oral or in writing, as requested by the General Counsel.

J) All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by SFRTA or at its expense shall be kept confidential by Outside Counsel and shall not be disclosed to any other

party, directly or indirectly, without SFRTA's prior written consent, unless required by Florida Statutes Chapter 119 or an order issued by a court or like authority of lawful jurisdiction. All drawings, maps and sketches, and other data developed or purchased under this Agreement, or at SFRTA's expense, shall be and remain the property of SFRTA and shall be reproduced and used solely at the discretion of SFRTA. Outside Counsel shall at all times comply with the provisions of Chapter 119, Florida Statutes (Public Records Law). Should Outside Counsel receive any public records requests, Outside Counsel shall immediately inform the General Counsel of the nature of the request.

4.2 OUTSIDE COUNSEL LEGAL SERVICES; GENERAL REQUIREMENTS

A) It is the intent of this specification to describe the essential duties and responsibilities of Outside Counsel. All items or features not specifically mentioned which are necessary or which are normally furnished in order to provide such services shall be furnished by Outside Counsel. In providing legal services, Outside Counsel shall exercise the degree of reasonable knowledge and skill that lawyers of ordinary ability and skill possess and exercise.

B) Outside Counsel should possess the necessary qualifications, knowledge, skills and abilities to provide SFRTA with the following legal services:

1. Advice regarding general matters, including review and assistance in drafting commodity, construction, consultant, personal services, and other public contracts as requested, as well as providing advice on the federal requirements (laws, regulations, circulars and guidance) relating to such contracts.

2. Advice regarding Chapter 53 of Title 49, of the U.S. Code, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), as well as other federal legislation and programs relating to public transit and commuter rail systems, including, but not limited to, disadvantaged business enterprise (DBE) programs of recipients of federal financial assistance governed by 49 CFR Part 26; and the Americans with Disabilities Act (ADA).

3. Support for SFRTA interaction with the state, counties, cities, metropolitan planning organizations, regional planning councils and the federal government, including the Federal Transit Administration (FTA), Federal Railroad Administration (FRA), and the United States Department of Transportation (USDOT).

4. Support for preparing easements and access agreements, and/or acquiring, purchasing, holding, leasing real estate owned by SFRTA, including addressing environmental issues related to such transactions.

5. Support to sell, convey, exchange, lease, or otherwise dispose of any real or personal property acquired by SFRTA or to enter into joint development agreements involving SFRTA property, including addressing environmental issues related to such transactions.

6. In-service training programs for SFRTA managers and supervisors regarding topics as requested by SFRTA.

7. Research and informal oral and formal written opinions regarding any subject requested by SFRTA.

8. Research and preparation of written briefs and oral argument in all cases where so required before administrative agencies or courts of law.

9. Advice regarding all employment practices, including hiring and termination, employment applications, employee handbook, and policy and procedure manuals.

10. Advice and representation regarding all labor relations matters, including but not limited to recognition petitions, collective bargaining, grievances, and arbitration cases.

11. Advice regarding the Federal Fair Labor Standards Act (FLSA) and Florida Wage-Hour Laws.

12. Advice and representation regarding Federal Equal Employment Opportunity Commission (EEOC) and Florida Commission of Human Relations (FCHR), discrimination cases, including but not limited to administrative agency investigations and hearings.

13. Advice regarding Occupational Safety and Health Administration (OSHA) matters, including representation before administrative agencies, and review and assistance in drafting safety procedures, plans, etc.

14. Advice to SFRTA management on all types of employee, labor relations, human resource and other personnel issues.

15. Advice and representation regarding claims of wrongful discharge, breach of employment contract, etc.

16. Advice and representation regarding unemployment compensation matters, including administrative hearings.

17. Advice regarding Florida's Retirement Program and any other SFRTA employee benefit matters.

18. Advice regarding the Federal and Florida Family and Medical Leave Acts (FMLA), and review and assistance in drafting FMLA compliance plans, procedures, forms, policies, etc.

19. Advice regarding the FTA matters, including but not limited to required drug and alcohol testing, and review and assistance in drafting substance abuse policies and procedures.

20. Advice regarding standard terms and conditions governing the administration of federal and state assistance awarded by the USDOT or FDOT through a Grant Agreement, Cooperative Agreement, Joint Participation Agreement or other agreement.

21. Advice regarding legal issues related to the operations and management of a public regional transportation authority, including but not limited to compliance with Florida's Public Meetings Law (Chapter 286, F.S.), Public Records Law (Chapter 119, F.S.,) and Public Ethics Laws (Section 112.311, et seq., F.S.).

22. Advice regarding the design, construction and maintenance of transportation facilities, including, but not limited to, vertical construction, railroad tracks, roads and bridges, etc., including but not limited to state and federal laws and standards and practices.

23. Advice and representation regarding right-of-way acquisition, relocation assistance, and condemnation of real property for transportation facilities.

24. Advice, counsel and assistance regarding both federal and state legislative and executive branch governmental issues which may impact SFRTA, including but not limited to the drafting or interpretation of legislative bills to be considered by the Florida Legislature or U.S. Congress and their possible impact on the authority.

25. Advice regarding the drafting or amending the SFRTA By-laws and Policies.

26. Advice relating to Railway Labor Act, labor protection, union agreements and other such matters.

4.3 OTHER LEGAL SERVICES

A) Nothing herein shall preclude SFRTA from retaining other outside counsel to perform any legal service as may be determined to be necessary from time to time by the General Counsel including, but not limited to:

1. Any of the legal services described in Section 4.2

2. Transactional matters relating to the drafting, interpretation and enforcement of certain complex contracts.

3. Litigation.

4. Matters involving a conflict of interest for Outside Counsel. In the event that SFRTA is required to obtain the legal services of another attorney due to a conflict of interest (whether legal or business) for Outside Counsel on a matter in which Outside Counsel is performing Work for SFRTA, Outside Counsel may be required by SFRTA to compensate it for the costs of obtaining those separate legal services in an amount negotiated with Outside Counsel.

B) Outside Counsel may, upon the recommendation of SFRTA's Board and/or General Counsel, be used to perform certain specialized outside counsel services that are not within the scope of the general legal services agreement. Such services shall be performed based on the hourly fee schedule in Exhibit D to this Agreement.

EXHIBIT D

HOURLY RATES

Akerman Senterfitt	**Yr 1 (2011)**	**Yr 2 (2012)**	**Yr3 (2013)**	**Yr 4 (2014)**	**Yr 5 (2015)**
All Attorneys	225	250	250	250	250
All Paralegals	110	110	110	110	11

EXHIBIT 3

AGREEMENT NO. 11-015

BETWEEN

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

AND

KAPLAN, KIRSCH & ROCKWELL, P.A.

FOR

OUTSIDE COUNSEL SERVICES

This Agreement (the "Agreement"), by and between the **SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY**, a body politic and corporate and an agency of the state of Florida created pursuant to Chapter 343, Florida Statutes (hereinafter referred to as "**SFRTA**" or the "**Authority**"),

and

KAPLAN, KIRSCH & ROCKWELL, P.A., a _____ professional association, hereinafter referred to as "**Outside Counsel**".

WITNESSETH:

WHEREAS, SFRTA wishes to retain Outside Counsel to provide the Services (as defined herein); and

WHEREAS, Outside Counsel wishes to perform the Services (as defined herein) for SFRTA;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein and other valuable consideration, receipt of which is hereby acknowledged, the parties mutually undertake, promise and agree for themselves, their successors and assigns as follows:

1. **RECITALS.** The Recitals to this Agreement are true and correct and incorporated herein.

2. **DEFINITIONS.** For the purposes of this Agreement and the other Contract Documents, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

    a. **Board.** The governing body of the SFRTA, created pursuant to Chapter 343, Florida Statutes, as amended.
    b. **Contract.** Same as Agreement.
    c. **Contract Administrator.** The General Counsel or appointed designee. In the administration of this Agreement, all parties may rely upon the instructions or determinations made by the Contract Administrator.
    d. **Contract Documents.** The Agreement (which may also be referred to as the "Contract"), all attached Exhibits to this Agreement.
    e. **Contractor.** Same as Outside Counsel
    f. **Effective Date.** The date on which the last party executes the Agreement.
    g. **General Counsel.** SFRTA General Counsel or appointed designee.
    h. **Matter.** A legal issue, or related legal issues, as determined by General Counsel.
    i. **Outside Counsel.** Kaplan, Kirsch & Rockwell, P.A.
    j. **Outside Counsel Representative.** Charles (Chuck) Spitulnik, Esq.
    k. **Project, Services or Work.** Same as the Scope of Services (Exhibit C)
    l. **Project Manager.** Same as Contract Administrator.
    m. **Work Order.** Written authorization from the General Counsel regarding a specific Matter or general services to be performed under the Agreement.

3. **TERMS AND CONDITIONS.**

    Outside Counsel agrees to comply with all of the General Terms and Conditions (Exhibit A) and the Special Terms and Conditions (Exhibit B). In the event Outside Counsel becomes aware of a conflict between any terms and conditions of the Agreement, Outside Counsel shall immediately notify General Counsel who shall then determine which provision of the Agreement shall control.

4. COMPENSATION

SFRTA agrees to pay Outside Counsel compensation at the hourly rates provided for attorneys and paralegals in Exhibit D, for the Services.

5. NOTICE.

Any notice, request, demand, instruction, or other communications to be given to the parties hereunder shall be in writing and shall be deemed to be delivered upon the earlier to occur of (i) actual receipt if delivered by hand or by commercial courier to the address indicated or if faxed with confirmation of receipt, or (ii) the first attempted delivery by registered or certified United States Parcel Service mail, Federal Express or other overnight carrier, return receipt requested, postage prepaid, addressed as follows:

If to OUTSIDE COUNSEL:

Kaplan, Kirsch & Rockwell, P.A.
1001 Connecticut Ave., N.W., Suite 800
Washington, DC 20036
Attn: Chuck Spitulnik, Esq.

If to SFRTA:

South Florida Regional Transportation Authority (SFRTA)
800 N.W. 33rd Street
Pompano Beach, FL 33064
Attn: Teresa J. Moore, General Counsel

6. MISCELLANEOUS.

a. **Headings.** Section headings are for convenience of reference only and shall in no way effect the interpretation of this Agreement or other Contract Documents.

b. **Full Execution.** This Agreement shall be deemed fully executed and binding upon each party when both parties hereto have executed this Agreement as set forth below and are in possession of the original, a photocopy or faxed copy of the fully executed Agreement.

c. **Third Parties.** Unless expressly stated herein to the contrary nothing in the Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of the Agreement on any person other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any persons any right of subrogation or action over or against any party to this Agreement.

d. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy or facsimile copy of this Agreement and any signatory hereon shall be considered for all purposes as an original.

e. **Sovereign Immunity.** Nothing herein shall be construed as a waiver of SFRTA's sovereign immunity or a waiver by SFRTA of the benefits of Section 768.28, Florida Statutes, or any similar provision of law.

f. **Expenditures by SFRTA.** SFRTA, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. SFRTA shall require a statement from the SFRTA director of finance that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years.

g. **Exhibits.** All exhibits to this Agreement are attached hereto and incorporated herein.

h. **Purchase Orders.** Purchase orders shall be issued under the Agreement for each Matter for the purpose of paying invoices. Terms and conditions of the Agreement shall supersede any general terms and conditions associated with SFRTA's Purchase Orders.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective date under each signature: **KAPLAN, KIRSCH & ROCKWELL, P.A.,** signing by and through its _____, duly authorized to execute same and **SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY**, signing by and through its Chair, authorized to execute same the ____ day of _____, 2011.

ATTEST:

_____
Joseph Giulietti, Exec. Director

(SFRTA SEAL)

_____
Christopher Bross
Director, Procurement

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By_____
Bruno Barriero, Chair

_____ DAY OF _____, 2011

Approved as to form by:

_____
Teresa Moore, General Counsel

ATTEST:

KAPLAN, KIRSCH & ROCKWELL, P.A.

_____
WITNESS

_____
Authorized Party

_____ DAY OF _____, 2011

(CORPORATE SEAL)

EXHIBIT A

GENERAL TERMS AND CONDITIONS ("GTC's")

EXHIBIT A
GENERAL TERMS AND CONDITIONS

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2.0 - GENERAL TERMS AND CONDITIONS

2.1 EXAMINATION OF DOCUMENTS

N/A

2.2 PROPOSAL COSTS

N/A

2.3 CONFLICT OF INTEREST

SFRTA shall not enter into a contract or arrangement in connection with the Project, with any officer, director or employee of SFRTA, or any business entity of which the SFRTA officer, director or employee or the SFRTA officer's, director's or employee's spouse or child is an officer, partner, director, or proprietor or in which such SFRTA officer, director or employee or the SFRTA officer's director's or employee's spouse or child, or any combination of them, has a material interest. Material interest means direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity.

SFRTA shall not enter into any contract or arrangement in connection with the Project, with any person or entity who was represented before SFRTA by any person who at any time during the immediately preceding two years was an officer, director or employee of SFRTA.

2.4 ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of any resultant Agreement, including any or all of its right, title or interest therein, or its power to execute such contract to any person, company or corporation without the prior written consent of SFRTA.

SFRTA may assign its rights and obligations under any resultant Agreement to any successor to the rights and functions of SFRTA or to any governmental agency to the extent required by applicable laws or governmental regulations all or part of the specified deliverable items as originally competed and evaluated to one or more third parties.

2.5 FAMILIARITY WITH LAWS

The Contractor is required to be familiar and shall comply with all Federal, State and local laws, ordinances, rules, and regulations ("Legal Requirements") that in any manner affect the Work. Ignorance on the part of the Contractor will in no way relieve the Contractor from responsibility for compliance with such Legal Requirements.

2.6 ADVERTISEMENTS

Contractor agrees not to use SFRTA's name as a part of any commercial advertising, without the prior express written consent of SFRTA.

2.7 PUBLIC RECORDS

SFRTA shall not be liable to a Contractor for disclosure of all or any portion of a submitted Proposal or the Contract Documents. The Contractor shall allow public access to all documents, papers, letters, or other material, subject to the applicable provisions of Chapter 119, Fla. Stat., and made or received by the Contractor in conjunction with the Agreement. Failure by the Contractor to grant such public access shall be grounds for immediate unilateral cancellation of the Agreement by SFRTA.

2.8 REQUIRED LICENSES

The Contractor and its employees shall be licensed to practice law pursuant to the Florida Bar's Rules of Professional Conduct and/or similar rules from a Bar association that is acceptable to SFRTA. All attorneys shall be in good standing with the applicable Bar under which they are licensed to practice law.

2.9 INSURANCE

The Contractor shall provide at its own cost all General Liability, Business Auto Liability, Professional Liability, Workers' Compensation and all other employee related insurance as may be required by law to SFRTA.

2.9.1 Self insurance shall not be acceptable for this Project.

2.9.2 The Contractor shall furnish certification of insurance to SFRTA within seven (7) business days of receipt of a fully executed Agreement. If the insurance certificate is received within the specified time frame but not in the manner prescribed, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) business days to submit a corrected certificate to SFRTA. If the Contractor fails to submit the required insurance certificate in the manner prescribed within fifteen (15) business days of receipt of a fully executed Agreement, the Contractor shall be in default, and the Agreement may be rescinded. Under such circumstances, the Contractor may be subject to SFRTA's debarment and suspension procedures, Section 30C-2.009 of the Procurement Code.

2.9.3 Such policy or policies shall be issued by a company or companies authorized to transact business in the State of Florida or an eligible surplus lines insurer in good standing with the Florida Insurance Commissioner's Office. Contractor shall specifically protect SFRTA by naming SFRTA as an additional insured under the Insurance Policy(ies) hereinafter described, except Workers' Compensation Insurance and

Professional Liability Insurance. All policies must be endorsed to provide SFRTA with thirty (30) days, notice of cancellation, non-renewal and/or restriction.

2.9.4 Workers' Compensation Insurance is to apply to all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include Employer's Liability with a limit of One Hundred Thousand Dollars ($100,000.00) per accident.

2.9.5 Comprehensive General Liability Insurance with minimum limits of One Million Dollars ($1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

2.9.5.1 Premises and/or Operations;

2.9.5.2 Independent Contractors;

2.9.5.3 Products and/or Completed Operations.

2.9.6 Business Automobile Liability Insurance with minimum limits of Three Hundred Thousand Dollars ($300,000.00) per occurrence combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

2.9.6.1 Owned Vehicles;

2.9.6.2 Hired and Non-Owned Vehicles;

2.9.6.3 Employees' non-ownership; and,

2.9.6.4 Personal Injury, Property Damage, Uninsured Motorist, Collision, and Comprehensive Coverages.

2.9.7 Malpractice Insurance. The Contractor shall maintain during the life of the Agreement standard professional liability insurance with the minimal amount of coverage of One Million Dollars ($1,000,000.00) per occurrence.

2.9.8 Renewal of Insurance. Contractor shall be responsible for assuring that the insurance certificate required in conjunction with this section remains in force for the duration of the contractual period. If the insurance certificate is scheduled to expire during this period, Contractor shall be responsible for submitting a new or renewed insurance certificate to SFRTA at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificate is not replaced with a new or

renewed certificate which covers the contractual period, SFRTA may suspend this Agreement until such time as the new or renewed certificate is received by SFRTA.

2.9.9 Minimum Coverage. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Contractor of liability in excess of such coverage, nor shall it preclude SFRTA from taking such other actions as is available to it under any other provisions of this Agreement or otherwise in law or equity.

2.10 INDEMNIFICATION

The Contractor shall be required to indemnify and hold harmless, SFRTA and all of SFRTA's officers, agents, and employees from any claim, loss, damage, cost, charge, judgment or expense, the extent arising out of any negligence, recklessness, or intentionally wrongful conduct by the Contractor, its agents, employees, subconsultants or subcontractors during the performance of the Contract, whether direct or indirect, and whether to any person or property to which SFRTA or said parties may be subject.

The Contractor's obligation to indemnify SFRTA shall be activated by SFRTA's notice of claim for indemnification to the Contractor. The Contractor's inability to evaluate liability or its evaluation of liability shall not excuse the Contractor's duty to indemnify within seven (7) days after such notice by SFRTA is given by registered mail. Only an adjudication or judgment after the highest appeal is exhausted specifically finding SFRTA solely negligent shall excuse performance of this provision by the Contractor. The Contractor shall pay all costs and fees related to this obligation and its enforcement by SFRTA. SFRTA's failure to notify the Contractor of a claim shall not release the Contractor of the above duty to indemnify.

It is specifically agreed between the parties executing the Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third-party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

The Contractor guarantees the payment of all just claims for materials, supplies, tools or labor and other just claims against it or any subcontractor or subconsultant, in connection with the Contract.

The parties hereby agree and acknowledge that one hundred dollars ($100.00) of the first payment to the Contractor for performance of this Agreement is the specific consideration from SFRTA to the Contractor for the Contractor's indemnity agreement.

2.11 WAIVER OF SUBROGATION

Contractor shall require all policies of insurance that are in any way related to the Work and that are secured and maintained by Contractor and all Subcontractors to include clauses providing that each underwriter shall waive all of its rights of recovery, under subrogation or otherwise, against SFRTA, Contractor, separate Contractors, and Subcontractors.

Contractor waives all rights of recovery against SFRTA, separate Contractors, and all Subcontractors which Contractor may have or acquire because of deductible clauses in or inadequacy of limits of any policies of insurance that are in any way related to the Work and that are secured and maintained by Contractor.

Contractor shall require all Subcontractors to waive their rights of recovery (as aforesaid waiver by Contractor) against SFRTA, Contractor, separate Contractors, and other Subcontractors (including Subcontractors of separate Contractors).

2.12 TERMINATION FOR DEFAULT

The Contractor shall be considered in material default of the Contract and such default shall be considered cause for SFRTA to terminate the Contract, in whole or in part, as further set forth in this Article, if the Contractor: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by SFRTA; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work contrary to the requirements of the Contract; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; or (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) materially breaches any other provision of the Contract Documents.

If SFRTA determines that the Contractor is in default under this Contract, SFRTA shall notify the Contractor in writing of the Contractor's default(s). If SFRTA determines that the Contractor has not remedied and cured the default(s) within seven (7) calendar days following receipt by the Contractor of said written notice, then SFRTA, at its option, without releasing or waiving its rights and remedies against the Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate the Contractor's right to proceed under the Contract, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of the Contractor, take assignments of any of the Contractor's subcontracts and purchase orders that SFRTA may designate, and complete all or any portion of the Contractor's Work by whatever means, method or agency which SFRTA, in its sole discretion, may choose. In the event of termination, Contractor shall cooperate with SFRTA in the retrieval of all information and documentation to be taken into SFRTA's possession within seven (7) calendar days from notice of termination.

If SFRTA deems any of the foregoing remedies necessary, the Contractor agrees that it shall not be entitled to receive any further payments hereunder until after the Work is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including attorneys' fees) or damages incurred by SFRTA incident to such completion, shall be deducted from the unpaid balance of the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, the Contractor agrees to pay promptly to SFRTA on demand

the full amount of such excess, including costs of collection, attorney's fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by SFRTA to complete the Work, the Contractor shall be entitled to such unpaid excess portion. Any amounts to be paid to SFRTA by the Contractor pursuant to this Paragraph, the obligation for payment shall survive termination of the Contract.

The liability of the Contractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by SFRTA in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefore or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder.

If, after notice of termination of the Contractor's notice to proceed pursuant to this Article, it is determined for any reason that the Contractor was not in default, or that its default was excusable, or that SFRTA is not entitled to the remedies against the Contractor provided herein, then such termination shall be deemed a termination for SFRTA's convenience and the Contractor's remedies against SFRTA shall be the same as and limited to those afforded the Contractor under Paragraph below.

2.13 TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION

Either party shall have the right to terminate this Contract, in whole or in part, without cause upon thirty (30) calendar days written notice to other party. In the event of termination for convenience by SFRTA, the Contractor's recovery against SFRTA shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but the Contractor shall not be entitled to any other or further recovery against SFRTA, including, but not limited to, damages or any anticipated profit on portions of the Work not performed. In the event of termination, Contractor shall cooperate with SFRTA in the retrieval of all information and documentation to be taken into SFRTA's possession within thirty (30) calendar days from notice of termination. Nothing herein shall limit SFRTA's recovery against the Contractor in the event of termination for convenience by the Contractor.

SFRTA shall have the right to suspend all or any portions of the Work upon giving the Contractor two (2) calendar days prior written notice of such suspension. If all or any portion of the Work is so suspended, the Contractor's sole and exclusive remedy shall be to seek an extension to the Contract Time in accordance with the procedures set forth in the Contract Documents. In no event shall the Contractor be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds two hundred (200) calendar days, the Contractor shall have the right to terminate the Contract with respect to that portion of the Work which is subject to the ordered suspension.

2.14 PUBLIC ENTITY CRIMES

Pursuant to Section 287.133, Florida Statutes, a person or affiliate 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 firm, 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 Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being on the convicted vendor list.

2.15 UNCONTROLLABLE FORCES

Neither SFRTA nor the Contractor shall be considered to be in default of the Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under the Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing party shall within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

2.16 CLAIMS AND DISPUTES

A Claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between SFRTA and the Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim shall rest with the party making the Claim.

Initial notice of Claims by the Contractor shall be made in writing to the SFRTA Project Manager within forty-eight (48) hours after the first day of the event giving rise to such Claim, or else the Contractor shall be deemed to have waived the Claim. Written supporting data shall be submitted to the SFRTA Project Manager within fifteen (15) calendar days after the occurrence of the event unless SFRTA grants additional time in writing, or else the Contractor shall be deemed to have waived the Claim. All Claims shall be priced so as to compensate the Contractor

for its actual and direct labor, material and equipment costs and extended general conditions expenses, together with markup, as set forth in Paragraph above.

The Contractor shall proceed diligently with its performance as directed by SFRTA, regardless of any pending Claim, unless otherwise agreed to by SFRTA in writing. SFRTA shall continue to make payments in accordance with the Contract Documents during the pendency of any Claim.

Prior to the initiation of any action or proceeding permitted by this Contract to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power. Failing resolution, and prior to the commencement of depositions in any litigation between the parties with respect to the Contract, the parties shall attempt to resolve the dispute through mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may request a court of law to order mediation under Florida Statutes Section 44.102.

Any litigation between SFRTA and the Contractor, whether arising out of any Claim or arising out of the Contract or any breach thereof, shall be brought, maintained and pursued only in the appropriate State courts of the State of Florida; and SFRTA and the Contractor each hereby waive and renounce any and all rights and options which they, or either of them, have or might have to bring or maintain any such litigation or action in the Federal Court system of the United States or in any United States Federal District Court. Venue of any such litigation between the SFRTA and the Contractor shall lie and be only in the appropriate State courts of the State of Florida's Seventeenth Circuit in and for Broward County, Florida. SFRTA and the Contractor consent and submit to the jurisdiction of any such court and agree to accept service of process outside the State of Florida in any matter to be submitted to any such court pursuant hereto. By submittal of its Proposal and/or execution of this Agreement, the Proposer EXPRESSLY WAIVES ALL RIGHTS TO TRIAL BY JURY REGARDING ANY DISPUTE RELATING TO THE CONTRACT (AND THE CONTRACTOR'S WORK HEREUNDER) THAT RESULTS IN LITIGATION.

2.17 RIGHTS IN TECHNICAL DATA

All documents and materials prepared or developed by the Contractor and its subcontractors pursuant to this Agreement shall become the property of SFRTA without restriction or limitation on their use and shall be made available upon request to SFRTA at any time. Original copies of such shall be delivered to SFRTA upon completion of the services or termination of the services. The Contractor shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the written approval of SFRTA.

No material or technical data prepared by the Contractor under this Agreement is to be released by the Contractor to any other person or agency except as necessary for the performance of the services. All press releases or information to be published in print or electronic media, shall be distributed only after first being authorized by SFRTA.

SFRTA shall have the right to use, duplicate, modify or disclose the technical data and the information conveyed therein, in whole or in part, in any manner whatsoever, and to have or permit others to do so.

The Contractor shall agree to grant to SFRTA and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free license to publish, translate, reproduce, deliver, and use as they deem fit all technical data covered by copyright supplied for this Agreement. No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for SFRTA to use in the manner herein described.

The Contractor warrants that the processes, design, equipment, materials, or devices used in providing the services shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If a suit or proceeding based on a claimed infringement of a patent or copyright is brought against SFRTA the Contractor shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by SFRTA, and indemnify and hold harmless SFRTA, its subsidiaries, agents and employees from all liability, damages, costs, and expenses associated therewith, including, without limitation, defense costs and attorney fees.

2.18 CONTRACTOR PERSONNEL

SFRTA's selection of the Contractor for the performance of the Scope of Services is based in part upon a careful consideration of the qualifications and experience of Contractor's personnel, including subcontractors, who will participate in the Scope of Services. The names of these personnel and their areas of participation under this Agreement are set forth in the Contractor's submittal or shall be agreed upon between the parties.

The Contractor shall be responsible for the performance of all of the work and shall utilize the specialized expertise and experience of the personnel listed in the Contractor's submittal.

SFRTA shall have the right to demand the removal of any of the personnel listed in the Contractor's submittal for reasonable cause and by written notice.

The Contractor shall not replace any of the personnel listed in the Contractor's submittal without the prior written approval of SFRTA, which SFRTA agrees, will not be unduly withheld.

In the event the Contractor, through circumstances beyond its control, is unable to provide the services of the personnel listed in the Contractor's submittal or agreed upon between the parties, the Contractor shall be responsible for providing other personnel for the performance of the particular items of work involved, whose expertise and experience, in the opinion of SFRTA are equivalent to that which would have been provided by the originally listed person.

The Contractor shall be responsible for any additional costs caused by the substitution of personnel for those listed in the Contractor's submittal. In no event shall any substitution of personnel result in an increase in compensation to be paid by SFRTA.

2.19 SUCCESSORS AND ASSIGNS

Subject to other provisions hereof, Contract shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Contract.

2.20 GOVERNING LAW

The Contract shall be interpreted under and its performance governed by the laws of the State of Florida.

2.21 NO WAIVER

The failure of SFRTA to enforce at any time or for any period of time any one or more of the provisions of the Contract shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

2.22 JOINT PREPARATION

The preparation of this agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

2.23 SEVERABILITY

In the event any term or provision of this agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed or deleted as such authority determines, and the remainder of this agreement shall be construed to be in full force and effect.

2.24 ATTORNEY'S FEES

In the event it shall become necessary for either party to this agreement to institute legal proceedings against the other party for recovery of any amounts due and owing under this agreement, then in such event, it is expressly agreed that the prevailing party in any such action shall be entitled to recover from the non-prevailing party all costs, including reasonable attorneys' fees, of pre-suit collection attempts, suit, and post judgment or settlement collection including those incurred on appeal.

2.25 RELATIONSHIP OF THE PARTIES

Except as set forth herein, no party to this agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other party. The

Contractor is and shall be in the performance of all work, services, and activities under this agreement independent, and not an employee, agent, or servant of SFRTA. All persons engaged in any of the work or services performed pursuant to this agreement shall at all times and in all places be subject to the Contractor's sole discretion, supervision, and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respect the Contractor's relationship and the relationship of its employees to SFRTA shall be that as an independent and not as employees or agent.

2.26 CONTINGENT FEE

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the making of this agreement. For the breach or violation of this provision, SFRTA shall have the right to terminate the agreement without liability at its discretion, to deduct from the contract price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

2.27 TRUTH IN NEGOTIATING

Execution of this Agreement by the Contractor shall act as the execution of a truth in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which SFRTA determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this agreement.

2.28 CONFLICT OF PROVISIONS

Where there is a conflict between any provision set forth within this Agreement and a more stringent state or federal provision that is applicable to any services performed under this Agreement, the more stringent state or federal provision shall prevail.

2.29 MODIFICATION AND AMENDMENTS

This Agreement may not be changed, altered, or modified except by an instrument in writing signed by all parties against whom enforcement of such change would be sought.

2.30 [NOT USED]

2.31 OWNERSHIP OF DOCUMENTS

All tracings, plans, specifications, maps and/or reports prepared or obtained under the Contract Documents shall be considered works made for hire and shall become property of SFRTA

without restriction or limitation on their use, and shall be made available upon request to SFRTA at any time. The Contractor therefore agrees not to publish, copyright or patent any of the data furnished in compliance with the Agreement. SFRTA shall have the right to visit the offices of the Contractor for review of such data at any time. The Contractor shall not be liable for use by SFRTA of said tracings, plans, specifications, documents, studies, or other data for any purpose other than intended by the terms of the Contract Documents.

2.32 VARIANCES IN TERMS AND CONDITIONS

Where there appears to be variances or conflicts between the General Terms and Conditions, the Special Terms and Conditions, and the Scope of Services outlined in the Purchase Order, the governing order shall be as follows:

Scope of Services
Special Terms and Conditions
General Terms and Conditions

2.33 MISCELLANEOUS

All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

There are no understandings or agreements except as herein expressly stated.

Failure to capitalize any defined term in the Contract Documents shall not change the meaning of the defined term when used in the Contract Documents.

Use of the term "Agreement" or "Contract" in these General Terms and Conditions shall mean the Purchase Order and all exhibits, including the General Terms and Conditions.

Any reference to Contractor shall mean Shutts & Bowen LLP.

2.34 FEDERAL REQUIREMENTS

1. Federal Changes - The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (15) dated October, 2008) between SFRTA and FTA, as they may be amended or promulgated from time to time during the term of this agreement. Contractor's failure to so comply shall constitute a material breach of this agreement.

2. Drugfree Workplace - The Contractor shall comply with the terms of the State of Florida and the U.S. DOT regulations for Drugfree Workplace Requirements, 49 C.F.R. Part 29, Subpart F.

3. Debarment and Suspension - The Contractor shall comply with U.S. DOT regulations, "Government wide Debarment and Suspension" (Non-procurement). This requirement shall pass to any and all subcontractors engaged to perform services under the Agreement.

4. Program Fraud and False or Fraudulent Statements or Related Acts - The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

5. Lobbying - Pursuant to the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.], Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the SFRTA. This requirement shall pass through to any and all Subcontractors engaged to perform services under this Agreement.

6. Interest of Members of or Delegates to Congress - In accordance with 18 U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of the Agreement or to any benefit arising there from.

7. Organizational Conflict of Interest - Prior to entering into this Agreement, the Contractor is required to inform SFRTA of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the nature of the work to be performed under a contract may, without some restriction on future activities, results in an unfair competitive advantage to the Contractor, or may impact the Contractor's objectivity in performing the contract work.

8. Civil Rights - Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,"41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Age – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

9. Clean Air - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report each violation to SFRTA and understands and agrees that SFRTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

10. Clean Water - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to SFRTA and understands and agrees that SFRTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

11. Access to Records and Reports - The Contractor agrees to provide SFRTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this agreement for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until SFRTA, the FTA Administrator, the Comptroller General, or any of

their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

12. Energy Conservation - The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

13. Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SFRTA requests, which would cause SFRTA to be in violation of the FTA terms and conditions.

14. Disadvantaged Business Enterprise – The Contractor, sub recipient or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as SFRTA deems appropriate.

15. Environmental Protection - The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.* consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

16. Fly America Requirements – The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their Contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of

compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

17. No Government Obligation to Third Parties - SFRTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to SFRTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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EXHIBIT B

SPECIAL TERMS AND CONDITIONS ("STC's")

EXHIBIT B
SPECIAL TERMS AND CONDITIONS

3.1 TERM

The term of this Project shall commence starting upon SFRTA's issuance of a Notice to Proceed (which for the purposes herein shall be the execution of the Agreement by SFRTA) and shall be for a period determined by General Counsel.

3.2 COMPENSATION

3.2.1 SFRTA agrees to pay Outside Counsel compensation for its services pursuant to the terms and conditions of the Agreement and associated exhibits.

3.2.2 Outside Counsel shall bill SFRTA monthly for the Services outlined in the Agreement and the monthly invoice shall include an itemized listing of services rendered by Outside Counsel for the Matter that is the subject of the representation in a form satisfactory to General Counsel. The sums paid pursuant to this paragraph are inclusive of all employee benefits, excise and payroll taxes, social security, unemployment compensation insurance, retirement benefits, legal research, and direct and indirect overhead of Outside Counsel.

3.2.3 SFRTA will pay Outside Counsel, at direct cost without markup, reasonable and appropriate reimbursable expenses for travel pre-approved in writing by General Counsel. SFRTA shall not pay Outside Counsel any expenses for travel or meals in Miami-Dade, Broward or Palm Beach counties. Reimbursable expenses shall not be paid without the prior express written approval of the expenses by SFRTA. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Agreement shall be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes. Approved travel shall be itemized and invoiced separately.

3.2.4 The Agreement shall not exceed $50,000 for any one Work Order. Any work performed which exceeds $50,000 without prior approval from the SFRTA Governing Board, shall be considered work performed at Outside Counsel's risk and SFRTA does not guarantee that Outside Counsel shall be compensated for any such work not previously authorized. At such time as the Outside Counsel reasonably believes that work being performed under a Work Order shall exceed $50,000, Outside Counsel shall immediately inform the General Counsel. If General Counsel determines that additional Outside Counsel work is necessary in excess of the $50,000 threshold for the Work Order, General Counsel shall prepare an agenda item for the next available regular Board meeting, including Outside Counsel's best estimate of the cost of such additional services, seeking Board authorization to perform such additional legal services. Board approval shall be required for all Work Orders if the cumulative amount of any Work Orders in any one fiscal year exceeds the annual budgeted amount for legal services.

3.2.5 Payments shall be made upon proper submittal of an invoice for performance of the work which each payment represents. Outside Counsel shall make Application for Payment

for work completed at intervals of not more than once a month, unless more frequent invoices are requested by General Counsel. The Outside Counsel's invoice shall show a complete breakdown of the work components, and Contract and Work Order Numbers. In addition, the invoice must contain the level of detail as required by the General Counsel. All invoices must meet or exceed generally accepted accounting standards, and must be in a format suitable for SFRTA's audit requirements. SFRTA shall pay Outside Counsel invoices or items set forth in such invoices which are not in dispute within forty-five (45) days after receipt of the invoices. Invoices are to be sent to the Attention of General Counsel and not to any other individual or department.

3.2.6 Outside Counsel represents that it has, or will secure at its own expense, all necessary personnel, with the exception of secretarial and administrative personnel located at SFRTA's administrative offices, required to perform the legal services. Such personnel shall not be the employee of or have any contractual relationship with SFRTA. Outside Counsel shall be considered an independent contractor of SFRTA. The legal services shall be performed by Outside Counsel or under its supervision and all personnel engaged in performing the legal services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. Outside Counsel warrants that the legal services shall be performed by skilled and competent personnel and will meet the appropriate professional standards.

3.2.7 Outside Counsel's books and records shall be available at all reasonable times for examination and audit by SFRTA, state and federal auditors during the term of this Agreement and for a period of three (3) years thereafter. Incomplete or incorrect entries in such books and records will be grounds for disallowance by SFRTA of any fees or expenses based upon such entries.

3.2.8 SFRTA, during any fiscal year, shall not expend money, incur any liability or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void and no money may be paid on such contract.

3.3 FORMAT OF INVOICES

3.3.1 Within thirty (30) days of services rendered, each statement for fees and costs shall be submitted (two copies) in a format that includes, at a minimum, the following information:

A.) Case name and number, if applicable, or other legal Matter reference.

B.) Contract and Work Order numbers, and invoice number for the particular bill.

C) Outside Counsel taxpayer identification number.

D) Outside Counsel and General Counsel's name.

E) Inclusive dates of the month covered by the invoice.

F) Itemization of the date; hours or portions of hours billed; a concise meaningful description of the services rendered, with sufficient detail to enable SFRTA to evaluate the services rendered and costs; the person(s) who performed the services for each day during which the Outside Counsel and its Paralegals performed work; and their hourly rate as specified in the Agreement.

G) The total of only the current bill. Prior balances or payment histories should be shown separately, if at all.

H) A certification statement, signed by the Outside Counsel's contract administrator, that reads, "I certify that all costs and fees claimed for payment are accurate and were performed in furtherance of the AGREEMENT between Outside Counsel and South Florida Regional Transportation Authority."

I) Any other information as may be requested by General Counsel.

3.4 ADMINISTRATION OF AGREEMENT

3.4.1 Contract Administrator/Project Manager shall be General Counsel. In the administration of this Agreement, all parties may rely upon the instructions or determinations made by General Counsel. Any legal opinions, decisions and interpretations provided to SFRTA on any Matter shall be solely the responsibility of Outside Counsel.

3.4.2 The Outside Counsel's Representative shall be designated in the Agreement.

3.4.3 All approvals must be obtained from, and all notices provided to, Outside Counsel's Representative and General Counsel.

3.4.4 This Agreement shall be governed by and construed under the laws of Florida.

3.5 MISCELLANEOUS CONDITIONS

3.5.1 The Outside Counsel will make affirmative efforts to achieve cost effectiveness by consolidating court hearings, limiting travel, streamlining case processing, using printed forms, using the appropriate level of attorney or staff experience required by task, and taking other actions to improve efficiency.

3.5.2 Multiple staffing of Outside Counsel attorneys at meetings, hearings, depositions, trials, etc., by Outside Counsel will not be compensated without prior written approval from the General Counsel.

3.5.3 Outside Counsel agrees that all documents shall be promptly returned at the termination of the Outside Counsel's involvement in the case or Matter.

3.5.4 Outside Counsel shall, as it becomes aware, provide immediate notice by e-mail, facsimile transmission or telephone regarding significant legal developments, especially those that will likely result in media inquiries and Outside Counsel shall not make any statements (whether written or oral) to the media without first having obtained General Counsel's prior authorization.

3.5.5 Outside Counsel shall provide General Counsel with immediate notice of any representation undertaken by Outside Counsel in Matters where another client of Outside Counsel is suing or being sued by the State of Florida, state entities or Miami-Dade, Broward or Palm Beach counties in any civil or adversarial administrative action.

3.6 CONFLICT OF INTEREST

Outside Counsel shall promptly notify General Counsel in writing of any and all existing, apparent or potential conflicts of interest (whether legal or business) for any and all existing or prospective representations, interests or other circumstances which will be directly adverse to the SFRTA or when there is a substantial risk that the representation will materially limit the Outside Counsel responsibilities to SFRTA. This notification shall be provided to General Counsel no later than two (2) business days following Outside Counsel learning of such existing, apparent or potential conflicts of interest. **REPORTABLE CONFLICTS INCLUDE, BUT ARE NOT LIMITED TO, ANY BUSINESS OR LOBBYING ACTIVITIES THAT CONFLICT WITH THE INTERESTS OF SFRTA, AS WELL AS LEGAL CONFLICTS.** The notice shall identify the existing or prospective representation, interest or circumstance and the nature of the work that the Outside Counsel is already undertaking or wishes to undertake and requests General Counsel's opinion as to whether the representation, interest or circumstance would, in the opinion of General Counsel, constitute a conflict of interest under this Agreement(the "Notice"). General Counsel agrees to notify Outside Counsel of his/her opinion within three (3) business days of receipt of the Notice. If, in the opinion of General Counsel, the existing or prospective representation, interest or circumstance would not constitute a conflict of interest by the Outside Counsel, then General Counsel shall so state in his/her opinion, and the representation, interest or circumstance shall not be deemed a conflict of interest with respect to the legal services provided under this Agreement. If General Counsel concludes a conflict of interest exists that is not waivable pursuant to the Florida Bar's Rules of Professional Conduct, Outside Counsel shall cease any existing third-party representation or not accept the potential representation. Outside Counsel may appeal the General Counsel's determination to the SFRTA Board at its next regularly scheduled meeting, but shall not undertake the representation, or continue with an existing third-party representation, pending the Board's decision. In the event General Counsel determines that the conflict of interest is waivable or Outside Counsel is appealing General Counsel's determination as provided above, Outside Counsel may seek consent from the Board to undertake or continue the third-party representation.

Regarding an item which requires resolution prior to the next regularly-scheduled SFRTA Board meeting, the SFRTA Chair (or Vice-Chair if the Chair is unavailable) may, at his or her sole discretion, act on behalf of the SFRTA Board to address a conflict of interest waiver request

from General Counsel. Any such conflict waiver decisions shall be reported to the SFRTA Board at its next regularly scheduled meeting.

Outside Counsel shall not represent any other party before the State Legislature or any committee thereof, the office of the Governor or any member of the cabinet or any state agency, on any matter where such party's interest may be adverse to SFRTA without the prior permission of the SFRTA Board. In the event Outside Counsel desires to represent another party before any of the aforementioned public officials, bodies or agencies on any matter where such party's interest may be adverse to SFRTA, it shall follow the procedure described above. However, the conflict waiver delegation to the SFRTA Chair, as described herein, shall not apply to this situation.

The SFRTA Board (or as delegated herein), in its sole and absolute discretion, may preclude Outside Counsel from simultaneously representing SFRTA and another party when SFRTA determines that representation of such other party may be adverse to SFRTA's interests. In making such determination, SFRTA Board (or as delegated herein) shall have sole and absolute discretion to determine the role of Outside Counsel and the nature of its representation of SFRTA. Should Outside Counsel fail, after five (5) days' notice, to cure a conflict as determined by SFRTA, SFRTA shall have the right to terminate the Agreement, in whole or in part, with Outside Counsel.

3.7 GENERAL COUNSEL PROCEDURES

Outside Counsel agrees to comply with any General Counsel Procedures which may be promulgated and issued by General Counsel for Work performed under this Agreement.

EXHIBIT C

SCOPE OF SERVICES

EXHIBIT C
SCOPE OF SERVICES

4.1. INTRODUCTION

A) Outside Counsel shall provide legal services for the South Florida Regional Transportation Authority (SFRTA). The Agreement between SFRTA and Outside Counsel shall be considered a personal service contract and the Outside Counsel services shall be performed, managed and supervised by a designated Outside Counsel Representative and such partners, associates and employees of Outside Counsel assigned by the designated Outside Counsel's Representative to SFRTA Matters. Counsel may also retain experts, consultants, etc. as needed to provide the services to SFRTA, subject to prior approval by General Counsel.

B) The designated Outside Counsel's Representative shall attend meetings as required by General Counsel. Outside Counsel shall send a replacement when Outside Counsel Representative is out on vacation or ill. General Counsel shall first approve all attorneys assigned to SFRTA Matters.

C) The specialties and resources of Outside Counsel's entire firm shall be made available to SFRTA through Outside Counsel's Representative.

D) Outside Counsel's Representative shall be available to provide legal services for emergency situations seven days a week, 24 hours a day, pursuant to arrangements acceptable to SFRTA and Outside Counsel.

E) Outside Counsel's Representative shall work with and report to the General Counsel.

F) Legal support services shall also be provided at Outside Counsel's offices. All direct and indirect expenses, including, but not limited to, copying, faxing, scanning, postage, etc. but not including any filing fees or any actual travel-related costs incurred by Outside Counsel (outside of the tri-county area) shall be incurred by Outside Counsel.

G) Outside Counsel shall at all times comply with the Florida Bar's Rules of Professional Conduct, including, but not limited to, provisions relating to conflicts of interest. Outside Counsel shall have a continuing obligation to report any existing, apparent or potential conflicts to SFRTA as required by Section 3.6 of the Agreement. Failure to comply with this provision may result in termination of the Contract.

I) Outside Counsel's Representative shall provide periodic status reports, either oral or in writing, as requested by the General Counsel.

J) All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by SFRTA or at its expense shall be kept confidential by Outside Counsel and shall not be disclosed to any other

party, directly or indirectly, without SFRTA's prior written consent, unless required by Florida Statutes Chapter 119 or an order issued by a court or like authority of lawful jurisdiction. All drawings, maps and sketches, and other data developed or purchased under this Agreement, or at SFRTA's expense, shall be and remain the property of SFRTA and shall be reproduced and used solely at the discretion of SFRTA. Outside Counsel shall at all times comply with the provisions of Chapter 119, Florida Statutes (Public Records Law). Should Outside Counsel receive any public records requests, Outside Counsel shall immediately inform the General Counsel of the nature of the request.

4.2 OUTSIDE COUNSEL LEGAL SERVICES; GENERAL REQUIREMENTS

A) It is the intent of this specification to describe the essential duties and responsibilities of Outside Counsel. All items or features not specifically mentioned which are necessary or which are normally furnished in order to provide such services shall be furnished by Outside Counsel. In providing legal services, Outside Counsel shall exercise the degree of reasonable knowledge and skill that lawyers of ordinary ability and skill possess and exercise.

B) Outside Counsel should possess the necessary qualifications, knowledge, skills and abilities to provide SFRTA with the following legal services:

1. Advice regarding general matters, including review and assistance in drafting commodity, construction, consultant, personal services, and other public contracts as requested, as well as providing advice on the federal requirements (laws, regulations, circulars and guidance) relating to such contracts.

2. Advice regarding Chapter 53 of Title 49, of the U.S. Code, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), as well as other federal legislation and programs relating to public transit and commuter rail systems, including, but not limited to, disadvantaged business enterprise (DBE) programs of recipients of federal financial assistance governed by 49 CFR Part 26; and the Americans with Disabilities Act (ADA).

3. Support for SFRTA interaction with the state, counties, cities, metropolitan planning organizations, regional planning councils and the federal government, including the Federal Transit Administration (FTA), Federal Railroad Administration (FRA), the Surface Transportation Board (STB) and the United States Department of Transportation (USDOT).

4. Support for preparing easements and access agreements, and/or acquiring, purchasing, holding, leasing real estate owned by SFRTA, including addressing environmental issues related to such transactions.

5. Support to sell, convey, exchange, lease, or otherwise dispose of any real or personal property acquired by SFRTA or to enter into joint development agreements involving SFRTA property, including addressing environmental issues related to such transactions.

6. In-service training programs for SFRTA managers and supervisors regarding topics as requested by SFRTA.

7. Research and informal oral and formal written opinions regarding any subject requested by SFRTA.

8. Research and preparation of written briefs and oral argument in all cases where so required before administrative agencies or courts of law.

9. Advice regarding all employment practices, including hiring and termination, employment applications, employee handbook, and policy and procedure manuals.

10. Advice and representation regarding all labor relations matters, including but not limited to recognition petitions, collective bargaining, grievances, and arbitration cases.

11. Advice regarding the Federal Fair Labor Standards Act (FLSA) and Florida Wage-Hour Laws.

12. Advice regarding Occupational Safety and Health Administration (OSHA) matters, including representation before administrative agencies, and review and assistance in drafting safety procedures, plans, etc.

13. Advice to SFRTA management on all types of employee, labor relations, human resource and other personnel issues.

14. Advice and representation regarding claims of wrongful discharge, breach of employment contract, etc.

15. Advice regarding the relationship between Florida's Retirement Program and any other SFRTA employee benefit matters and any federal employee benefit and retirement matters that might be governed by federal laws regulating the rail industry.

16. Advice regarding the Federal and Florida Family and Medical Leave Acts (FMLA), and review and assistance in drafting FMLA compliance plans, procedures, forms, policies, etc.

17. Advice regarding the FTA matters, including but not limited to required drug and alcohol testing, and review and assistance in drafting substance abuse policies and procedures.

18. Advice regarding standard terms and conditions governing the administration of federal and state assistance awarded by the USDOT or FDOT through a

Grant Agreement, Cooperative Agreement, Joint Participation Agreement or other agreement.

19. Advice regarding federal legal issues related to the operations and management of a public regional transportation authority, including but not limited to compliance with Florida's Public Meetings Law (Chapter 286, F.S.), Public Records Law (Chapter 119, F.S.,) and Public Ethics Laws (Section 112.311, et seq., F.S.).

20. Advice regarding the federal laws and standards and practices within the rail industry relating to the design, construction and maintenance of transportation facilities, including, but not limited to, vertical construction, railroad tracks, roads and bridges, etc., including but not limited to state and federal laws and standards and practices.

21. Advice and representation regarding right-of-way acquisition, relocation assistance, and condemnation of real property for transportation facilities.

22. Advice, counsel and assistance regarding both federal and state legislative and executive branch governmental issues which may impact SFRTA, including but not limited to the drafting or interpretation of legislative bills to be considered by the Florida Legislature or U.S. Congress and their possible impact on the authority.

25. Advice regarding the drafting or amending the SFRTA By-laws and Policies.

26. Advice relating to Railway Labor Act, labor protection, union agreements and other such matters.

4.3 OTHER LEGAL SERVICES

A) Nothing herein shall preclude SFRTA from retaining other outside counsel to perform any legal service as may be determined to be necessary from time to time by the General Counsel including, but not limited to:

1. Any of the legal services described in Section 4.2

2. Transactional matters relating to the drafting, interpretation and enforcement of certain complex contracts.

3. Litigation.

4. Matters involving a conflict of interest for Outside Counsel. In the event that SFRTA is required to obtain the legal services of another attorney due to a conflict of interest (whether legal or business) for Outside Counsel on a matter in which Outside Counsel is performing Work for SFRTA, Outside Counsel may be required by SFRTA to

compensate it for the costs of obtaining those separate legal services in an amount negotiated with Outside Counsel.

B) Outside Counsel may, upon the recommendation of SFRTA's Board and/or General Counsel, be used to perform certain specialized outside counsel services that are not within the scope of the general legal services agreement. Such services shall be performed based on the hourly fee schedule in Exhibit D to this Agreement.

EXHIBIT D

HOURLY RATES

KK & R	Yr 1 (2011)	Yr 2 (2012)	Yr3 (2013)	Yr 4 (2014)	Yr 5 (2015)
C. Spitulnik	282	305	320	336	353
All other attys	225	250	250	250	250
Paralegals	110	110	110	110	110

Tracking No. 05131102 AGENDA ITEM NO. R2

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY
LEGAL SERVICES COMMITTEE MEETING: MAY 13, 2011

AGENDA ITEM REPORT

☐ Consent ☒ Regular

GENERAL COUNSEL EVALUATION

REQUESTED ACTION:

MOTION TO APPROVE: General Counsel Evaluation

SUMMARY EXPLANATION AND BACKGROUND:

On February 26, 2010, SFRTA entered into an employment contract with Teresa J. Moore, for the position of SFRTA General Counsel (the "Agreement"), as provided in Exhibit 1. At its March 25, 2011 meeting, the Governing Board delegated authority to the Legal Services Committee to perform the annual evaluation of General Counsel pursuant to the terms of the Agreement. To facilitate the evaluation, the General Counsel has provided a list of 2010/2011 General Counsel/Legal Department accomplishments (see Exhibit 2).

Department: Legal

FISCAL IMPACT: none

EXHIBITS: Exhibit 1 – General Counsel Agreement
Exhibit 2 – 2010/2011 General Counsel/Legal Department Accomplishments

GENERAL COUNSEL EVALUTION

Recommended by:_____
Department Director Date

Approved by:_____
Contracts Director Date

Authorized by:_____
Executive Director Date

Approved as to Form by:_____
General Counsel Date

Committee Action:

Approved: _____Yes _____No

Vote: _____ Unanimous

Amended Motion:

F. Martin Perry. _____Yes _____ No
James A .Cummings _____Yes _____No
Felix M. Lasarte _____Yes _____No

EXHIBIT 1

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

GENERAL COUNSEL

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is made and entered into this 22nd day of March 2010, by the SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY, the successor in interest to the **TRI-COUNTY COMMUTER RAIL AUTHORITY,** (hereinafter called "SFRTA"), an agency of the State of Florida created pursuant to Chapter 343, Florida Statutes,

AND

TERESA J. MOORE, the General Counsel of SFRTA (hereinafter called "**COUNSEL**").

WITNESSETH

WHEREAS, the parties hereto believe that it would be mutually beneficial to have a contract of employment setting forth the agreements and understandings as to COUNSEL's employment with SFRTA;

NOW, THEREFORE, in consideration of the mutual covenants and promises that the parties set forth below, SFRTA and COUNSEL agree as follows:

1. EMPLOYMENT OF COUNSEL

SFRTA hereby agrees to employ Teresa J. Moore as COUNSEL of the SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY and Teresa J. Moore hereby accepts such employment upon the terms and conditions hereinafter set forth. The relationship set forth herein shall be that of employer-employee and COUNSEL shall not be considered an independent contractor.

2. EMPLOYMENT TERM

The term of this employment agreement shall be for a period of three (3) years, commencing on March 22, 2010 ("Effective Date"), and automatically renewing each year thereafter for a three-year term.

3. COMPENSATION

3.1 The SFRTA agrees to pay COUNSEL and COUNSEL agrees to accept from SFRTA the gross annual amount of One Hundred Ninety Thousand and no/100 Dollars ($190,000.00) payable in bi-weekly equal installments during each year of the term of this Agreement. Payments shall be less any amounts required to be

deducted or withheld from such installments for income tax, social security, or other charges required by law or agreed upon by the COUNSEL.

3.1. SFRTA shall provide the COUNSEL with the additional SFRTA fringe benefits set forth in Exhibit A to this Agreement. SFRTA shall, at the option of COUNSEL, either make all required contributions to the Florida Retirement System - Senior Management Class or the Florida Retirement System - Regular Class (depending on which membership class the General Counsel position is placed in during the term of the Agreement) that are mandated by law for all state agencies (the "Required Contributions"); or in the event the COUNSEL cannot enter the Florida Retirement System, the SFRTA shall make a contribution equal to the Required Contributions to a private retirement plan designated by the COUNSEL (the "Plan"), and shall provide a maximum of One Thousand Dollars ($1,000.00) annually to manage the Plan.

SFRTA agrees that if the COUNSEL elects to enter the Florida Retirement System and is not included in the Senior Management Class by the Effective Date, SFRTA shall make all necessary appeals to the Florida Retirement System to qualify the General Counsel position for the Senior Management Class at the earliest possible date after the position becomes eligible.

3.2. Within the last sixty (60) days of each anniversary of the Effective Date, the SFRTA Board will conduct an annual review of COUNSEL's performance and set goals and objectives for the COUNSEL for the next year. The SFRTA Board may determine, at its sole discretion and without cause, to discontinue this Agreement by giving COUNSEL thirty (30) days advance written notice prior to the third anniversary of the Effective Date. If the Board elects to discontinue this Agreement, COUNSEL shall be entitled to six (6) months' severance pay. In the event the Board does not give COUNSEL thirty (30) days advance written notice of its intention not to renew this Agreement, then this Agreement shall automatically renew as set forth in Section 2 of this Agreement. During the last sixty (60) days prior to each anniversary of the Effective Date, the Board will consider granting COUNSEL a pay increase.

3.3. COUNSEL shall be allowed to take up to four (4) weeks annual leave during each year of the Agreement, with the first such year to run for one (1) calendar year from the Effective Date. To the extent the COUNSEL shall not take such leave during each such calendar year, SFRTA shall automatically pay to COUNSEL at the end of each such year an amount up to two (2) weeks cash equivalent to unused vacation, calculated at the COUNSEL's rate of compensation for that year ("Automatic Annual Leave Payment"). A maximum of two (2) weeks annual leave may be carried forward from each such year to each such year, if the COUNSEL has any annual leave remaining after the Automatic Annual Leave Payment.

3.5. SFRTA standard sick leave policy contained in the Employee Handbook, as amended from time to time, shall control.

3.6 SFRTA shall pay for the COUNSEL's Florida Bar dues, including membership in any of the Florida Bar Committees, and any Continuing Legal Education ("CLE") fees necessary to maintain COUNSEL's license to practice law in Florida and COUNSEL will utilize on-line CLE courses as much as possible. SFRTA shall also pay for COUNSEL to attend trade organization meetings, such as those held by the American Public Transit Association ("APTA").

4. DUTIES

COUNSEL agrees to devote her full time, attention, and best efforts to the performance of her duties hereunder in a competent and professional manner that shall include the following on behalf of SFRTA, as amended or supplemented from time to time by SFRTA:

4.1. Subject to direction by SFRTA's Governing Board, the COUNSEL shall:

4.1.1. Assume and perform all duties and responsibilities of the office as set forth in the SFRTA Bylaws, Procurement Code and Employee Handbook, as they may be amended from time to time.

4.1.2. Assume and perform all duties and responsibilities customarily attendant upon said office.

4.1.3. Assume and perform such other reasonable responsibilities and duties consistent with the Office of the COUNSEL as may be assigned to her from time to time by SFRTA's Governing Board.

4.1.4. Work directly under and report directly to SFRTA's Governing Board.

5. TERMINATION OF EMPLOYMENT FOR CAUSE

During the term of this Agreement, the SFRTA Board may, at any time, terminate this Agreement for good cause. Termination must be by written notice clearly specifying the grounds forming the basis of the SFRTA Board's decision to terminate the COUNSEL and shall be effective immediately after delivery of the written notice to the COUNSEL. The COUNSEL may, at her sole option, request a hearing before the SFRTA Board to appeal the Board's decision.

For the purposes of this Agreement, "good cause" for termination by the SFRTA Board shall be defined as any action constituting:

(1) Misfeasance; i.e. the improper performance of a job responsibility that is required of the COUNSEL.

(2) Malfeasance; i.e. carrying out an act that the COUNSEL is prohibited from doing pursuant to this Agreement, SFRTA Bylaws, Employee Handbook, Procurement Code, as they may be amended from time to time, or specific direction of the Board.

(3) Nonfeasance; i.e. the omission of an act that the COUNSEL has a responsibility to do, pursuant to this Agreement, SFRTA Bylaws, Employee Handbook, Procurement Code, as they may be amended from time to time, or specific direction of the Board.

(4) Fraud, embezzlement, or willful violation of law.

5.2. Termination Without Cause

5.2.1 During the term of this Agreement and any renewals, the SFRTA Board may elect to terminate the COUNSEL without specific grounds for termination by giving a sixty (60) day notice of termination and paying the COUNSEL severance pay in cash. The severance pay shall be equal to a lump sum amount equivalent to what the COUNSEL would have been paid in cash for the following six (6) month period.

5.2.2 During the term of this Agreement and any renewals, COUNSEL may elect to terminate her employment without specific grounds for termination by providing the SFRTA Board with thirty (30) days written notice.

6. INDEMNIFICATION AND HOLD HARMLESS

To the extent permitted by law, regarding any civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of the COUNSEL for an act or omission arising out of and in the scope of his or her employment or function, unless, in the case of a tort action, the COUNSEL acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, the SFRTA agrees:

(1) to indemnify and hold harmless the COUNSEL for any costs, fines, judgments, damages, and losses that the COUNSEL incurs as a result of said civil action, subject to the exception noted below; and

(2) to provide an attorney to defend said civil action.

Defense of such civil action includes, but is not limited to, any civil rights lawsuit seeking relief personally against the COUNSEL for an act or omission under color of state law, custom, or usage, wherein it is alleged that the COUNSEL has deprived another person of rights secured under the Federal Constitution or laws.

Legal representation of the COUNSEL shall be by counsel selected by the SFRTA Board and the defense shall be controlled by the SFRTA Board.

However, as an exception to the indemnification and the hold harmless contained herein, any monies, including, but not limited to attorney's fees, and judgments, paid from public funds for the COUNSEL who is then found to be personally liable by virtue of acting outside the scope of his or her employment, or was acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, may be recovered by the SFRTA in a civil action against the COUNSEL.

7. HEALTH INSURANCE

Except as limited below, SFRTA shall provide the COUNSEL, her spouse and her children ("Covered Parties") with the same or equivalent coverages and limits available under the then-current health insurance coverage program offered by SFRTA to SFRTA's Senior Management Employees, including the COUNSEL ("SFRTA Health Insurance"), during the term of this Agreement. Should the Agreement be terminated for any reason, these benefits shall be provided at no cost to the COUNSEL for an additional thirty (30) days following the termination

8. EXPENSE REIMBURSEMENT

Upon submission of proper proof by the COUNSEL, SFRTA will reimburse the COUNSEL for all reasonable business expenditures paid or incurred by the COUNSEL in the course of and pursuant to the business of SFRTA. The COUNSEL shall be provided with a corporate credit card for such purposes. The COUNSEL shall not charge more than Two Thousand Five Hundred and no/100 Dollars ($2,500.00) annually to the corporate credit card for such expenses.

9. PREVAILING PARTY

In the event of any litigation regarding the provisions of the Agreement, the prevailing party shall be entitled to attorney's fees, court costs, and any other related costs of litigation which may be awarded by the Court. The venue for any legal proceeding will be in Palm Beach, Broward or Miami-Dade County, Florida.

10. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the parties hereto, and the same shall not be modified or altered except by another written agreement executed by each of the parties hereto. The fact that this Agreement has been prepared by counsel for one of the parties shall not affect or influence the interpretation of any provision hereof.

11. NOTICES

Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and shall be deemed served if deposited in the United States mail, certified, return receipt requested, and addressed as follows:

To the SFRTA:

South Florida Regional Transportation Authority
800 NW 33rd Street, Suite 100
Pompano Beach, FL 33064
Attention: CHAIR

To the COUNSEL:

South Florida Regional Transportation Authority
800 NW 33rd Street, Suite 100
Pompano Beach, FL 33064
Attention: GENERAL COUNSEL

or to such other address as the parties may from time to time give written notice of to the other parties.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY, through its Chair, authorized by Board action on the 26th day of February, 2010.

Witness

John Koons, Chair/SFRTA

26th day of February, 2010

GENERAL COUNSEL

Witness

Teresa J. Moore

26 day of February, 2010

Approved as to form and legal sufficiency by:

Jeff Olson, SFRTA Staff Counsel

EXHIBIT A

COUNSEL BENEFITS

Vacation

As set forth in Section 3.4 of Agreement

Holidays*:
9 Paid Holidays (same as all employees)

Personal Days*:
2 days per calendar year (same as all employees)

Sick Days*:
12 Sick days per year (same as all employees)

Retirement:

As set forth in Section 3.2 of Agreement

Vehicle Allowance

$400/month

Insurance:

Health Insurance	as set forth in Section 7 of the Agreement
Life Insurance*	Employer paid $ 150,000 (Same as all employees: 1.25% of salary or maximum of $150,000) 2004 – 2% of Annual Income Senior Management
Long Term Disability*	Employer paid (same as for all employees)

* Or as otherwise set forth in the SFRTA Employee Handbook in effect from time to time.

Exhibit 2
General Counsel/Legal Department Major Accomplishments
March, 2010-March, 2011

1. **Locomotive procurement** – successful in defeating 2 bid protests and civil court challenge of award to the lowest bidder which saved the agency approximately $10 million (difference in contract amounts between the lowest and second lowest bidders); successful in addressing political challenge from third party regarding the use of modified one-step bid process.

2. **Amended Procurement Policy** - completed, along with Procurement Department, material amendments to the agency's Procurement Policy to codify recent changes and accepted agency practice.

3. **Ethics Workshop** – coordinated Workshop and moderated Ethics panel that appeared before the Governing Board and included ethics experts from each county, as well as the University of Miami.

4. **SFOMA/Phase B** – prepared legal comparison and analysis of the two scenarios, as well as assisted staff in the cost analysis.

5. **MIC Agreement with FDOT** – negotiated favorable terms in agreement with FDOT for the temporary relocation during the Central Station construction including FDOT's contribution of approximately $1 million of costs associated with the temporary relocation and SFRTA's ability to relocate to Central Station without any conditions.

6. **Positive Train Control Implementation Plan (PTCIP)** – with only 8 days notice that the agency had to prepare its own PTCIP, the Legal Department prepared SFRTA's PTC plan, along with other agency staff, that was joined by FDOT and approved by Federal Railroad Administration; saved agency significant funds (other agencies contracted with consultants months in advance of deadline to complete the PTC plan).

7. **Broward MPO** – coordinated consultant study on agency administrative costs and negotiated administrative services agreement for provision of services to the now-independent MPO representing repayment of SFRTA expenses of approximately $85,000/year.

8. **Outside Counsel Contracts** –finalized negotiations at favorable rates with 3 firms.

9. **Office Lease** – worked with staff to negotiate favorable office lease and budget for boardroom improvements.

10. **Funding** – convinced FDOT that all operating funds should be transferred to the RTA without a JPA. FDOT also agreed to negotiate a separate Operating Agreement.'

11. **Legal support** - drafted numerous agreements, reviewed documents, etc. for SFRTA administration of JARC and New Freedom programs for which SFRTA receives 10% of grant awards

12. **Ongoing litigation** – ongoing coordination with FDOT and State Attorneys' Office for representation of SFRTA and its contractors in current tort litigation which has resulted in minimizing State and agency liability.