

TAMPA HILLSBOROUGH EXPRESSWAY AUTHORITY  
**DISPUTE REVIEW BOARD**  
**THREE PARTY AGREEMENT**

700-011-02  
THEA  
09/2020  
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**THIS THREE PARTY AGREEMENT**, hereinafter called "**AGREEMENT**", made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the Tampa Hillsborough Expressway **AUTHORITY**, an agency of the State of Florida, hereinafter called "**AUTHORITY**"; and \_\_\_\_\_, hereinafter called the "**CONTRACTOR**"; and the Dispute Review **BOARD**, hereinafter called the "**BOARD**", and consisting of three members:

\_\_\_\_\_, \_\_\_\_\_  
and \_\_\_\_\_,

WITNESSETH, that  
WHEREAS, the **AUTHORITY** is now engaged in the construction of \_\_\_\_\_ (hereinafter called "project"), and

WHEREAS, this **AGREEMENT** provides for the establishment and operation of the **BOARD** to assist in resolving disputes and claims; and

WHEREAS, the **BOARD** is composed of three members, one selected by the **AUTHORITY**, one selected by the **CONTRACTOR**, and the third member selected by these two;

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I  
**DESCRIPTION OF WORK**

In order to assist in the resolution of the REL Added Scope dispute and claim between the **CONTRACTOR** and the **AUTHORITY**, the **AUTHORITY** has provided for the establishment of the **BOARD**. The **BOARD** shall follow the terms as outlined in this document. The purpose of the **BOARD** is to fairly and impartially consider disputes and claims placed before it and to provide written recommendations for resolution of these disputes and claims to both the **AUTHORITY** and the **CONTRACTOR**. The members of the **BOARD** shall perform the services necessary to participate in the **BOARD**'s actions as designated in Section II, Scope of Work. The **AUTHORITY** has appointed an independent project manager (hereinafter called "ENGINEER"), responsible for full oversight of the **CONSTRUCTION CONTRACT** and providing both field and office supervision of the **CONTRACTOR**. The term "ENGINEER" in the context of this **AGREEMENT**, overrides the definition of the term "ENGINEER" referenced in Section 1-3, **FDOT Standard Specifications for Road and Bridge Construction**.

II  
**SCOPE OF WORK**

The Scope of Work of the **BOARD** includes, but is not limited to, the following:

Operations: The **BOARD** will formulate its own rules of operation, based on the Dispute Review Board Operating Procedures, which shall be provided by the **AUTHORITY**. It is not desirable to adopt inflexible rules for the internal operation of the **BOARD**.

The **AUTHORITY** and the **CONTRACTOR** inform the **BOARD** of the unresolved dispute. The **BOARD** will meet until the unresolved dispute is resolved. The number and frequency of these meetings will be as mutually agreed to by the **AUTHORITY** and the **CONTRACTOR**.

A. Procedure and Schedules for Dispute Resolution: The referenced dispute will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by the **AUTHORITY** and the **CONTRACTOR** and the time periods stated below may be shortened in order to hasten resolution. Referral to the **BOARD** is accomplished by providing a position paper outlining the nature and scope of the dispute or claim and describing the basis for entitlement to the dispute or claim. Requests for equitable adjustment must be certified as required by 4-3.2. Claims that are referred to the **BOARD** must be in compliance with 5- 12.

a. The **CONTRACTOR** has objected to the decision, action, or order of the Engineer, with respect to the subject dispute and has filed a written protest and with the Engineer, stating clearly and in detail the basis for the objection and has referred the matter to the **BOARD**.

b. Upon receipt by the **BOARD** of a written duly preserved protest of a dispute from either the **AUTHORITY** or the **CONTRACTOR**, it will first be decided when to conduct the hearing. For this urgent matter, the **BOARD** will meet at its earliest convenience.

c. Either party furnishing any written evidence or documentation to the **BOARD** shall do so a minimum of 15 days prior to the date the **BOARD** sets to convene the hearing for the dispute, and will at the same time furnish copies of such information to the other party. If the **BOARD** requests any additional documentation or evidence prior to, during, or after the hearing, the **AUTHORITY** and/or **CONTRACTOR** will provide the requested information to the **BOARD** and to the other party.

d. The **CONTRACTOR** and the **AUTHORITY** will each be afforded an opportunity to be heard by the **BOARD** and to offer evidence.

e. The **BOARD's** recommendations for resolution of the dispute will be given in writing to both the **AUTHORITY** and the **CONTRACTOR**, within 15 days of completion of the hearing. In cases of extreme complexity, both parties may agree to allow additional time for the **BOARD** to formulate its recommendations. The **BOARD** will focus its attention in the written report to matters of entitlement and allow the parties to determine the monetary damages. Once Entitlement is determined, the parties should timely, within 60 calendar days, proceed to negotiate monetary changes. Upon both parties having made reasonable efforts to negotiate such monetary damages provided sufficient documentation is available, and such negotiations are at an impasse, the **BOARD** shall be notified of the impasse, and upon the request of both parties shall then proceed to schedule a hearing to make a recommendation as to monetary damages.

f. Within 15 days of receiving the **BOARD's** recommendations, both the **AUTHORITY** and the **CONTRACTOR** will respond to the other and to the **BOARD** in writing, signifying either acceptance or rejection of the **BOARD's** recommendations. The failure of either party to respond within the 15-day period will be deemed an acceptance of the **BOARD's** recommendations by that party and shall preclude any further pursuit of this issue before this **BOARD** or any successive **BOARD**. If the **AUTHORITY** and the **CONTRACTOR** are able to resolve the dispute with or without the aid of the **BOARD's** recommendations, the **AUTHORITY** will promptly process any required changes to the Construction Contract.

g. Should the dispute remain unresolved, either party may seek reconsideration of the decision by the **BOARD** only when there is new evidence to present. No provisions in this **AGREEMENT** will abrogate the **CONTRACTOR's** responsibility for preserving the claim in accordance with Standard Specification 5-12.

Although both the **AUTHORITY** and the **CONTRACTOR** should place great weight on the **BOARD's** recommendation, it is not binding on the parties. If the **BOARD's** recommendations do not resolve the dispute, all written recommendations of the **BOARD** will be admissible as evidence in any subsequent arbitration, or circuit proceedings, as provided by law.

B. **BOARD** Consideration of Disputes or Claims: The **BOARD** may request that written documentation and arguments from both parties be sent to each member and to the other party for study before the hearing begins.

Upon receipt by the **BOARD** of the written referral of a dispute, from either the **CONTRACTOR** or the **AUTHORITY**, the **BOARD** shall convene to review and consider the dispute or claim. The time and location of the **BOARD** hearing shall be determined by the **AUTHORITY**, the **CONTRACTOR**, and the **BOARD**. Both the **AUTHORITY** and the **CONTRACTOR** shall be given the opportunity to present their evidence and documentation at the hearing.

It is expressly understood that the **BOARD** members are to act impartially and independently in the consideration of the Contract provisions, and the facts and conditions surrounding any written referral of a dispute or claim presented to the **BOARD** by the **AUTHORITY** or the **CONTRACTOR**, and that the **BOARD's** recommendations concerning any such dispute or claim are advisory. **BOARD** members shall not discuss or communicate any matters relating to any aspect of the construction project except at duly scheduled meetings of the **BOARD** except for communications between the Chairman and other parties on administrative matters relating to the operation of the **BOARD**.

The third member of the **BOARD** will act as Chairman of all the hearings and meetings, or he/she may designate one of the other members. The **BOARD** will keep a formal record of its sessions during the consideration of the dispute. Formal records of the **BOARD** hearings may be transcribed by a court reporter if requested by one party and agreed upon by all parties. Audio and/or video recording of the meeting is discouraged. Such recordings may only be made at the **AGREEMENT** of all parties.

The **AUTHORITY** and the **CONTRACTOR** must each have a representative at the hearing. The **CONTRACTOR** will first present its analysis of the dispute or claim, followed by the **AUTHORITY's** position. Each party will then be allowed successive rebuttals until all aspects are fully covered. The **BOARD** members may ask questions, request clarification, or ask for additional data.

During the hearing, no **BOARD** member will express any opinion concerning the merit of any facet of the case.

At the conclusion of a hearing, the **BOARD** will meet in private to formulate recommendations, which must be supported by two or more members. All **BOARD** deliberations will be conducted in private, with all individual views kept strictly confidential. The **BOARD's** recommendations and discussions of its reasoning will be submitted as a written report to both parties. The recommendations will be based on the pertinent Construction Contract provisions and the facts and circumstances involved in the dispute or claim.

Either the **AUTHORITY** or the **CONTRACTOR**, or both, may seek reconsideration of a recommendation to the **BOARD**. However, reconsideration will be allowed only when there is new evidence to present.

C. **BOARD** Member Replacement: Should the need arise to appoint a replacement **BOARD** member; the replacement **BOARD** member shall be appointed in the same manner as the original **BOARD** members were appointed. The selection of a replacement **BOARD** member shall begin promptly upon notification of the necessity for a replacement and shall be completed within 30 calendar days. This **AGREEMENT** will be supplemented to indicate change in **BOARD** membership.

### III

#### CONTRACTOR RESPONSIBILITY

The **CONTRACTOR** shall furnish to the **BOARD** three sets of all pertinent documents which are or may become necessary for the **BOARD** to consider, except documents furnished by the **AUTHORITY**, to perform their function. Pertinent documents are any drawings or sketches, calculations, procedures, schedules, estimates, or other documents which are used in the performance of the work or in justifying or substantiating the **CONTRACTOR's** position. A copy of such pertinent documents must also be furnished to the **AUTHORITY**.

Except for its participation in the **BOARD's** activities as provided in the Construction Contract and in this **AGREEMENT**, the **CONTRACTOR** will not solicit advice or consultation from the **BOARD** or any of its members on matters dealing in any way with the project, the conduct of the work, or resolution of problems.

### IV

#### AUTHORITY RESPONSIBILITIES

Except for its participation in the **BOARD's** activities as provided in the Construction Contract and in this **AGREEMENT**, the **AUTHORITY** will not solicit advice or consultation from the **BOARD** or any of its members on matters dealing in any way with the project, the conduct of the work, or resolution of problems.

The **AUTHORITY** shall furnish the following services and items:

A. Contract Related Documents: The **AUTHORITY** shall furnish the **BOARD** three copies of all Construction Contract documents, supplemental **AGREEMENTs**, written instructions issued by the

**AUTHORITY** to the **CONTRACTOR**, or other documents pertinent to the performance of the Construction Contract and necessary for the **BOARD** to perform its function. A copy of such pertinent documents must also be furnished to the **CONTRACTOR**.

B. Coordination and Services: The **AUTHORITY**, in cooperation with the **CONTRACTOR**, will coordinate the operations of the **BOARD**. The **AUTHORITY**, through the Engineer, will arrange or provide conference facilities at or near the project site and provide secretarial and copying services.

## V TIME FOR BEGINNING AND COMPLETION

The **BOARD** is to remain in operation for a reasonable post-construction period following final acceptance of the project, but not to exceed the date the **AUTHORITY** administratively closes the CONSTRUCTION CONTRACT for construction of the project. Any disputes or claims that were not resolved prior to Financial Acceptance of the project pursuant to 5-11 must be referred to the **BOARD** within 90 calendar days after Final Acceptance on projects with an original Contract amount of \$3,000,000 or less, and within 180 calendar days after Final Acceptance on projects with an original Contract amount greater than \$3,000,000. Only duly preserved disputes or claims will be eligible to be heard by the **BOARD**. Failure to submit all disputes or claims to the **BOARD** within aforementioned timeframe after Final Acceptance constitutes an irrevocable waiver of the **CONTRACTOR**'s dispute or claim.

## VI PAYMENT

The **BOARD** members shall be paid by the **CONTRACTOR** for services rendered under this **AGREEMENT** as provided hereinafter. Such payments shall be full compensation for work performed or services rendered, and for all labor, materials, supplies, equipment, and incidentals necessary to the operation of the **BOARD**. The **BOARD** members shall comply with all applicable portions of 48 CFR 31 (Federal Acquisition Regulations: Contract Cost Principals and Procedures). The chairman shall transmit an invoice to the **CONTRACTOR**, with a copy to the **AUTHORITY**. **BOARD** members shall be paid for a meeting that is canceled with less than 5 working days advance notice unless the **BOARD** initiates such cancellation.

### A. All Inclusive Rate Payment:

Each **BOARD** Member will be paid \$1,300 per day for each day the **BOARD** meets for regularly scheduled project meetings. This daily rate includes salary and all expenses related to membership on the **BOARD**. Subsequent changes in the billing rate must be authorized by a Supplemental **AGREEMENT** to this **AGREEMENT**. The **AUTHORITY** may authorize in advance additional day(s) for payment to each **BOARD** member or to the Chairman of the **BOARD** when it is determined by the **AUTHORITY** that such compensation is necessary for the **BOARD** or the Chairman to perform their obligation effectively.

A per hearing cost of \$9,000 has been established by the **AUTHORITY** for providing compensation for all members of the Dispute Review **BOARD** for participation in an actual hearing. The **BOARD** chairman will receive \$3,500 for participation in the hearing while the remaining two members will receive \$2,750 each. The **AUTHORITY** and the **CONTRACTOR** will equally provide compensation to the **BOARD** for participation in an actual hearing. The **AUTHORITY** will compensate the **CONTRACTOR** \$4,500 as its contribution to the hearing cost. Such payment will be full and complete compensation to the **BOARD** members for all expenses related to the hearing. This includes travel, accommodations, meals, pre- and post- hearing work, review of position papers and any rebuttals, conducting the hearing, drafting and issuance of recommendations, readdressing any requests for clarification. It is not intended for hearings to last longer than a single day, however, in some cases they may. Any additional time and/or compensation for a hearing would only be allowed upon prior written approval of the **AUTHORITY** and the **CONTRACTOR**. If an additional day(s) is granted for the hearing, it will be at \$3,900 per day, regular meeting rate, payment of which is equally split between the **AUTHORITY** and the **CONTRACTOR**.

B. Inspection of Costs Records: The **BOARD** members shall keep available the cost records and accounts pertaining to this **AGREEMENT**, for inspection by representatives of the **AUTHORITY**, for a period of three years after final payment, at which time all such cost records and accounts shall be delivered to the **AUTHORITY** for further retention as may otherwise be required. If any litigation, claim, or audit arising out of, in connection with, or related to the CONSTRUCTION CONTRACT is initiated before the expiration of the three

year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records in completed.

## VII ASSIGNMENT OF TASKS OF WORK

The **BOARD** members shall not assign any of the work of this **AGREEMENT**.

## VIII TERMINATION OF AGREEMENT

This **AGREEMENT** may be terminated by mutual agreement of the **AUTHORITY** and the **CONTRACTOR** at any time, upon not less than four weeks' written notice to all other parties. **BOARD** members may withdraw from the **BOARD** by providing four weeks' written notice to all other parties. This **AGREEMENT** will remain in force until another Dispute Review **BOARD** Three Party **AGREEMENT** to replace it has been fully executed. **BOARD** members may be terminated for cause or without cause only by his/her original appointer; i.e., the **OWNER** may only terminate the **OWNER**-appointed member, the **CONTRACTOR** may only terminate the **CONTRACTOR**-appointed member, and the first two members must agree to terminate the third member, except in the instance of an apparent conflict of interest, when a member may be terminated for cause by a vote of both of the other two members plus either the **AUTHORITY** or the **CONTRACTOR**. In the event that the **CONTRACTOR** and the **AUTHORITY** cannot agree on a new **BOARD** within 60 days of the **BOARD**'s termination, the new **BOARD** will be selected by the THEA Director of Operations and Engineering and the President of Florida Transportation Builders Association.

## IX LEGAL RELATIONS

The parties hereto mutually understand and agree that each **BOARD** member in the performance of duties on the **BOARD** is acting in the capacity of an independent contractor and not as an agent or employee of either the **AUTHORITY** or the **CONTRACTOR**.

The **AUTHORITY** and the **CONTRACTOR** agree that no **BOARD** member shall be personally liable for any act or omission in the scope of their capacity as a **BOARD** member pursuant to this **AGREEMENT**, unless such **BOARD** member acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of their responsibilities hereunder.

This **AGREEMENT** creates no third-party rights on behalf of any person or entity.

## X VENUE, APPLICABLE LAW

In the event that any party deems it necessary to institute legal action or other proceedings to enforce any right or obligation under this **AGREEMENT**, the parties hereto agree that any such action against the **AUTHORITY** shall be brought in Hillsborough County and that any cause of action against the **CONTRACTOR** or **BOARD** Members shall be brought in the appropriate venue according to Florida law. The parties hereto agree that this **AGREEMENT** shall be interpreted in accordance with Florida law.

## XI PUBLIC RECORDS

Each **BOARD** member, **CONTRACTOR**, and the **AUTHORITY** shall allow public access to all documents, papers, letters, and other material made or received by the parties to this **AGREEMENT**, in accordance with the provisions of Chapter 119, Florida Statutes. Failure to grant such public access may be grounds for immediate unilateral cancellation of this **AGREEMENT** by the **AUTHORITY**. However, upon receipt of any such public records request, the parties hereto shall immediately notify the **AUTHORITY** and obtain prior written consent from the **AUTHORITY** before releasing such records.

The **BOARD** members shall maintain all documents, papers, letters, and other material made or received by the members pursuant to their performance pursuant to this **AGREEMENT** for a period of three years following the **AUTHORITY**'s final acceptance of the CONSTRUCTION CONTRACT work; or in the event that any litigation, claim, or audit arising out of, in connection with, or related to the CONSTRUCTION CONTRACT is initiated before the expiration of the three year period, all documents, papers, letters, and other material made or received by the members pursuant to their performance pursuant to this **AGREEMENT** shall be retained until such litigation, claim, or audit involving the records is completed; at which time all such documents, papers, letters, and other material shall be delivered to the **AUTHORITY** for further retention as may otherwise be required.

## **XII NO BONUS**

The parties hereto agree that they shall not agree to pay or receive any commission, percentage, bonus, or consideration of any nature, other than the payment provided for in Section VI above, for their performance and services under this **AGREEMENT**.

## **XIII NO CONFLICT**

The members of the **BOARD** agree individually that they do not now and during the term of this **AGREEMENT** will not have any direct or indirect ownership or financial interest in the company or firm that submitted a bid or a proposal respectively, the **CONTRACTOR**, the CEI consulting firm selected for this project, any subcontractor or supplier of the project, or with any other **BOARD** member. The members of the **BOARD** affirm and agree that except for services as a **BOARD** member on other **AUTHORITY** projects, that they have not for a period of two years prior to this CONSTRUCTION CONTRACT been an employee, subcontractor, or consultant to the **CONTRACTOR**, the CEI consulting firm selected for this project, any subcontractor or supplier of the project, or of another **BOARD** member, and that during the term of this CONSTRUCTION CONTRACT they shall not become so involved. The members of the **BOARD** also agree that they have not for a period of two years been employed by the **AUTHORITY**, or as a consultant for the **AUTHORITY**. Furthermore, the members of the **BOARD** affirm that they are not employed by the **CONTRACTOR** or CEI consulting firm that has on-going work or contracts pending with the **AUTHORITY**. Finally, the members of the **BOARD** agree that they are not a full-time employee of an **AUTHORITY** prequalified contractor or prequalified consultant. Should, during the life of the CONSTRUCTION CONTRACT, the **CONTRACTOR** or CEI consulting firm employing the **BOARD** member secure additional work with the **AUTHORITY**, the **BOARD** member should notify the **CONTRACTOR** and the **AUTHORITY** of such change and may continue to serve on the **BOARD** unless either the **AUTHORITY** or the **CONTRACTOR** have good cause to reject the member. The members of the **BOARD**, the **AUTHORITY**, and the **CONTRACTOR** agree that during the life of the CONSTRUCTION CONTRACT, no unilateral discussion will be had or agreement will be made between any **BOARD** member and any party to this **AGREEMENT** for employment after the CONSTRUCTION CONTRACT is completed.

## **XIV CERTIFICATION OF THE BOARD MEMBERS AND THE AUTHORITY**

Attached hereto as Exhibits are the "CERTIFICATION OF THE BOARD MEMBERS" and "CERTIFICATION OF TAMPA HILLSBOROUGH EXPRESSWAY AUTHORITY".

## **XVI E-VERIFY**

**CONTRACTOR:**

A. shall utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the **CONTRACTOR** during the term of the Construction Contract; and

B. shall expressly require any subcontractors performing work or providing services pursuant to the Construction Contract to likewise utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Construction Contract term.

IN WITNESS WHEREOF, the parties hereto have executed this **AGREEMENT** as of the day and year first above written.

**BOARD MEMBER**

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

Signature: \_\_\_\_\_

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

**BOARD MEMBER**

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

Signature: \_\_\_\_\_

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

**BOARD MEMBER**

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

Signature: \_\_\_\_\_

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

**CONTRACTOR**

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

Signature: \_\_\_\_\_

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

**TAMPA HILLSBOROUGH EXPRESSWAY AUTHORITY**

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

Signature: \_\_\_\_\_

Title: Director of Operations and Engineering

Approved as to Form Only this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
General Counsel

**EXHIBIT A  
CERTIFICATION OF BOARD MEMBERS**

The undersigned hereby certify that he/she represents the firm located at the indicated address and that neither the undersigned nor the firm represented has:

- a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for him/her or the firm indicated below) to solicit or secure this **AGREEMENT**; or
- b) agreed, as an express or implied condition for obtaining this **AGREEMENT**, to employ or retain the services of any firm or person in connection with carrying out this **AGREEMENT**; or
- c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for him/her or the firm indicated below) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this **AGREEMENT**; except as here expressly stated (if any):

I acknowledge that this certification is to be furnished to the Tampa Hillsborough Expressway Authority in connection with this **AGREEMENT** involving participation of Authority funds, and is subject to applicable state and federal laws, both criminal and civil.

_____ Name	_____ Signature	_____ Date
_____ Title	_____ Firm Address	
_____ Firm Represented		

_____ Name	_____ Signature	_____ Date
_____ Title	_____ Firm Address	
_____ Firm Represented		

_____ Name	_____ Signature	_____ Date
_____ Title	_____ Firm Address	
_____ Firm Represented		

**EXHIBIT B**  
**CERTIFICATION OF TAMPA HILLSBOROUGH EXPRESSWAY AUTHORITY**

I hereby certify that I am the Director of Operations and Engineering of the Tampa Hillsborough Expressway Authority, and that the above signatories have not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this **AGREEMENT** to:

- a) employ or retain, or agree to employ or retain, any firm or person; or
- b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Tampa Hillsborough Expressway Authority in connection with this **AGREEMENT**, involving participation of Authority funds, and is subject to applicable state and federal laws, both criminal and civil.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date