



Meeting of the Board of Directors

October 28, 2024 - 1:30 p.m.

**THEA Headquarters
1104 E. Twiggs Street
First Floor Board Room
Tampa, FL 33602**

For any person who wishes to address the Board, a sign-up sheet is provided at the Board Room entrance. Presentations are limited to three (3) minutes. When addressing the Board, please state your name and address and speak clearly into the microphone. If distributing backup materials, please furnish ten (10) copies for the Authority Board members and staff. Any person who decides to appeal any decisions of the Authority concerning any matter considered at its meeting or public hearing will need a record of the proceedings and, for such purpose, may need to hire a court reporter to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which an appeal is to be based.

I. Call to Order and Pledge of Allegiance

II. Public Input/Public Presentations

III. Consent Agenda

A. Approval of Minutes from the September 23, 2024, Board Meeting

B. Approval of Task Order for Nelson Mullins to provide legal services for the South Selmon Capacity Project - \$150,000

IV. Discussion/Action Items

A. Operations & Engineering – Bennett Barrow, Committee Chair – *Brian Pickard, P.E., Director*

1. Additional Inspection Services – Burgess & Niple - \$475,467

Purpose: To authorize Burgess & Niple to undertake additional inspection services.

Funding: Capital Budget - \$475,467

Action: Request the Board to authorize the Executive Director to execute a purchase order with Burgess & Niple for additional inspection services for \$475,467.

2. Cleaning and Staining the REL – Design Services – HNTB - \$484,226

Purpose: To execute a task order with our GEC (“HNTB”) to develop a design and scope for an invitation to bid to procure a contractor to perform the cleaning and staining work for the REL.

Funding: Capital Budget - \$484,226

Action: Request the Board to authorize the Executive Director to execute a task order with HNTB for \$484,226 to develop a design and scope to procure a contractor for the cleaning and staining of the REL.

3. FY25 East Selmon Resurfacing from 78th Street to Falkenburg Road

Purpose: To provide all the labor, materials, equipment, and incidentals necessary to mill and resurface the local lanes from 78th Street to Falkenburg Road in both directions.

Funding: Capital Budget

Action: Request the Board to:

- a) Approve the selection of the lowest bid from Hubbard Construction in the amount of \$2,433,772.56 for milling and resurfacing East Selmon from the 78th Street ramps to the Falkenburg Road ramps on the local lanes.

Firm	Amount
Hubbard Construction	\$2,433,772.56
CW Roberts	\$2,699,719.63
Superior Asphalt	\$3,074,421.74
Ajax Paving	\$3,295,081.55
Preferred Materials	\$3,525,993.40

- b) Authorize and direct staff to negotiate and execute a contract with the lowest responsible bid firm, Hubbard Construction. If negotiations are unsuccessful, staff shall negotiate with the next lowest bid firm. Contract is subject to review and approval of THEA Chief Legal Officer.

V. Team Reports

A. Operations & Engineering – *Brian Pickard, P.E., Director*

B. Planning & Innovation – *Bob Frey, Director*

C. Toll Operations – *Gary Holland, Toll Systems Manager*

D. Finance Quarterly Update – *Jeff Seward, Chief Financial Officer*

VI. Executive Reports

A. Executive Director – *Greg Slater, Executive Director*

1. Contract Renewals and Expirations

2. Director's Report

B. Chief Legal Officer – *Amy Lettelleir, Esquire*

C. Chairman – *Vince Cassidy*

1. Upcoming Meetings

- Board Meeting – November 18, 2024
- Board Meeting – December 16, 2024

VII. Old Business

VIII. New Business

IX. Adjournment

Tampa-Hillsborough County Expressway Authority
Minutes of the September 23, 2024, Board Meeting
1104 E. Twiggs Street
Tampa, FL 33602

The Tampa-Hillsborough County Expressway Authority held a public meeting at 1:30 p.m. on September 23, 2024, at THEA Headquarters, 1104 E. Twiggs Street in Tampa Florida. The following were present:

BOARD:

Vincent Cassidy, Chairman
Bennett Barrow, Vice Chairman
Mayor Jane Castor, Member
Commissioner Donna Cameron-Cepeda

STAFF:

Greg Slater
Amy Lettelleir
Bob Frey
Brian Pickard
Jeff Seward
Keisha Boyd
Tim Garrett
Shari Callahan
Charlene Varian
Chaketa Mister
Shannon Bush
Judith Villegas

Lisa Pessina
Emma Antolinez
Gary Holland
Pedro Leon
Liz Gray
Frederick Pekala
Brian McElroy
Brian Ramirez
Anna Quinones
Szabina Szenassy
Julie Aure

OTHERS:

Mark Creger, Public Trust
Josue Mazariegos, Infotect
Sally Dee, Playbook
Sarah Lesch, Playbook
Scarlett Sharpe, WSP
Nicole Dufva, WSP
Snehal Ambare, CDM Smith
Jim Drapp, HNTB
Hope Scarpinato, PFM
Matthew Sansbury, RBC
Suraj Patel, Infotect
James Fike, BCC
Steve Williams, Infotect
Joseph Saris, GMZ

Steve Ferrell, HDR
Xiao Li, PFM
Sarah Lesch, Playbook
Christina Matthews, WSP
Scarlett, Sharpe, WSP
Madison Baptiste, Playbook
Rick Patterson, Raymond James
John Generalli, Wells Fargo
Mark Easley, Lochner
Len Becker, HNTB
Tim Schock, Parsons
Alex Barne, RS&H

Call to Order and Pledge of Allegiance

Chairman Cassidy called the meeting to order at 1:41 pm, followed by the Pledge of Allegiance.

Chairman Cassidy announced the agenda would be reordered to move the action items to the end to allow time for a board member who is in route to arrive.

Public Input/Public Presentations

There was no public comment.

Team Reports

Strategy, Communications & Community Engagement – *Keisha Boyd, Director*

Ms. Boyd provided the Board with an update on the 12th Annual FAV Summit. The event had more than four hundred registrants. The publicity metrics for this event show media hits at 30 and audience reach at 84,301,945.

Publicity metrics for THEA overall from September 1-12, THEA had about twenty media mentions, with over three million in audience reach and over \$70 thousand in publicity value.

And finally, she updated the Board on social media followers, noting a 15% increase in followers since this time last year.

Toll Operations – *Tim Garrett, Interim Director*

Mr. Garrett provided an update on the August tolling statistics. He reported a 5.3% increase in overall traffic year over year for the month of August. Transactions continue to increase on the REL. Westbound traffic essentially remains the same with the REL having a 21% year-over-year increase and the East Mainline having a 3.8% year-over-year decrease. On the West extension, we continue to see an increase of 3.5% year over year, with a 1% increase on the West mainline.

Mr. Garrett presented the transponder statistics, noting total transactions of 6,655,409, of which 32% were Toll-By-Plate and 68% transponders.

Finally, he provided the Board with an introduction to THEA's Tolling Back Office System (TOBS) and the Operational Back Office System (OBOS), which will replace TOBS. The key takeaways are that the OBOS is being developed to be more scalable, flexible, user-friendly, and responsive. It has a modular design and enhanced data analytics & business intelligence.

After Mr. Garrett identified that OBOS may be a cloud-based solution or an on-premise solution, Chairman Cassidy asked why a vendor would decide where our data is stored. Shari Callahan, Director of IT & Security explained that the vendors will develop a

proposed design/solution and THEA will grade each proposal. THEA is looking at an eight-year original term contract with two two-year extensions. Storage could be in the cloud or on premises. Every proposal will be evaluated on the life-cycle cost. Mr. Garrett added that the system will include disaster recovery capabilities. It is potentially a different data center at a different location. From a security perspective – and equally secure.

Mr. Slater noted that THEA's plan was to have each vendor provide both cloud and on-premises solutions, but not all vendors provide both.

Unaudited FY2024 Budget and Revenue Report – *Jeff Seward - Director*

Mr. Seward presented the unaudited FY2024 Budget and Revenue Report and a Status Report on FY2025.

He noted that for the budget year that ended on June 30th THEA under collected by \$2.5 million, which can be attributed to the hurricane suspension from last year. Investment revenue was \$12 million higher than budgeted. This is due to the market environment in which our investments have been placed, the amount of cash we have in those accounts, and higher interest rates over the last year.

On the expenditure side, we were mostly on target. On the personnel side, we underspent because budgeted positions were not filled. We underspent the budget by \$1.4 million. We anticipate a debt service ratio of closing out at 2.72 (unaudited).

Mr. Seward discussed the capital program and pointed out that we spent \$9.6 million in preservation and budgeted \$33 million. This is primarily due to a reexamination of our preservation program throughout the year. As we become more mature in our asset management program, items that we felt needed to be replaced, or assessed or fixed did not. We were able push that preservation work further out into the future, thus the reason we underspent in that area.

On the enhancement of capital, we budgeted \$103 million and spent \$20 million. That can almost all be attributed to the South Selmon Capacity project not hitting the street. Mr. Seward noted the \$4.9 million under other expenditures and explained that every year we reassess the expenditures and in some cases items that were budgeted in capital have been deemed to not be capital. He used the example of a PD&E study that does not result in a capital expenditure or capital program.

Finally, Mr. Seward noted that the numbers the Board will see in December will be a little different based on some accrual on revenues, based on depreciation numbers and so forth, but as far as the budget is concerned, we ended the year \$1.4 million under spending, a higher debt service ratio, and an over collection of revenues mainly due to investment into interest income of \$9.5 million. He added that he will begin quarterly updates to the board in October.

Executive Reports

Contract Renewals and Expirations – *Greg Slater, Executive Director*

Mr. Slater reported that THEA has two contract renewals. One is the first one-year renewal with Millennium Floor Care for janitorial services, and the other is the second one-year renewal with Valor Intelligent Processing for delinquent toll account collection services.

Director's Report – *Greg Slater, Executive Director*

Mr. Slater reported that THEA recently conducted the final page turn for the South Selmon Capacity Project and we are looking forward to getting it in front of industry in a few weeks, then out on the street. The industry forum is scheduled for October 15.

He also mentioned the FAV summit, noting we did panels on our I-4 FRAME project with the City of Tampa and FDOT.

Mr. Slater welcomed Brian McElroy, THEA's new Project Manager, as Judith Villegas officially moves over to the ITS manager role. He thanked Judith for her outstanding dedication for going above and beyond and demonstrating outstanding leadership and problem solving.

Mr. Slater also recognized Elizabeth Gray who has successfully moved more than thirty vendors from manual check payments to sustained P-card payments, resulting in more than \$224,000 toward our rebate goal.

Finally, Mr. Slater made note of his upcoming travel:

Tampa Bay Chamber Benchmarking Trip to Dallas
USDOT Expert Task Group Meeting in DC
IBTTA in Cleveland to accept a Toll Excellence Award

Consent Agenda

Approval of Minutes from the August 26, 2024, Board Meeting

Chairman Cassidy requested a motion to approve. Mr. Barrow moved approval, seconded by Mayor Castor.

The motion passed unanimously.

Toll Operations – Bennett Barrow, Committee Chair - *Tim Garrett, Interim Director*

Operational Back Office System Procurement Support – BCC - \$148,000

Mr. Garrett presented an item to procure support for THEA and THEA's evaluation committee in the response to questions posed by proposers, review expanded letters of interest (ELORs) and technical proposals, provide Technical Advisors to evaluation committee members, and participate in technical presentations during the procurement phase of the OBOS project.

The requested action is for the Board to authorize the Executive Director to execute a task order with BCC Engineering for \$148,000 from the capital budget to provide technical support for the Operational Back Office System Procurement from advertisement through procurement.

Chairman Cassidy requested a motion to approve. Mr. Barrow moved approval, seconded by Mayor Castor.

The motion passed unanimously.

Budget & Finance – Commissioner Cepeda, Committee Chair – Jeff Seward, Director

Investment Policy Changes (Presentation by Mark Creger, Public Trust Advisors)

Mr. Seward introduced the item noting the policy updates include three specific areas.

1. Compliance - will align THEA's policy with state statutory requirements and Government Finance Officers Association (GFOA) model investment policy.
2. Industry best practices - incorporate industry standards and robust risk management to strengthen the investment strategy.
3. Potential for enhanced long-term returns - expand eligible investments to optimize long-term earnings potential while prioritizing safety and liquidity.

Mr. Seward introduced Mr. Mark Creger of Public Trust Advisors who presented the proposed recommended updates to the Investment Policy to bring it up to industry best practices. He reviewed the highlights of the proposed changes.

- Added a new Section 5 – Standard of Care
- Added Section 6 on Indemnification
- Updated Section 10 regarding authorized investment institutions and dealers.
- Expanded liquidity section.
- Expanded diversification section.

Chairman Cassidy inquired about Mr. Creger's reference to maturity characteristics. Mr. Creger clarified, noting that THEA's policy limits the maximum average maturity of its overall program to three years. So certain of the strategies we are managing involve structuring the maturities between one and three years and looking at the performance of that, versus a comparable benchmark.

The Chairman asked if, prior to this change, what was the duration. Mr. Creger confirmed it was three years.

Mr. Creger continued highlighting the proposed changes.

- Added a section requiring competitive bidding of investment securities.
- Added a section on prohibited investment practices.
- Added a glossary.
- Will also add a questionnaire regarding any investments in local government investment pools or other pooled investment vehicles that the authority may consider for investment.

Chairman Cassidy requested a motion to approve. Mr. Barrow moved approval, seconded by Mayor Castor.

Ms. Lettelleir noted that the indemnification regarding employees will not be included, so the policy the Board will adopt will not include the indemnification component. She also

clarified the Chairman's previous question regarding number of years – confirming the policy states “shall invest only in securities with either a final maturity or weighted average life of five years or less. Additionally, the average maturity of the total portfolio may not exceed three years.”

The motion passed unanimously.

Before moving on to the next agenda item, the Chairman questioned if the Board should consider forming an investment committee.

Mr. Slater agreed a discussion about committee structure is warranted.

Investment Grade Traffic and Revenue Analysis – Stantec

Mr. Seward gave an update on why we need this analysis. We have not had a full investment grade TNR since 2015, and the Expressway has evolved since then with the addition of the Selmon West Extension and the Slip Ramps. We have also endured COVID, and we are seeing a change in traffic patterns that expands beyond commuter traffic. An investment grade T&R will provide a fresh look at utilization of the Expressway before we go out to market for future bonds, especially in support of the work program, but in particular, the South Selmon Capacity Project – it will give us a new baseline from which to move forward.

Mr. Frey agreed and gave an overview of what the analysis will provide, including model validation through traffic counts.

Mr. Seward requested the Board to authorize the Executive Director to execute a task order with Stantec in an amount not to exceed \$375,000 from the capital budget for the investment grade traffic and revenue analysis in advance of the FY 2025 THEA Work Program.

Chairman Cassidy requested a motion to approve. Mr. Barrow moved approval, seconded by Mayor Castor.

The motion passed unanimously.

General Counsel – Amy Lettelleir, Esquire

Human Resources Policy Changes

Ms. Lettelleir presented the proposed updates to the Human Resources (HR) Policy to better align with organizational growth, which includes the addition of a Chief Operating Officer.

The requested action is for the Board to adopt the HR Policy changes as amended.

Chairman Cassidy requested a motion to approve. Mr. Barrow moved approval, seconded by Mayor Castor.

The motion passed unanimously.

Ms. Lettelleir added that she had the opportunity to attend the Global Tolling Summit and moderate the panel for enhancing the customer experience and that there is much to learn from the European tolling industry.

Chairman – *Vince Cassidy*

Upcoming Meetings

- Board Workshop – October 14, 2024 - *Cancelled*
- Board Meeting – October 28, 2024

Old Business

No old business.

New Business

No new business.

Adjournment

With no further business, the meeting adjourned at 2:27 p.m.

APPROVED: _____ **ATTEST:** _____
Chairman: Vince Cassidy **Secretary: Bennett Barrow**

DATED THIS 28TH DAY OF OCTOBER 2024.

AGREEMENT
Between
TAMPA-HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY
and
NELSON MULLINS RILEY & SCARBOROUGH LLP
for
LEGAL COUNSEL SERVICES
CONTRACT NO. L-4423

THIS AGREEMENT is made and entered into as of the 13th day of February, 2024 (**"Effective Date"**), by and between the **TAMPA-HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY**, a public body politic and corporate and agency of the State of Florida, organized and existing under the Laws of Florida (**"Authority"**), whose address is 1104 East Twiggs Street, Suite 300, Tampa, Florida 33602, and **NELSON MULLINS RILEY & SCARBOROUGH LLP ("Counsel")**, a corporation duly existing under the laws of the State of Florida, whose local address is 390 N. Orange Avenue, Suite 1400, Orlando, Florida 32801.

WHEREAS, the Authority is created and established to construct, reconstruct, improve, extend, repair, maintain, and operate the "Expressway System", pursuant to Part IV, Chapter 348, Florida Statutes; and

WHEREAS, pursuant to Section 348.54, Florida Statutes, the Authority has been granted the power to make contracts of every name and nature and to execute all instruments necessary or convenient for the conduct of its business and for carrying out the purposes of the Authority; and

WHEREAS, in response to the Authority's competitive solicitation process known as "RFQ I-1923, Legal Counsel Services" Counsel submitted its Response Package on December 12, 2023 ("Proposal"); and

WHEREAS, the Authority has identified Nelson Mullins Riley & Scarborough LLP as competent, qualified, and duly authorized to practice law in the State of Florida and desires to provide professional legal services to the Authority according to the terms and conditions stated herein as more particularly described in the Scope of Services, as contained in Exhibit "A" and incorporated herein by reference; and

WHEREAS, the Authority agrees to compensate Counsel for the services, as authorized and described herein, and Counsel agrees to perform such services in accordance with the fee schedule attached hereto and incorporated herein by reference as Exhibit "B"; and

NOW, THEREFORE, in consideration of the mutual covenants herein made and the benefits to accrue to the parties, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. RECITALS.

1.01 The above recitals are true and correct and are hereby incorporated by reference into the body of this Agreement.

2. SERVICES AND PERFORMANCE.

2.01 The Authority hereby retains Counsel pursuant to the terms set forth in this Agreement and Services to furnish professional services and perform those tasks generally described as legal services related to the Authority's needs and such other matters as the Authority may assign to Counsel from time to time, including, but not limited to government counsel legal services, government procurement law services, labor and employment law, real estate law, construction law, cyber security law and general litigation services, and as further described in the Scope of Services as contained in Exhibit "A" (the "Scope of Services").

2.02 The services under this Agreement will be requested by the Authority on an as-needed basis. The Authority does not guarantee that any or all of the services described in this Agreement or in the Scope of Services will be assigned during the term of this Agreement. The Authority has not made any representation or assurance to Counsel as to the total compensation to be paid to Counsel under this Agreement.

2.03 It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement may arise from time to time. The Authority hereby designates its General Counsel as the Authority employees to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. The designated representatives shall have the authority to transmit instructions, receive information, and interpret and define the Authority's policy and decisions pertinent to the Scope of Services covered by this Agreement.

3. RESPONSIBILITIES OF COUNSEL.

3.01 Counsel agrees to timely provide the professional services required to assist the Authority in the Scope of Services.

3.02 Counsel shall, at its sole expense, keep abreast of statutes, regulations, codes, tax codes and applicable case law in connection with its provision of the Scope of Services to the Authority.

3.03 Counsel designates Joseph B. Stanton as the primary attorney (the "Project Manager") to provide the Scope of Services to the Authority and will be assisted from time to time by other members of the firm, as deemed appropriate to the needs of a particular transaction.

3.04 Counsel agrees to utilize associates and legal assistants/paralegals, under the supervision of counsel where appropriate to accomplish cost effective performance of the Scope of Services.

3.05 It shall be the responsibility of Counsel to specifically request all required information and to provide itself with reasonably sufficient time to review information so as not to delay without good cause performance of the Scope of Services under this Agreement.

3.06 Counsel shall be responsible for the professional quality, technical accuracy, competence and methodology of the Scope of Services provided under this Agreement.

3.07 Before making any additions or deletions to the Scope of Services described in this Agreement, the parties shall negotiate any changes or revisions to such Scope of Services and any necessary cost changes and shall enter into a supplemental written agreement providing for such modifications and the compensation to be paid therefor. Such supplemental agreement(s) are subject to the approval of the Authority's governing Board in accordance with the Authority's Policy if the associated compensation will exceed the approved budget for the Scope of Services.

3.08 Counsel shall function as an extension of the Authority's staff by providing qualified technical and professional personnel to perform the Scope of Services assigned under the terms of this Agreement. Counsel shall be expected to operate without extensive oversight and direction and to represent, advance, and further the interests of the Authority throughout all aspects and phases of the Scope of Services described in this Agreement. Counsel shall, if requested by the Authority, fully support the Authority in its dealings with contractors and suppliers, engineers and other counsels, the Authority's General Counsel and accountants, financial advisors, traffic and revenue advisors, rating agencies and underwriters, governmental entities, and the public, all in accordance with the standards customarily possessed and exercised by a practicing member of the legal profession enjoying a favorable national reputation and currently practicing under similar circumstances.

3.09 Counsel's Proposal submitted for this engagement was evaluated, in part, based upon the qualifications of the Counsel's organization and upon the qualifications of key personnel presented in the Proposal. Counsel agrees and acknowledges that it will provide the full complement staff required to perform the Scope of Services, including the specific individuals named in its Proposal. The specific key personnel named in Counsel's proposal shall remain assigned for the duration of this Agreement, unless otherwise agreed to in writing by the Authority.

3.10 In the event Counsel proposes to substitute any of the key personnel, the individual(s) proposed as substitute(s) must demonstrate equal or superior qualifications and experience as required to successfully perform such duties. The Authority shall have the sole right to determine whether key personnel proposed as substitutes are accepted and qualified to work on the Scope of Services.

3.11 Counsel agrees to provide the Scope of Services in accordance with the generally accepted standards of ethical and professional practice and in accordance with all applicable laws, rules, regulations, ordinances, codes, decrees, policies, standards or other guidelines issued by those governmental agencies which have or may claim jurisdiction over all or any portion of the Scope of Services. Counsel has represented to the Authority during the selection process that Counsel possesses that level of skill, knowledge, experience, and expertise that is required to perform the Scope of Services.

3.12 Counsel shall perform the Scope of Services to the reasonable satisfaction of the Authority. All questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement regarding the prosecution and fulfillment of the Scope of Services or the character, quality, amount, or value thereof, which cannot be settled by mutual agreement of the parties shall be first attempted to be resolved by non-binding mediation, then settled by recourse to litigation under Florida Law.

3.13 Counsel covenants and agrees that it and its employees will be bound by the standards of conduct provided in applicable Florida Statutes and applicable rules of the Florida Bar as they relate to Scope of Services performed under this Agreement.

3.14 The Scope of Services of Counsel has been and will be rendered as an independent contractor and not as an employee. In this regard, Counsel shall not be deemed as an employee of the Authority for purposes of any tax or contribution levied by the Federal Social Security Act or any corresponding state law with respect to employment or compensation for employment, and Counsel shall file all tax forms required of an independent contractor.

3.15 The Authority will be entitled at all times to be advised, at its request, as to the status of work being done by Counsel and of the details thereof. Coordination will be maintained by the Counsel with the Authority, or other agencies interested in the engagement on behalf of the Authority.

4. TERM.

4.01 Subject to the termination provisions set forth in this Agreement, this Agreement shall begin on the Effective Date and shall continue in effect for a period of three (3) years with the option to renew for two (2) additional one (1) year terms. The renewal options, if exercised, will be in the form of a written Purchase Order which requires Counsel's signature denoting its acknowledgment and acceptance to extend the Agreement for the subsequent one (1) year term under the same terms and conditions.

5. COMPENSATION AND PAYMENT.

5.01 In consideration of the promises and the faithful performance by Counsel of the Scope of Services under this Agreement, the Authority agrees to pay Counsel a fee based on a "fixed-fee" per transaction basis, said fee shall be based on the Fee Schedule attached hereto as Exhibit "C". Any services not directly related to a specific transaction will be billed by Counsel on a hourly rate listed on the Fee Schedule.

5.02 For services under this Agreement where Counsel is being compensated per the "Time Basis Method", the Authority shall compensate Counsel for the actual work hours required to perform the services authorized. Payment for services billed on a Time Basis Method shall be made to Counsel each month for the immediately preceding month's services. Counsel shall provide an itemized invoice based on actual services rendered. Counsel shall be compensated based on the Fee Schedule attached hereto as Exhibit "C".

5.03 Reimbursable expenses shall be paid in addition to the payment due under Paragraphs 5.01 and 5.02 above and shall include actual expenditures made by Counsel, its

employees or its professional Counsels in the interest of the work effort for the expenses listed in the following subsections; provided; however, that all reimbursements of expense shall be subject to the Authority's policies and procedures, including those for travel expenses:

(a) Reasonable expenses of transportation, long distance calls and facsimile transmissions.

(b) Reasonable expense for reproductions, postage and handling of material associated with the work effort.

(c) If authorized in writing in advance by the Authority, the reasonable costs of other expenditures made by Counsel in the interest of the Scope of Services provided under this Agreement.

5.04 The parties hereto do hereby acknowledge that the fees described in this Agreement are based on the proposed fees to be paid to Counsel.

5.05 Counsel shall invoice the Authority monthly. The Authority shall pay Counsel within thirty (30) days of receipt of such valid invoice.

5.06 Counsel shall submit one (1) copy of its monthly invoice in a form acceptable to the Authority no more than thirty (30) calendar days after the end of the billing period. Invoices based on services provided on a Time Basis Method must be submitted to the Authority in detail sufficient for a proper pre-audit and post-audit thereof.

5.07 When reimbursement is sought for pre-authorized travel expenses, such invoices shall be submitted and paid within the guidelines of Section 112.061, Florida Statutes.

5.08 If a payment is not made to Counsel within forty (40) days of receipt of an approved invoice, a separate interest penalty at a rate established pursuant to Section 218.74, Florida Statutes, will be due and payable to Counsel. Invoices that are returned to Counsel because of preparation errors or uncompleted or services not in compliance with the terms herein will result in a delay in the payment and are not subject to the 40-day payment provision.

5.09 Within ten (10) business days of receipt of either services or invoice, whichever is later, the Authority shall notify Counsel if such services or invoice is unacceptable. The Authority reserves the right to withhold payment for services not completed, or services not completed in accordance with the terms herein, or services that are deemed inadequate or untimely by the Authority. Any payment withheld will be released and paid to Counsel within a reasonable time when services are subsequently satisfactorily performed.

5.10 Records of costs incurred under terms of this Agreement will be maintained by Counsel for the entire term of the Agreement and for a period of three (3) years after the later of: (a) the end of the term of this Agreement; or (b) until all claims (if any) regarding the Agreement are resolved. Incomplete or incorrect entries in such records shall be grounds for disallowance by the Authority of any fees, expenses, or costs based upon such entries. Records of costs incurred shall include Counsel's general accounting records and project records, together with supporting

documents of Counsel performing services under the Agreement, and all other records of Counsel that are considered necessary by the Authority for a proper audit.

5.11 Effect of Payments. No payment by the Authority shall relieve Counsel of its obligation to deliver timely the Scope of Services required under this Agreement. If after approving or paying for any service, product, or deliverable, the Authority determines that said service, product or deliverable does not satisfy the requirements of this Agreement, the Authority may reject same and, if Counsel fails to correct or cure the same within a reasonable period of time and at no additional cost to the Authority, Counsel shall return any compensation received therefore. No compensation shall be made for revisions to Counsel's services or deliverables required due in any way to the error, omission, or fault of the Counsel, its employees, agents or subcontractors. In addition to all other rights provided in this Agreement, the Authority shall have the right to set off any amounts owed by Counsel pursuant to the terms of this Agreement upon providing the Counsel prior written notice thereof.

5.120 For this purpose, the end of the Agreement is the date of final billing or acceptance of the work by the Authority, whichever is later.

6. INDEMNITY.

6.01 Counsel will indemnify, save, and hold harmless the Authority, its members, officers, agents, representatives, and employees from any claim, loss, suit, action, demand, liability, damage, cost, charge, and expense, including but not limited to reasonable attorneys' and paralegal fees (at trial and on appeal), to the extent caused by any negligent act, error, omission, recklessness, or intentional misconduct by Counsel, its agents, employees, or sub-counselors during the performance of Scope of Services under this Agreement. Counsel, its employees, agents or subconsultants shall not be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Authority or any of its officers, agents, employees or other professionals retained by the Authority during the performance of this Agreement.

6.02 If either party receives a notice of claim for damages that may have been caused by Counsel in the performance of services required of Counsel under this Agreement, such party shall promptly evaluate the claim and report its findings to each other. The Authority and Counsel will evaluate the claim and report their findings to each other within ten (10) business days from the date the last party received notice of such claim. The Authority's failure to notify Counsel of a claim within ten (10) business days will not release Counsel from any of the requirements of this section upon subsequent notification by the Authority to Counsel of the claim.

6.03 The parties agree that one percent (1%) of the total compensation to Counsel for performance of this Agreement is the specific consideration from the Authority to Counsel for the Counsel's indemnity agreement.

7. INSURANCE.

7.01 Counsel shall not commence any work until insurance of the types listed in Attachment 2, Insurance Requirements, Coverages and Limits of Exhibit "A" have been obtained.

Counsel agrees to provide Certificate(s) of Insurance to the Authority. Such insurance shall be maintained in full force and effect during the term of this Agreement or for a longer term as may be otherwise provided hereunder. All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable to the Authority. All insurance coverages required of the Counsel shall be primary over any insurance or self-insurance program carried by the Authority. The Authority's approval or disapproval of Counsel's insurance shall not release Counsel and of its respective obligations to exercise due care in the performance of their duties.

7.02 The Certificate of Insurance shall include the following statement: "The policy(ies) will not be cancelled or materially changed during the period of coverage without at least thirty (30) days prior written notice addressed to the Authority at the address set forth in this Agreement or such other address as may hereafter be specified. The Authority reserves the right to review a copy of such policy or policies upon request.

7.03 The Authority agrees that if more than one entity is providing legal services, each firm shall independently be liable to the Authority for any negligence or professional malpractice committed by the respective entity's employees and that no law firm shall have any cross-liability or responsibility for any negligence or professional malpractice committed by another acting separately or in a co-counsel relationship.

8. TERMINATION AND DEFAULT.

8.01 The Authority may terminate this Agreement unilaterally in whole or in part at any time the Authority deems it in its interest to effectuate such termination by providing thirty (30) days written notice of such intention. The Authority also reserves the right, with or without cause, to terminate any one or any combination of services to be rendered by Counsel without terminating the Agreement. Termination of the Agreement by the Authority shall occur as follows:

(a) Termination for Cause. If the Authority determines the performance of Counsel is not in compliance with the terms herein, the Authority may notify the Counsel of the deficiency with the requirement that the deficiency be corrected within a specified time ("Corrective Period"), but not less than 10 days. Upon Counsel's failure to correct the stated deficiency, the Agreement will be terminated at the end of the Corrective Period.

(b) Termination Without Cause. If the Authority opts to terminate the Agreement or portions thereof for no stated reasons, the Authority will notify Counsel of such termination, with instructions as to the effective date of work stoppage or specify the stage of work at which the Agreement is to be terminated.

8.02 If the Agreement is terminated under these provisions before performance is completed; Counsel will be paid for the services provided and expenses incurred in compliance with the requirements of this Agreement to the date of termination. Payment is to be on the basis of substantiated costs, not to exceed an amount, which is the same percentage of the contract price as the amount of Services satisfactorily completed called for by the Agreement. All Services in progress shall be deemed the property of the Authority and shall be promptly delivered at no

expense to the Authority at the address set forth herein, unless directed in writing to another location.

8.03 Counsel may cancel this Agreement only by mutual consent of both parties.

9. MISCELLANEOUS PROVISIONS.

9.01 **Ownership of Documents.** All legal opinions or any other form of written instrument or document that may result from Counsel's services or have been created during the course of counsel's performance under this Agreement shall become the property of the Authority after final payment is made to Counsel; however, Counsel retains the right to retain copies of its work product and to use same for appropriate purposes. Counsel shall incorporate a similar provisions into its separate arrangement with co-counsel granting ownership to the Authority of such written instrument or document that may result from co-counsel's services.

9.02 **Public Entity Crime Information Statement.** Counsel represents that it is not currently on the convicted vendor list as provided in its proposal under "Public Entity Crime Information Statement." Counsel also represents that it shall notify the Authority immediately if, during this Agreement, it is placed on said list. A person or affiliate who has been placed on the said list following a conviction for a public entity crime may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

9.03 **Publicity.** No information relative to the existence or the details of the Scope of Services shall be released by Counsel, either before or after completion of any such services, for publication, advertising or any commercial purposes without Authority's prior written consent unless otherwise required by applicable law.

9.04 **Public Records.** Counsel shall comply with the provisions of Chapter 119, Florida Statutes, and shall permit public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement. Upon receipt of any such public record request, Counsel shall immediately notify the Authority of such request and fully cooperate with the Authority in responding to such request. Failure of Counsel to grant such public access will be grounds for immediate termination of this Agreement by the Authority.

9.05 **Audit Right.** Authority shall have the right to audit the books, records, and accounts of Counsel that are related to this Agreement. Counsel shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Scope of Services provided under this Agreement.

9.06 **Record Retention.** Counsel shall make available records, at reasonable times for examination and audit by Authority, financial records, supporting documents, statistical records, and any other documents including books, documents and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the Authority and/or the governmental agencies providing grant funds pertinent

to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable.

9.06.1 If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by Authority to be applicable to Counsel's records, Counsel shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Counsel. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for Authority's disallowance and recovery of any payment upon such entry.

9.07 **Unauthorized Aliens.** The Authority will consider the employment by Counsel of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation will be cause for unilateral cancellation of this Agreement, by the Authority, if Counsel knowingly employs unauthorized aliens.

9.08 **Nondiscrimination, Equal Employment Opportunity, and Americans with Disabilities Act.** During the performance of services under this Agreement, Counsel agrees that it will comply with all federal, state, and local laws and ordinances applicable to the services or payment for services thereof, and will not discriminate against any employee or applicant for employment because of race, age, creed, color, gender, national origin, or disability.

9.08.1 Counsel agrees that it will comply with all federal, state and local laws and ordinances applicable to the services or payment for services thereof and will not unlawfully discriminate against any person in its operation and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the American with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by Authority, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

9.08.2 Counsel's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

9.08.3 Counsel shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, Counsel shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, terminal, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

9.08.4 Counsel shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

9.08.5 Counsel shall in all solicitations or advertisements for employees placed by or on behalf of Counsel state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin, or state that Counsel is an "Equal Opportunity Employer".

9.08.6 Counsel agrees to and shall post in conspicuous places, available to employees and applicants or employment notices setting forth the provisions of these Equal Employment Opportunity Clauses.

9.09 **E-Verify.** Counsel shall utilize the U.S. Department of Homeland Security's E-Verify System (www.uscis.gov) in accordance with the terms governing use of the system to confirm the employment eligibility of:

(a) All persons employed by Counsel during the term of the Contract to perform employment duties within Florida; and

(b) All persons assigned by Counsel to perform work pursuant to this Agreement with the Authority.

9.09.1 Counsel shall provide proof of registration in the E-Verify system to the Authority upon execution of this Agreement. Documentation evidencing Counsel's registration in the E-Verify system shall be incorporated herein and made a part hereof as Exhibit "F".

9.10 **Drug-Free Workplace.** Counsel agrees and certifies that it either has or that it will establish a drug-free work place.

9.11 **SBE Policy.** The Counsel agrees to enhance contracting opportunities for Small Business Enterprises, as defined in the Authority's SBE Policy adopted on February 25, 2002, (as amended), attached as Attachment 1 of Exhibit "A," and incorporated herein by reference. Counsel agrees to comply with the Authority's SBE Policy in its efforts to achieve its anticipated level of SBE participation, as proposed in its Proposal on Form 6, Anticipated SBE Participation Statement of Exhibit "B".

9.12 **Amendment.** No waiver, alternation, consent or modification of any of the provisions of this Agreement, including any change in the Scope of Services, shall be binding unless made in writing and duly approved and executed by the parties hereto.

9.13 **Entire Agreement.** This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein and this

Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.

9.14 **Rights at Law Retained.** The rights and remedies of the Authority, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

9.15 **Severability.** It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid.

9.16 **Successors and Assigns.** Authority and Counsel bind themselves, their successors, assigns, executors, administrators and other legal representatives to the other party hereto and to successors, assigns, executors, administrators and other legal representatives of such other party in respect to all terms and conditions of this Agreement.

9.17 **Assignment:** Counsel shall not assign, or transfer their rights, duties, and obligations provided for herein, nor allow such assignment or transfer by operation of law or otherwise without the prior written approval of the Authority. The delegation by Counsel of certain assignments or tasks under the Scope of Services to co-counsel shall not be deemed an assignment of this Agreement for purposes of this Section.

9.18 **Loss of Essential License.** The parties agree that any occurrence, whether within or beyond the control of Counsel, which renders one or more key personnel incapable of performing the duties and obligations required hereunder, including the loss or suspension of license to practice law in Florida, shall constitute an extraordinary breach of this Agreement and shall give the Authority the right to terminate this Agreement immediately upon written notice to Counsel. It shall be solely within the discretion of the Authority whether the affected member of Counsel's law firm is considered key personnel for the purposes of this Agreement. This Section shall apply irrespective of the reason for the loss or suspension of any essential license.

9.19 **Insolvency.** If Counsel shall file a petition in bankruptcy or shall be adjudged bankrupt, or in the event that a receiver or trustee shall be appointed for Counsel, the parties agree that the Authority may immediately terminate this Agreement with respect to the party in bankruptcy or receivership.

9.20 **Contingency Fee.** Counsel warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Counsel, 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 Counsel, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, Authority shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

9.21 **Waiver of Breach and Materiality.** Failure by Authority to enhance any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9.22 **Scrutinized Companies:** Due to Federal requirements having precedence, Section 287.135 of the Florida Statutes prohibiting governmental entities from contracting for goods and services of \$1 million or more with companies that are on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, Iran Terrorism Sectors List, or is engaged in business operations in Cuba or Syria has been vacated for this engagement.

9.23 **Venue.** The parties agree that venue lies in Hillsborough County, Florida, for any action brought under the terms of, or to enforce, this Agreement; and the Counsel hereby waives any and all privileges and rights it may have under Chapter 47, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule or case law, including, but not limited to those grounded on convenience.

9.24 **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Judicial Circuit of Hillsborough County, Florida, the venue situs, and shall be governed by the laws of the State of Florida.

9.25 **Legal Fees and Costs.** The parties agree that in the event that it should become necessary for either party to employ an attorney to enforce any of its rights hereunder, the prevailing party shall be entitled to reimbursement of all costs and expenses, including attorney's fees and paralegal fees (at both trial and appellate court levels) which may reasonably be incurred or paid at any time or times by it in connection therewith.

9.27 **Counterparts.** This Agreement may be executed in several counterparts and each counterpart shall constitute an original of this Agreement.

9.28 **Truth-in-Negotiation.** Signature of this Agreement by Counsel 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 as of the date of this Agreement. The original Agreement price and any additions thereto shall be adjusted to exclude any significant sums, by which the Authority determines the Agreement price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such Agreement adjustments shall be made within one (1) year following the end of this Agreement.

10. **ALTERNATIVE DISPUTE RESOLUTION.** In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exercise best

efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among all parties participating.

11. NOTICES.

11.01 All notices or other communications regarding this Agreement shall be made in writing and shall be deemed properly delivered to the addressee at the address set forth in this Agreement or such other address as may hereafter be specified in writing by (a) hand delivery, (b) courier service or overnight service, (c) facsimile transmittal, (d) mailing of such notice or (e) by email transmission.

11.02 All notices shall be effective upon receipt.

12. CAPTIONS.

12.01 Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, extend or describe the scope of this contract or the intent of any provision hereof.

13. ATTACHMENTS.

13.01 The documents listed below, hereto after known collectively as the "Contract Documents" are expressly agreed to be incorporated herein by reference, the same as though fully written herein or attached hereto, and made a part of without being limited thereto, this "Agreement" consists of the following:

Exhibit "A" Scope of Services


Exhibit "B" Fee Schedule

Exhibit "C" Certificate of Insurance

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this instrument to be signed and witnessed by their respective duly authorized officials as all the dates set forth below.

**TAMPA-HILLSBOROUGH COUNTY
EXPRESSWAY AUTHORITY**


By: 
Greg Slater
Executive Director

Date: 2/9/24

Authorization as to availability of funds:


Jeff Seward, Director of Finance

Approved as to form and sufficiency:


Amy Lettelle, Esq. General Counsel

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

By: 

Date: 2/1/2024

Witnesses to the signature of Nelson Mullins Riley
& Scarborough LLP

Signature: 

Printed Name: Shelly Bradley

EXHIBIT "A"

SCOPE OF SERVICES

In each practice area, these services may include but are not limited to:

- Provide expertise in the specific area of law relevant to the Authority's needs. Demonstrate a comprehensive understanding of applicable laws, regulations, and industry standards.
- Represent the Authority in legal proceedings, including negotiations, arbitration, mediation, and litigation, as required. Including preparing legal documents, contracts, and agreements on behalf of the Authority.
- Offer proactive legal strategies to mitigate risk and ensure compliance.
- On an as-needed basis, conduct legal research to stay current on legal developments, analyze complex legal issues, and provide recommendations to the Authority.
- Assist the Authority in understanding and adhering to relevant laws and regulations. Develop compliance programs and policies where necessary.
- In each practice area, provide other legal services as may be requested from time to time.

EXHIBIT "B"
FEE SCHEDULE

Nelson Mullins Riley & Scarborough

Services in the following specialized fields of law will be billed at the following hourly rates:

TITLE	HOURLY RATE
Senior Partner	\$450
Junior Partner	\$415
Of Counsel	\$390
Associate	\$375
Paralegal	\$325

Travel and expenses – no charge for any travel within Hillsborough County. If there is the need to travel for a meeting from one of the offices outside of Tampa, will bill the out-of-pocket expenses in accordance with Chapter 112, Florida Statutes. No charge for any travel time, phone calls, photocopies, legal research software fees, or postage. All other fees incurred in representing the Authority (i.e. legal filing fees, courier fees, etc.) will be passed through to the Authority without markup. In addition, the Authority will not be charged for file intake or administrative fees.

***All rates will be held firm for two years. In year three, and each year thereafter, all rates increase annually by 3%.

Exhibit "C"



December 22, 2023

Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor
Columbia, South Carolina 29201

The following confirms the terms of professional liability insurance ALAS will provide to Nelson Mullins Riley & Scarborough, LLP on January 1, 2024:

Policy No.:	LPL-2004-2024
Named Insured:	Nelson Mullins Riley & Scarborough, LLP
Type of Coverage:	Lawyers' Professional Liability
Policy Period:	January 1, 2024 – January 1, 2025
Limits: (for Policy period set forth above)	\$100,000,000 per claim/\$200,000,000 in the aggregate
Retention: (for Policy period set forth above)	\$2,500,000 each claim up to an aggregate of \$5,000,000 and \$100,000 each claim thereafter
Premium:	

All coverage is subject to the terms, conditions, limitations and exclusions stated therein.

ATTORNEYS' LIABILITY ASSURANCE SOCIETY LTD.,
A RISK RETENTION GROUP

By:
Anne M. Mahoney
Assistant Director of Underwriting

Date: 12/22/2023

311 S. Wacker Drive, Suite 5700
Chicago, IL 60606-6629
tel 312.697.6900
fax 312.697.6901

alas.com

BURGESS & NIPLE

1511 N. Westshore Boulevard | Suite 500 | Tampa, FL 33607 | 813.962.8689

Brian Pickard, PE
Tampa Hillsborough Expressway Authority
1104 E. Twiggs Street
Tampa, Florida 33602

Re: Phase 1B Cap Inspections of the West
Selmon Extension

October 16, 2024

Dear Mr. Pickard:

Burgess & Niple, Inc. (B&N) is pleased to submit this lump sum proposal to provide inspection services for the above referenced project. The following describes our understanding of the scope of work and anticipated schedule to provide these services and presents our proposed method and amount of compensation to provide the services.

SCOPE OF SERVICES

Burgess & Niple (B&N), in collaboration with its subconsultant Structural Technologies, LLC, will perform the removal, visual inspection, re-wax, and reinstallation of 264 post-tension (PT) caps as outlined in "Phase 1B" of the attached "Phase 1B Supplemental Inspection Scope of Services" document, dated July 18, 2024. This work will utilize the attached Technical Specification "TSP(T463-PT System Inspection) DRAFT.pdf," as a guideline as modified by the pre-bid meeting held on September 17, 2024.

A B&N Post-Tension Inspector will be on-site throughout all phases of the operation, conducting detailed inspections. The inspector will document findings using the preferred Excel format provided in the "Anchor Cap Inspection Form.xls." For each cap removed, photographs will be captured to document the removal, cleaning, and inspection of the tendon end. Photos will be uploaded weekly to a Microsoft Teams site for review and approval by THEA prior to reinstallation.

Due care will be taken to collect any and all water or substances that the cap/tendon releases and or a representative sampling of the water and or wax will be taken at a total of 16 locations either as selected by the descriptions below or by the presence of water.

1. One sample at each E-tendon location anchored at an expansion joint
2. Select 1 of 6 tendons based on any evidence of strand failure, anchor plate surface corrosion, etc.
3. If no evidence of distress at any of the 6 E-tendons at a given location, one will be selected randomly.
4. Sample all tendons with evidence of strand failure. Coordinate with THEA to adjust the remaining sampling scheme.
5. Thoroughly clean the receptacle used to store the water and wax samples; and sanitize the sampling tools with an alcohol wipe before taking each sample.

Testing will be completed by our subconsultant VCS Engineering.

Due care will be taken to avoid cross contamination of the samples, and the samples will be submitted to the labs on a weekly basis.

Once approval from THEA is received, the reinstallation process will begin, which includes adjusting the wax injection ports, re-waxing the caps, and applying epoxy coating. Photographic documentation of these steps will also be provided upon project completion.

B&N will not be responsible for the following items:

- A. Non-destructive or destructive testing not expressly provided herein.
- B. Conditions which are not obvious through usual and customary visual inspection.
- C. Conditions that develop after completion of the field inspection, providing the conditions were not visually apparent during the inspection.
- D. Identifying and evaluating portions of the structures, which are comprised of poor-quality materials, workmanship and/or inadequate structural design unless obviously visible.

DELIVERABLES

The deliverables shall include the following (and as further described above):

- 1) A Microsoft Teams based folder structure with the following files.
 - a. Approved Material Data Sheets and Shop Drawings
 - b. Documented RFI's
 - c. PDF of the Weekly Anchor Cap Inspection Form (Approved)
 - d. Raw .Jpeg Photographs during the removal of the Cap (separated by each Span/Cap)
 - e. Raw . Jpeg Photographs during the waxing of the Caps (separated by each Span/Cap)
 - f. Raw .Jpeg Photographs during the epoxy paint of the Caps (separated by each Span/Cap)
 - g. PDF's of all collected sample results.

OWNER'S RESPONSIBILITIES

The owner shall be responsible for providing all existing plans or previously completed reports. Complete access to all portions of the site to allow for a thorough inspection.

SCHEDULE

B&N shall begin procuring material in the month of November 2024, with inspection and cap removal beginning in January 2025 and will be completed by March 1, 2025, barring any approved special weather days.

Should the timeline be adjusted due to procurement, a minimum of 60 days is required to secure approved materials prior to commencement of work.

COMPENSATION FOR SERVICES

We propose to provide these services for a lump sum fee of \$475,467.

PROPOSAL VALIDITY

This proposal is valid provided we receive your authorization to proceed with 60 days from the date of this proposal.

Thank you for the opportunity to respond to your engineering needs. If you have any questions, please do not hesitate to contact us.

Very truly yours,

BURGESS & NIPLE, INC.

CLIENT



Drew Appler, PE
Project Manager

Client Signature



Scott D. Perfater, PE
Executive Vice President

Client Printed Name

Date

ATTACHMENT A
TERMS AND CONDITIONS

1. These Terms and Conditions are attached to and are part of this Proposal and are considered to be the Agreement between the Client and Burgess & Niple, Inc. (B&N) upon signature by both parties.
2. **Changes to Agreement.** Services beyond those stated herein can be provided by B&N upon written authorization of an addition fee and associated scope of additional services.
3. **Independent Contractor.** It is expressly understood and agreed that in the performance of their services under this Agreement, B&N shall not be considered an agent, i.e., an employee of the Client, but shall be considered an independent contractor.
4. **Standard of Care.** The standard of care for all professional and related services performed or furnished by B&N under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. B&N makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by B&N.
5. **Insurance.** B&N will maintain insurance coverage for workers compensation, employer's liability, general liability, automobile liability, and professional liability throughout the time of this agreement. Certificates of insurance will be provided upon request.
6. **Indemnification.** To the fullest extent permitted by law, B&N and Client each agree to indemnify the other party and the other party's officers, directors, employees, and representatives, from and against all losses, damages, and judgements arising from claims by third parties, including reasonable attorney's fees and expenses recoverable under applicable law, but only to the extent they are found to be caused by a negligent act, error, or omission of the indemnifying party or any of the indemnifying party's officers, directors, members, partners, agents, employees, or subconsultants in the performance of services under this agreement. If claims, losses, damages, and judgements are found to be caused by the joint or concurrent negligence of Client and B&N, they shall be borne by each party in proportion to its negligence.
7. **Limitation of Liability.** To the fullest extent permitted by laws and regulations, and notwithstanding any other provision of this Agreement, Client agrees that the total liability, in the aggregate, of B&N and B&N's officers, directors, members, partners, agents, employees, and subconsultants, to the Client, its subsidiary and/or affiliated companies and their respective officers, directors, employees, agents, and anyone claiming by, through, or under Client for any and all injuries, claims, losses, expenses, damages whatsoever arising out of, resulting from or in any way relating to B&N's services, this Agreement or any Addenda, from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of B&N or B&N's officers, directors, members, partners, agents, employees, or subconsultants, shall be limited to the total amount of compensation received by B&N or \$50,000, whichever is greater.
8. **Ownership of Documents.** All documents prepared or furnished by B&N pursuant to this Agreement are instruments of B&N's professional service, and B&N shall retain an ownership and property interest therein. B&N grants Client a license to use instruments of B&N's professional service for the purpose of constructing, occupying and maintaining the Project. Reuse or modification of any such documents by Client, without B&N's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold B&N harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through Client.
9. **Opinions of Cost.** When included in B&N's scope of services, opinions or estimates of probable construction cost are prepared on the basis of B&N's experience and qualifications and represent B&N's judgment as a professional generally familiar with the industry. However, since B&N has no control over the cost of labor, materials, equipment or services furnished by others, over contractor's methods of determining prices, or over competitive bidding or market conditions, B&N cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from B&N's opinions or estimates of probable construction cost.
10. **Suspension of Services.** If Client fails to make any payment due to B&N for services and/or expenses within 60 days after receipt of B&N's invoice, B&N may, after giving seven days written notice to Client, suspend services under this Agreement until B&N has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against B&N for any such suspension.
11. **Force Majeure.** Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence.
12. **Termination.** Client may terminate this Agreement with seven (7) days' prior written notice to B&N for convenience or cause. B&N may terminate this Agreement for cause with seven (7) days' prior written notice to Client. Failure of Client to make payments when due shall be cause for termination or, at the option of B&N, suspension of services under this Agreement until B&N has been paid all amounts due. The terminating party may set the effective date of termination at a time up to 30 days later than otherwise provided to allow B&N to

ATTACHMENT A (CONTINUED)
TERMS AND CONDITIONS

complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. In the event of any termination, B&N will be entitled to invoice Client and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

SCOPE OF SERVICES
TAMPA HILLSBOROUGH EXPRESSWAY AUTHORITY
REVERSIBLE EXPRESS LANES (REL) CLEANING AND STAINING PROJECT 2024
THEA Project No.: XXXXX

I. OBJECTIVES

The Tampa Hillsborough Expressway Authority (THEA) requires professional services for a design consultant to prepare construction plans for the cleaning and staining/re-staining of the Selmon Expressway Reversible Express Lanes (REL) from Twiggs Street at Meridian Avenue in downtown Tampa to Town Center Blvd. in Brandon. These contract documents will be used to bid the project and by the successful construction contractor to build the project, and by THEA and its Construction Engineering & Inspection (CEI) consultant for inspection and final acceptance of the project.

II. PROJECT DESCRIPTION AND REQUIREMENTS

The design consultant shall provide services as defined in this Scope of Services, the referenced Tampa-Hillsborough County Expressway Authority (THEA) and Florida Department of Transportation (FDOT) manuals, and procedures.

Services provided by the design consultant shall comply with all FDOT manuals, procedures, and memorandums in effect as of the date of execution of a contract with the design consultant unless otherwise directed in writing by THEA.

The design consultant shall design and prepare construction plans and specifications for all activities associated with cleaning and staining/re-staining the REL from Twiggs Street at Meridian Avenue in downtown Tampa to Town Center Blvd. in Brandon in accordance with Section III.

The plans shall be a minimal set of plans depicting the project layout and how the work is to progress. The plans shall include the following sheets necessary to convey the intent and scope of the project and to identify and quantify the areas of the REL substructures and superstructures that are to be cleaned and stained:

- Key Sheet
- Typical Sections
- General Notes
- Design detail sheets
- Summary of Quantities
- Summary of Pay Items
- Bridge Plan and Elevations
- Plan/Profile Sheets
- Special Details
- Erosion Control Plan Sheets
- Temporary Traffic Control Plan Sheets
- Project Network Control Sheets

III. ANALYSIS AND PLANS

The design consultant shall submit the Phase II (60%) and Phase IV (100%) submittal packages in PDF format. The design consultant shall deliver the final signed and sealed contract plans and documents in digital BIM/CADD format.

The design consultant shall provide three (3) engineer's estimates of probable cost:

- Phase II (60%)
- Phase IV (100%)
- Final

The design consultant shall provide an estimate of the number of Construction Days with each of the phase submittals. The project will be bid as a Pay Item Project, so a deliverable by the design consultant will be a bid tabulation excel file in a format provided by THEA.

The design consultant shall collect all data and information necessary to prepare permit applications and shall obtain the environmental permits required to construct the project. Anticipated Environmental Permitting Agencies include, but are not limited, to:

- Southwest Florida Water Management District (SWFWMD)
- Hillsborough County Environmental Protection Commission (HCEPC)
- Florida Department of Environmental Protection (FDEP).

The design consultant shall coordinate with FDOT District 7, the FDOT Turnpike Enterprise, City of Tampa, and Hillsborough County in advance for permits and approvals for work or detours that impact their respective roadways.

The design consultant shall coordinate with THEA's toll operations department to develop construction plans that minimize disruptions to toll operations. Plans shall be prepared such that the project shall not disrupt any toll collection operation, revenue collection or Intelligent Transportation System (ITS) during any construction phase.

The design consultant shall prepare and submit a Specifications Package and provide Technical Special Provisions for all items of work not covered by the FDOT Standard Specifications for Road and Bridge Construction and the workbook of implemented modifications. The Specifications Package shall be prepared by team members who have successfully completed the FDOT Specifications Package Preparation and shall be developed using the FDOT Specs on the Web application. The design consultant shall document that the procedure defined in the Handbook for the Preparation of Specifications Packages is followed, which includes the required quality assurance/quality control procedures.

Work depicted in the project plans prepared by the design consultant shall include cleaning by power washing and staining the REL from west of 12th Street in downtown Tampa to east of Gornto Lake Road in Brandon. The existing concrete surfaces shall be cleaned prior to the application of the stain. Concrete coatings shall consist of a Silicone Acrylic Concrete Sealer in accordance with the Technical Provisions to be prepared by the design consultant. Project plans shall require the construction contractor to submit color samples for final approval by THEA prior to application of the coating. Surfaces within the REL project limits to be coated as follows:

- All exposed surfaces of all REL bridge and roadway traffic barriers

- External edge of deck slab (coping) and underside of deck overhang at exterior beams (for non-segmental bridges)
- External face of exterior beams
- All exposed surfaces of REL segmental bridge piers
- All exposed surfaces of REL bridge segmental box girders
- All exposed surfaces of wall facing, including mechanically stabilized earth (MSE) wall panels and coping.

The design consultant shall require the application of anti-graffiti coatings to existing surfaces within the project limits in accordance with approved products from FDOT's approved products list (APL). Surfaces to be coated are as follows:

- Exposed faces of the REL bridge piers
- Retaining walls
- All exposed surfaces of all REL bridge and roadway traffic barriers
- All exposed surfaces of REL segmental bridge piers
- All exposed surfaces of all REL bridge and roadway traffic barriers
- All exposed surfaces of wall facing, including MSE wall panels and coping.

Project Limits

1. The scope of construction work for the REL roadway segments at the beginning and end of the project and between bridges, shall include cleaning and applying a concrete stained finish to the entire barrier wall (inside and out), slope pavement and retaining walls.



2. The scope of construction work for the REL Segmental Viaduct from West of 12th Street to west of CSX Railroad crossing (Bridge No. 100800), shall consist of cleaning and applying a concrete stained finish to the bridge structure segments, including the underside and outside surfaces of the segmental viaduct bridge spans, all above ground faces of the bridge piers and straddle bents, all the cast in place concrete surfaces of the bridge abutments, all exposed surfaces of roadway concrete barrier, concrete bridge railings.

3. The scope of construction work for the REL bridge over CSX Railroad (Bridge No. 100802), shall include cleaning and applying a concrete stained finish to the entire barrier wall (inside and out) and the outside & overhang of the deck and outside beam face.

4. The scope of construction work for the REL bridge over 34th Street (Bridge No. 100450), shall include cleaning and applying a concrete stained finish to the entire barrier wall (inside and out) and the outside & overhang of the deck and outside beam face.

5. The scope of construction work for the REL Segmental Viaduct from 39th Street to East of 78th Street (Bridge No. 100806), shall consist of cleaning and applying a concrete stained finish to the bridge structure segments, including the underside and outside surfaces of the segmental viaduct bridge spans, all above ground faces of the bridge piers and straddle bents, all the cast in place concrete surfaces of the bridge abutments, all exposed surfaces of roadway concrete barrier, concrete bridge railings.
6. The scope of construction work for the REL bridge over Palm River Road (Bridge No. 100461), shall include cleaning and applying a concrete stained finish to the entire barrier wall (inside and out) and the outside & overhang of the deck and outside beam face.
7. The scope of construction work for the REL bridge over Delaney Creek (Bridge No. 100810), shall include cleaning and applying a concrete stained finish to the entire barrier wall (inside and out) and the outside & overhang of the deck and outside beam face.
8. The scope of construction work for the REL bridge over US 301 (Bridge No. 100466), shall include cleaning and applying a concrete stained finish to the entire barrier wall (inside and out) and the outside & overhang of the deck and outside beam face.
9. The scope of construction work for REL/Eastbound Lower Lane Bridge over Falkenburg Road (Bridge No. 100490), shall include cleaning and applying a concrete stained finish to the entire barrier wall (inside and out) and the outside & overhang of the deck and outside beam face.
10. The scope of construction work for the REL Segmental Viaduct from west of I-75 to east of Gornito Lake Road (Bridge No. 100812), shall consist of cleaning and applying a concrete stained finish to the bridge structure segments, including the underside and outside surfaces of the segmental viaduct bridge spans, all above ground faces of the bridge piers and straddle bents, all the cast in place concrete surfaces of the bridge abutments, all exposed surfaces of roadway concrete barrier, concrete bridge railings.

The design consultant is advised that portions of the Selmon Greenway Trail run adjacent to and underneath the REL piers so accommodations for pedestrians may be required to be included in the construction project plans.

Temporary Traffic Control Plan (TTCP):

The design consultant shall utilize FDOT's Standard Plans, Index 102 series, where applicable. Should these standards be inadequate, a detailed TTCP shall be developed by the design consultant that includes but is not limited to, general notes and construction sequence sheets, typical detail sheets, traffic control plan sheets, and detour diagrams, as necessary.

The TTCP shall be signed and sealed by the responsible professional engineer who has completed FDOT's Advanced Temporary Traffic Control training course, and in accordance with the FDOT's Standard Plans and the FDOT Design Manual.

It is expected that the TTCP shall be designed such that the work can be constructed in the fewest possible number of phases.

IV. PROJECT SCHEDULE

Within ten (10) days after the Notice-To-Proceed, and prior to the design consultant beginning work, provide a detailed project activity/event schedule for THEA and design consultant scheduled activities with duration times in months

V. QUALITY CONTROL

The design consultant shall be responsible for ensuring that all work products conform to THEA and FDOT standards and criteria. This shall be accomplished through an internal quality control (QC) process performed by the design consultant. This QC process shall ensure that quality is achieved through checking, reviewing, and surveillance of work activities by objective and qualified individuals who were not directly responsible for performing the initial work. Within thirty (30) days after the Notice to Proceed, the design consultant shall provide a Quality Control Plan (QCP) to THEA as a PDF, for review and approval.

VI. PROGRESS MEETINGS

Progress Meetings between the design consultant and THEA will be held monthly and any unscheduled meetings as necessary. Within ten (10) days after the Notice to Proceed, the design consultant shall provide a schedule of calendar deadlines in a Critical Path Method (CPM) Gantt chart format and delivered to THEA as a PDF.

VII. EXHIBITS

- SystemMapwith_REL_Cleaning&StainingLimits_041524.pdf – (Limits of this proposed project.)

In 2017 – 2018, THEA let an REL Structure Power Washing contract for two segments of the REL, from west of 12th Street to west of the I-4 Connector, and from 39th Street to east of 78th Street. Exhibits including the TTCP from that project are included as information only.

- ITB Document Power Washing - 2015-04Apr-28_Exhibits.pdf - (Details depicting areas to be Power Washed)
- Selmon X-Way 09-01-2016_S&S.pdf – (Temporary Traffic Control Plans)

SUMMARY FEE SHEET																						
ATTACHMENT "A"																						
PROJECT DESCRIPTION:		Tampa-Hillsborough Expressway Authority				HNTB PR 2025XXXX																
GEC CONTRACT NO.:		O-00121				REL Clean & Stain Design (11/1/24 - 6/30/25)																
CPMP		HI-0025 D-XX																				
PRIME CONSULTANT:		HNTB Corporation																				
ACTIVITY		Sr. Technical Advisor		Project Manager		Chief Eng./Planner Sr. Proj. Eng.		Sr. Eng./Planner		Proj. Eng./Planner		Engineer/Planner		Sr. Technician		Clerical		TOTAL		Avg. Hourly Rate		
		Man Hours	Hourly Rate \$ 173.37	Man Hours	Hourly Rate \$ 144.54	Man Hours	Hourly Rate \$ 102.19	Man Hours	Hourly Rate \$ 79.95	Man Hours	Hourly Rate \$ 61.62	Man Hours	Hourly Rate \$ 48.21	Man Hours	Hourly Rate \$ 38.95	Man Hours	Hourly Rate \$ 22.66	Manhours By Activity	Salary Cost By Activity			
REL Clean & Stain Design		0	\$0.00	60	\$8,672.40	134	\$13,693.46	578	\$46,211.10	944	\$58,169.28	722	\$34,807.62	255	\$9,932.25	0	\$0.00	2693	\$171,486.11	\$63.68		
Total Man Hours		Total Salary [(MHxHR)]		0	\$0.00	60	\$8,672.40	134	\$13,693.46	578	\$46,211.10	944	\$58,169.28	722	\$34,807.62	255	\$9,932.25	0	\$0.00	2,693	\$ 171,486.11	\$63.68
		Basic Activities Maximum Limiting Fees (Salary Costs)																		\$171,486.11		
		Cost Elements & Additives																				
		(a) 2.78 Multiplier																		\$476,731.39		
Direct Expenses		4.37%		\$ 7,493.94		SUBTOTAL (Cost Elements applied to Basic Activities Fee):													\$476,731.39			
		(d) Direct Reimbursables																		\$7,493.94		
		Total Project Cost:																		\$484,225.33		
		Maximum Limiting Amount:																		\$484,225.33		