

DISPUTE REVIEW BOARD
THREE PARTY AGREEMENT
(EFFECTIVE JULY 2024 LETTINGS)

THIS **THREE PARTY AGREEMENT**, hereinafter called "**AGREEMENT**", made and entered into this ____ day of _____, 20____, between the State of Florida Department of Transportation, an agency of the State of Florida, hereinafter called "**DEPARTMENT**"; and _____, hereinafter called the "**CONTRACTOR**"; and the Dispute Review Board, hereinafter called the "**BOARD**", and consisting of three members: _____, _____ and _____,

WITNESSETH, that

WHEREAS, the **DEPARTMENT** is now engaged in the construction of (FPID _____), and;

WHEREAS, the Contract # _____ 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 **DEPARTMENT**, 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 disputes and claims between the **CONTRACTOR** and the **DEPARTMENT**, the **DEPARTMENT** has provided in the Contract # _____, hereinafter called "CONSTRUCTION CONTRACT," for the establishment of the **BOARD**. The purpose of the **BOARD** is to assist the parties in avoiding disputes and claims, and when requested by either the **DEPARTMENT** or the **CONTRACTOR**, to fairly and impartially consider dispute or claim placed before it, and to provide recommendations for resolution of these disputes and claims to both the **DEPARTMENT** 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.

II

SCOPE OF WORK

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

A. Operations: The **BOARD** will formulate its own rules of operation, based on the Dispute Review Board Operating Procedures available on the **DEPARTMENT's** internet site. It is not desirable to adopt inflexible rules for the internal operation of the **BOARD**. The procedures will be kept flexible to adapt to changing situations.

The **DEPARTMENT** and the **CONTRACTOR** will keep the **BOARD** informed of construction activity and progress by submitting written progress reports and other relevant data at least monthly. The **BOARD** will visit the project at regular intervals and/or at times of critical construction events and meet with the Engineer (hereinafter as defined in the Standard Specifications for Road and Bridge Construction Section 1-3) and the **CONTRACTOR**. On projects without unresolved or emerging disputes, meetings will be held at intervals as mutually agreed to by the **DEPARTMENT** and the **CONTRACTOR**. The frequency of these meetings will be monthly for the first three to six months and either monthly or every two months thereafter as assessed by the **DEPARTMENT** and the **CONTRACTOR**. Meetings may be allowed every three months by special exception when the progress of the work is at or ahead of schedule and the exception is mutually agreed to by the **DEPARTMENT** and the **CONTRACTOR**. On projects with unresolved disputes, the **BOARD** will meet, at least monthly, until the unresolved disputes are resolved. The frequency of these visits will be as mutually agreed to by the **DEPARTMENT** and the **CONTRACTOR**, depending on the progress of the work.

Regular meetings will be held at the job site. Each meeting will consist of an informal round table discussion and a field inspection of the work. The round table discussion will be attended by selected personnel from the **DEPARTMENT** and the **CONTRACTOR**. Agenda for regular meetings of the **BOARD** will generally include the following:

- a. Meeting opened by the Chairman of the **BOARD**.
- b. Opening remarks by the Engineer.
- c. A description by the **CONTRACTOR** of: work accomplished since the last meeting, current status of the work schedule, schedule for the future, potential problems, and proposed solutions to any potential or existing problems.
- d. Discussion by the Engineer of: Work schedule as he views it, potential new disputes or claims and any proposed solutions, status of past disputes and claims, and other controversies.
- e. Set a tentative date for next meeting.

The **DEPARTMENT** will prepare minutes of all regular meetings and circulate them for comments, revisions, and/or approval by all concerned. Minutes, as amended, will be adopted at the next meeting.

The field inspections will cover all active segments of the work. The **BOARD** will be accompanied by representatives of both the **DEPARTMENT** and the **CONTRACTOR**. No party shall unilaterally seek any **BOARD** member's advice or consultation, nor shall any **BOARD** member(s) provide unilateral advice or consultation to the **DEPARTMENT** or the **CONTRACTOR**.

B. Procedure and Schedules for Dispute Resolution: Disputes 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 **DEPARTMENT** and the **CONTRACTOR** and the time periods stated below may be shortened in order to hasten resolution.

- a. Advisory Opinions: Either the **DEPARTMENT** or the **CONTRACTOR** may request that the **BOARD** provide a preliminary informal review of an emerging dispute through an Advisory Opinion.
 - i. Advisory Opinions may be provided during any regularly scheduled Board meeting. The party requesting the Advisory Opinion must inform the **BOARD** and the other party of the disputed issue at least one week before the meeting at which an Advisory Opinion will be sought.
 - ii. Advisory Opinions will be informal oral discussions between the **BOARD**, the **DEPARTMENT** and the **CONTRACTOR** in the presence of all parties. No formal position papers, written summaries, or presentations of any kind shall be provided to the **BOARD** and no written findings or recommendations will be provided from the **BOARD** to the **DEPARTMENT** and the **CONTRACTOR**.
 - iii. The **BOARD** will fairly and impartially consider emerging disputes referred to it and will provide informal Advisory Opinions to the **DEPARTMENT** and the **CONTRACTOR** to assist in the resolution of these emerging disputes.
 - iv. Advisory Opinions provided by the **BOARD** will not be binding on either the **DEPARTMENT** or the **CONTRACTOR**.
 - v. If the **BOARD** is later called upon to issue a recommendation in connection with an emerging dispute on which it has provided an Advisory Opinion, the **BOARD** shall not be bound by any previous statements, discussions, or opinions that it may have made in the course of an Advisory Opinion, nor shall it take into account any prior Advisory Opinions in the consideration of a formal recommendation.
- b. Disputes Review Hearings: 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. Only disputes or claims that have been duly preserved under the terms of the Contract as determined by the **BOARD** will be eligible to be heard by the **BOARD**. 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.

- i. If the **CONTRACTOR** objects to any decision, action, or order of the Engineer, the **CONTRACTOR** may file a written protest with the Engineer, within 15 days after the event, stating clearly and in detail the basis for the objection.
- ii. The Engineer will consider the written protest and make a decision on the basis of the pertinent construction contract provisions, together with the facts and circumstances involved in the dispute. The Engineer's decision will be furnished in writing to the **CONTRACTOR** within 15 days after receipt of the **CONTRACTOR**'s written protest.
- iii. The Engineer's decision will be final and conclusive on the subject, unless a written appeal to the Engineer is filed by the **CONTRACTOR** within 15 days of receiving the decision. Should the **CONTRACTOR** preserve its appeal of the Engineer's decision, the matter can be referred to the **BOARD** by either the **DEPARTMENT** or the **CONTRACTOR**.
- iv. Upon receipt by the **BOARD** of a written duly preserved protest of a dispute from either the **DEPARTMENT** or the **CONTRACTOR**, it will first be decided when to conduct the hearing. If the matter is not urgent, it may be heard at the time of the next regular **BOARD** meeting. For an urgent matter, the **BOARD** will meet at its earliest convenience.
- v. 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 **DEPARTMENT** and/or **CONTRACTOR** will provide the requested information to the **BOARD** and to the other party.
- vi. The **CONTRACTOR** and the **DEPARTMENT** will each be afforded an opportunity to be heard by the **BOARD** and to offer evidence.
The **BOARD**'s recommendations for resolution of the dispute will be given in writing to both the **DEPARTMENT** 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.
- vii. The **BOARD**'s recommendations for resolution of the dispute will be given in writing to both the **DEPARTMENT** 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.

- viii. Within 15 days of receiving the **BOARD**'s recommendations, both the **DEPARTMENT** 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 **DEPARTMENT** and the **CONTRACTOR** are able to resolve the dispute with or without the aid of the **BOARD**'s recommendations, the **DEPARTMENT** will promptly process any required changes to the CONSTRUCTION CONTRACT.
- ix. 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 a claim in accordance with Standard Specification 5-12. Although both the **DEPARTMENT** 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.

C. **BOARD** Consideration of Disputes or Claims:

- a. Advisory Opinions: Upon notification of the **BOARD** of the request for an Advisory Opinion on an emerging dispute, from either the **CONTRACTOR** or the **DEPARTMENT**, the **BOARD** shall review and consider the emerging dispute or claim during the next regularly scheduled Board meeting. Both the **DEPARTMENT** and the **CONTRACTOR** shall be given the opportunity to informally discuss their position on the emerging dispute or claim at the meeting. Each party will then be allowed successive rebuttals until all aspects are fully covered. The **BOARD** members may ask questions or for additional clarification. All discussion between the Board and the parties shall be informal oral discussions in the presence of all parties.
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 referral of an emerging dispute or claim presented to the **BOARD** by the **DEPARTMENT** or the **CONTRACTOR**, and that the **BOARD**'s opinions concerning any such emerging dispute or claim are informal and advisory.
- b. Disputes Review Hearings: 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 a written referral of a dispute, from either the **CONTRACTOR** or the **DEPARTMENT**, the **BOARD** shall convene to review and consider the dispute or claim. The time and location of **BOARD** hearing shall be determined by the **DEPARTMENT**, the **CONTRACTOR**, and the **BOARD**. Both the **DEPARTMENT** 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 **DEPARTMENT** 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. If possible, hearings should be kept informal. Although discouraged, 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 **DEPARTMENT** and the **CONTRACTOR** must each have a representative at all hearings. The **CONTRACTOR** will first present its analysis of the dispute or claim, followed by the **DEPARTMENT'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. In large or complex cases, additional hearings may be necessary in order to consider and fully understand all of the evidence presented by the parties.

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

D. Construction Site Visits: The **BOARD** members shall visit the project site to keep abreast of construction activities and to develop a familiarity with the work in progress. The frequency, exact time, and duration of these visits shall be as mutually agreed between the **DEPARTMENT**, the **CONTRACTOR**, and the **BOARD**.

In the case of an alleged differing site condition or specific construction problem (e.g. work that is to be removed or replaced) it will be advantageous, but not absolutely necessary, for the **BOARD** to personally view any relevant conditions. If viewing by the **BOARD** would cause delay to the project, photographs and descriptions of such conditions collected by either or both parties will suffice.

E. **BOARD** Member Replacement: In the event there is an issue regarding a **BOARD** member's capacity to perform his/her **BOARD** duties due to ethics, health, or other issues that impacts the integrity of the **BOARD**, the **BOARD** members shall notify the **DEPARTMENT** and the **CONTRACTOR** that, in the best interest of the project, there is a need to replace that member. The **DEPARTMENT** and the **CONTRACTOR** will then make the final determination to replace that member.

Should the need arise to appoint a replacement **BOARD** member for any reason, 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.

F. In the event disputes or claims reviewed by the **BOARD** are related to the Warranted Asphalt Pavement Specification (Section 338), the determinations of the **BOARD** as to that provision only shall be binding on both the **CONTRACTOR** and the **DEPARTMENT** and with no right of appeal by either party.

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 **DEPARTMENT**, 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 **DEPARTMENT**.

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 DEPARTMENT RESPONSIBILITIES

Except for its participation in the **BOARD**'s activities as provided in the CONSTRUCTION CONTRACT and in this **AGREEMENT**, the **DEPARTMENT** 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 **DEPARTMENT** shall furnish the following services and items:

A. Contract Related Documents: The **DEPARTMENT** shall furnish the **BOARD** three copies of all Construction Contract documents, supplemental agreements, written instructions issued by the **DEPARTMENT** 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 **DEPARTMENT**, in cooperation with the **CONTRACTOR**, will coordinate the operations of the **BOARD**. The **DEPARTMENT**, through the Engineer, will arrange or provide conference facilities at or near the Contract site and provide secretarial and copying services.

V TIME FOR BEGINNING AND COMPLETION

The **BOARD** is to remain in operation throughout the life of the active CONSTRUCTION CONTRACT and, if needed, for a reasonable post-construction period following final acceptance of the project, but not to exceed the date the **DEPARTMENT** 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** pursuant to Section 8-3.7 of the CONSTRUCTION CONTRACT, 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 Principles and Procedures). The chairman shall transmit an invoice to the **CONTRACTOR**, with a copy to the **DEPARTMENT**.

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 \$1,600 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 **DEPARTMENT** 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 **DEPARTMENT** that such compensation is necessary for the **BOARD** or the Chairman to perform their obligation effectively.

A per hearing cost of \$11,500 has been established by the **DEPARTMENT** for providing compensation for all members of the Dispute Review Board for participation in an actual hearing. The **BOARD** chairman will receive \$4,500 for participation in the hearing while the remaining two members will receive \$3, 500 each. The **DEPARTMENT** and the **CONTRACTOR** will equally provide compensation to the **BOARD** for participation in an actual hearing. The **DEPARTMENT** will compensate the **CONTRACTOR** \$4,750 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 **DEPARTMENT** and the **CONTRACTOR**. If an additional day(s) is granted for the hearing, it will be at \$4,800 per day, regular meeting rate, payment of which is equally split between the **DEPARTMENT** 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 **DEPARTMENT** and the Federal Highway Administration, for a period of three years after final payment, at which time all such cost records and accounts shall be delivered to the **DEPARTMENT** 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 is 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 **DEPARTMENT** 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 **DEPARTMENT** or the **CONTRACTOR**. In the event that the **CONTRACTOR** and the **DEPARTMENT** cannot agree on a new **BOARD** within 60 days of the **BOARD**'s termination, the new **BOARD** will be selected by the Director, Office of Construction 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 **DEPARTMENT** or the **CONTRACTOR**.

The **DEPARTMENT** 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 **DEPARTMENT** shall be brought in Leon 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 **DEPARTMENT** 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 **DEPARTMENT**. However, upon receipt of any such public records request, the parties hereto shall immediately notify the **DEPARTMENT** and obtain prior written consent from the **DEPARTMENT** 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 **DEPARTMENT**'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 **DEPARTMENT** 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 **DEPARTMENT** projects, that they have not, for a period of two years prior to the date of execution of 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 prior to the date of execution of the project's CONSTRUCTION CONTRACT, been employed by the Central Office of the **DEPARTMENT** or the **DEPARTMENT'S** District in which the project is located. 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 **DEPARTMENT**. Finally, the members of the **BOARD** agree that they are not a full-time employee of a **DEPARTMENT** 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 within the District in which the CONSTRUCTION CONTRACT is located, the **BOARD** member should notify the **CONTRACTOR** and the **DEPARTMENT** of such change and may continue to serve on the **BOARD** unless either the **DEPARTMENT** or the **CONTRACTOR** have good cause to reject the member. The members of the **BOARD**, the **DEPARTMENT**, 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 FEDERAL REVIEW

The Federal Highway Administration shall have the right to review the work in progress.

XV CERTIFICATION OF THE BOARD MEMBERS AND THE DEPARTMENT

Attached hereto as Exhibits are the "CERTIFICATION OF THE BOARD MEMBERS" and "CERTIFICATION OF STATE DEPARTMENT OF TRANSPORTATION".

XVI E-VERIFY

Vendor/Contractor:

1. 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 Vendor/Contractor during the term of the contract; and
2. shall expressly require any subcontractors performing work or providing services pursuant to the state 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 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: _____

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

Name: _____

Signature: _____

Title: DISTRICT CONSTRUCTION ENGINEER

Approved as to Form Only this
_____ day of _____, 20_____

Chief 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 State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this **AGREEMENT** involving participation of federal-aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

Name	Signature	Date
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Title	Firm Address	
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Firm Represented		
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Name	Signature	Date
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Title	Firm Address	
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Firm Represented		
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Name	Signature	Date
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Title	Firm Address	
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Firm Represented		
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EXHIBIT B
CERTIFICATION OF STATE DEPARTMENT OF TRANSPORTATION

I hereby certify that I am the District Construction Engineer of the State of Florida Department of Transportation, of the District in which the subject project is to be constructed, 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 the Federal Highway Administration, U.S. Department of Transportation, in connection with this **AGREEMENT** involving participation of federal-aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

(Date)

(Signature)

(Name)