PROSECUTION AND PROGRESS - PROSECUTION OF WORK – REGIONAL DISPUTES REVIEW BOARD.
(REV 3-1-24) (FA 3-13-24) (FY 2027-28)

ARTICLE 8-3 is expanded by the following new Subarticle:

8-3.7 Regional Disputes Review Board: For this Contract, a Disputes Review Board (Board) will be available to assist in the resolution of disputes and claims arising out of the work on the Contract.

8-3.7.1 Purpose: The Board will provide special expertise to assist in and facilitate the timely and equitable resolution of disputes and claims between the Department and the Contractor (Parties) in an effort to avoid construction delay and future claims.

It is not intended that the Parties default on their normal responsibility to cooperatively and fairly settle their differences by indiscriminately assigning them to the Board. It is intended that the Board encourage the Parties to resolve potential disputes or claims without resorting to this alternative resolution procedure.

8-3.7.2 Disputes Resolution: The Board will be used when normal dispute or claim resolution is not succeeding. It is a condition of this Contract that the Parties shall use the Board. Either Party may refer a dispute or claim to the Board for a disputes review hearing. Disputes and claims 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 Parties and the time periods stated below may be shortened in order to hasten resolution.

If the Contractor objects to any decision, action or order of the Engineer, the Contractor may file a written protest with the Engineer, stating clearly and in detail the basis for the objection, within 15 calendar days after the event. The Engineer will consider the written protest and make their decision on the basis of the pertinent contract provisions, together with the facts and circumstances involved in the dispute or claim. The Engineer's decision will be furnished in writing to the Contractor within 15 calendar days after receipt of the Contractor**'**s written protest. This decision will be final and conclusive on the subject, unless a written appeal to the Engineer is filed by the Contractor within 15 calendar days of receiving the decision.

8-3.7.2.1 Disputes Review Hearings: 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. Disputes or claims shall be referred to the Board 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. Claims that are referred to the Board must be in compliance with 5-12. Requests for equitable adjustment must be certified as required by 4-3.2.

Either Party furnishing any written evidence or documentation to the Board must do so a minimum of 15 calendar days prior to the date of the hearing for the dispute, and will at the same time furnish copies of such information to the other Party. Additionally, either party furnishing any written evidence or documentation to the Board must do so a minimum of 15 calendar days prior to the date of 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 Party will provide the requested information to the Board and to the other Party.

Both Parties will each be afforded an opportunity to be heard by the Board and to offer evidence. Neither Party may present information at the hearing that was not previously distributed to both the Board and the other Party.

The Board will fairly and impartially consider disputes or claims referred to it and will provide written recommendations to the Parties within 15 calendar days of completion of the hearing to assist in the resolution of these disputes or claims. The Board will focus its attention in the written report to matters of entitlement and allow the parties to determine the monetary damages. In cases of extreme complexity, both Parties may agree to allow additional time for the Board to formulate its recommendations.

Recommendations provided by the Board will not be binding on either Party.

Within 15 calendar days of receiving the Board's recommendations, both Parties will accept or reject the recommendations by responding to the other and to the Board in writing. The failure of either Party to reject 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.

For disputes involving non-compensable time extensions, the Department will resolve the dispute in a good-faith manner regardless of its acceptance or rejection of the Board's recommendations.

If Entitlement is determined by the Board, the Parties should proceed to negotiate monetary changes within 60 calendar days. If both Parties are unable to successfully negotiate monetary changes within 60 calendar days, 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.

If the Parties resolve the dispute with or without the aid of the Board's recommendations, the Department will promptly process any required changes to the Contract.

Requests for reconsideration of a Board recommendation may only be made when there is new evidence to present. The completed hearing of any unresolved dispute or claims is a condition precedent to a Party having the right to initiate arbitration, other alternative resolution procedures, or to file a lawsuit, as provided by law, on such unresolved disputes or claims. In addition, all written recommendations of the Board will be admissible as evidence in any subsequent arbitration, or circuit proceedings, as provided by law.

8-3.7.3 Contractor Responsibility: The Contractor shall furnish to each Board member a set of all pertinent documents which are or may become necessary for the Board, except documents furnished by 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.

8-3.7.4 Department Responsibilities: Except for its participation in the Board's activities as provided in the Contract and in this Three Party 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 each Board member a copy of all Contract Documents, supplemental agreements, written instructions issued by the Department to the Contractor, or other documents pertinent to the performance of the Contract and necessary for the Board to perform their 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 Project Engineer, will arrange or provide conference facilities at or near the Contract site and provide secretarial and copying services.

8-3.7.5 Continuance of Work: During the course of the Board's process, the Contractor will continue with the work as directed by the Engineer in a diligent manner and without delay or otherwise conform to the Engineer's decision or order, and will be governed by all applicable provisions of the Contract. Throughout any protested work, the Contractor will keep complete records of extra costs and time incurred. The Contractor will permit the Engineer and Board access to these and any other records needed for evaluating the disputes or claims.

8-3.7.6 Membership: The Board will consist of members pre-selected by the Engineer and the President of the Florida Transportation Builders' Association (FTBA), and posted on the Department's Website.

If during the life of the contract, a Board member has a discussion regarding employment or entered into any agreement for employment after completion of the contract with the Department, the Contractor or any subcontractor or supplier on the project, they shall immediately disclose this to the Contractor and the Department and shall be disqualified from serving on the Board.

Once established, the Board will remain active and in full force and effect. If, after the Department has made final acceptance of the project, there are unresolved disputes and claims remaining, the Board shall remain active and in full force and effect until the project is otherwise administratively closed by the Department following final payment so that the Board may continue in operation until all unresolved disputes and claims are resolved.

8-3.7.7 Limitation for Referral of Disputes or Claims to the Board: Any disputes or claims that were not resolved prior to Final Acceptance of the project pursuant to 5-11 must be referred to the Board within 90 calendar days after Final Acceptance for 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.

8-3.7.8 Basis of Payment: A per hearing cost of $11,500 for the Contract has been established by the Department for providing compensation for all members of the 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 Parties will equally provide compensation to the Board for participation in an actual hearing. The Department will compensate the Contractor $5,750 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 Parties. If an additional day(s) is granted for the hearing, it will be at $4,800 per day, payment of which is equally split between the Parties. Payment shall be made by issuing a work order against contingency funds set aside for this Contract.

The Department will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services, and will bear the cost of these services. If the Board desires special services, such as legal consultation, accounting, data research, and the like, both parties must agree, and the costs will be shared by them as mutually agreed.